

**International Labour Conference, 97th Session, 2008**

**Report VI**

**Strengthening the ILO's capacity to assist its Members' efforts to reach its objectives in the context of globalization: Continuation of the discussion on strengthening the ILO's capacity and possible consideration of an authoritative document, possibly in the form of a Declaration or any other suitable instrument, together with any appropriate follow-up, and the form they may take**

**Sixth item on the agenda**

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# I. Draft authoritative Text for the consideration of the Conference

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## Preamble

The International Labour Conference, meeting in Geneva on the occasion of its 97th Session,

**Aware** that since its creation in 1919 the International Labour Organization has evolved dynamically to meet the requirements of progress and social justice in a constantly changing environment, as reflected in particular by:

- the Declaration of Philadelphia (1944), which expanded and updated the “International Labour Charter” accompanying the original Constitution;
- the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (1998), through which Members recognized the particular significance of these rights in the discharge of the Organization’s mandate; and also
- the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (1977), which addressed the growing role of such actors in the realization of the Organization’s objectives;

**Considering** that:

- the present context of the global economy, in particular the diffusion of new technologies, the circulation of ideas, the exchange of goods and services and the movement of persons, in particular working women and men, offers unprecedented opportunities and benefits for enhancing the well-being of people;
- these opportunities and benefits remain unevenly distributed within and among countries, and large numbers of people, especially those occupied in the informal economy, or otherwise excluded, continue to be in a situation of hardship and privation;
- in the sectors of the economy exposed to rapid changes in technology, trade and finance flows, adjustments too often come at a considerable human and social cost; and
- in these circumstances, achieving a fair outcome for all is necessary to meet the universal aspiration for social justice and to ensure the sustainability of open societies and the global economy;

**Encouraged** by the international community's recognition of the ILO's critical role in addressing these challenges, in particular through:

- the commitments and Programme of Action adopted at the World Summit for Social Development in Copenhagen (1995);
- the wide support, repeatedly expressed at global and regional levels, for the Decent Work concept launched in the Director-General's Report to the 87th Session of the International Labour Conference (1999) and developed subsequently by the ILO, and the recognition of its importance for the eradication of poverty and the promotion of gender equality and youth employment;
- the conclusions and recommendations contained in the report of the World Commission on the Social Dimension of Globalization (2004); and
- the universal endorsement by Heads of State and Government of fair globalization and the goals of full and productive employment and Decent Work for all, as a central objective of their relevant national and international policies, in the Outcome Document of the 2005 World Summit;

**Convinced** that in a world of growing interdependence and complexity:

- the ILO fundamental values of freedom, human dignity, security and non-discrimination are essential for the development of individual and collective capacities and economic efficiency; and
- the tripartite system and the practice of free and informed dialogue and conciliation between the legitimate representatives of those concerned within and across borders are more relevant than ever to achieving solutions that will prove sustainable and to building up social cohesion and the rule of law, inter alia through international labour standards;

**Recognizing** that the present challenges call for the Organization to intensify its efforts and mobilize all its means of action to promote its constitutional objectives, and that, to make these efforts effective and strengthen the capacity of Members to take full advantage of the opportunities of globalization, the Organization must:

- develop a global and integrated approach, in line with the Decent Work strategy, drawing upon the synergies among these objectives;
- adapt and update its institutional practices and governance while fully respecting the existing constitutional framework and procedures;

**Adopts this ..... day of ..... of the year two thousand and ..... the present Text**, which may be cited as .....

## I. Scope and principles

The Conference recognizes and declares that:

- A. In the present context of accelerating change, Members' commitment and efforts to implement the ILO's constitutional mandate must be centred around four core objectives of recognized strategic importance, as follows:

- (i) placing full and productive employment at the centre of economic and social policies and creating a sustainable, institutional and macroeconomic environment in which:
    - individuals can develop and update the necessary capacities to be productively occupied for their personal fulfilment and the common well-being; and
    - both private and public enterprises can develop activities and initiatives offering greater employment and income opportunities and prospects for all;
  - (ii) developing measures of social and labour protection which are sustainable and adapted to national possibilities, with a view to:
    - progressively extending social security to all and adapting its scope and coverage to meet the new needs and uncertainties generated by the rapidity of technological and economic changes;
    - ensuring healthy, safe and decent working conditions, bearing in mind the basic requirements spelled out in the 1919 “International Labour Charter”, as well as the legitimate expectation of all those concerned to obtain a fair share of the wealth which they have helped to generate;
  - (iii) promoting social dialogue and tripartism as the most appropriate method for:
    - adapting the implementation of the strategic objectives to the needs and possibilities of each country;
    - translating economic development into social progress and vice versa; and
    - facilitating consensus building on relevant national and international policies;
  - (iv) guaranteeing fundamental principles and rights at work both as human rights and as the enabling condition without which none of the other objectives can be fully reached, and the violation of which cannot be invoked or otherwise used as a legitimate comparative advantage.
- B. These objectives are indivisible, interdependent and mutually supportive. The failure to promote any one of them will hinder progress towards the others. To optimize their impact, efforts to promote them should, in line with the strategy for Decent Work, be part of a global and integrated policy covering all relevant areas of activity.
- C. The specific content and relative importance to be given to these objectives is a matter to be determined by each Member, subject to its existing international obligations and giving due regard to:
- (i) national conditions and possibilities, and such priorities as the parties concerned may express through their freely chosen and representative organizations;
  - (ii) the requirements of interdependence and solidarity among all Members, which are inherent in the ILO Constitution, and which are more pertinent than ever in the context of a global economy; and
  - (iii) the principles and provisions of international labour standards.

## II. Method of implementation

The Conference further recognizes that, in a globalized economy:

- A. The implementation of Section I of this Text requires that the ILO effectively guide, coordinate and assist its Members in their efforts. To that end, the Organization should review and adapt its institutional practices and governance in order to make the best use of its human and financial resources and of the unique advantage of its tripartite structure and standards system, with a view to:
- (i) systematically assessing its Members' needs, especially those of developing countries, with respect to each of the strategic objectives, as well as past ILO action to meet them, through a regular universal review by the International Labour Conference, so as to:
    - determine how the ILO can more efficiently address these needs through coordinated use of all its means of action;
    - attract additional voluntary resources to address the needs thus determined; and
    - guide the Governing Body and the Office in their responsibilities;
  - (ii) mobilizing technical cooperation and expert advice to support and assist:
    - efforts by individual Members to make progress on a tripartite basis towards all the strategic objectives, through country programmes for Decent Work, where appropriate, and within the framework of the United Nations system; and
    - building up, wherever necessary, the institutional capacity of States, as well as employers' and workers' organizations, as a prerequisite for meaningful and coherent social policy and sustainable development;
  - (iii) promoting shared knowledge and understanding of the synergies between the strategic objectives through empirical analysis and tripartite discussion of concrete experiences, with the voluntary cooperation of countries concerned and with a view to informing Members' decision-making in relation to the opportunities and challenges of globalization;
  - (iv) upon request, providing assistance to Members who wish to promote strategic objectives jointly within the framework of bilateral or multilateral agreements, subject to their overall compatibility with ILO obligations;
  - (v) developing new partnerships with relevant non-state entities – in consultation, where appropriate, with national and international employers' and workers' organizations – in order to enhance the effectiveness of ILO operational programmes and activities, enlist their support in any appropriate way, and otherwise promote ILO strategic objectives.

- B. At the same time, Members have the key responsibility to give effect to their commitment to and support for a global and integrated strategy for Decent Work outlined in Section I of this Text and making it an integral part of their social and economic policy. For the discharge of that responsibility, they may consider, *inter alia*:
- (i) adopting a national strategy for Decent Work targeting a set of priorities for the integrated pursuit of the strategic objectives, giving due regard to national possibilities and needs identified in consultations with representative organizations of employers and workers;
  - (ii) establishing, if necessary with the assistance of the ILO, appropriate indicators or statistics to monitor and evaluate the progress made;
  - (iii) reviewing their situation as regards the ratification or implementation of ILO instruments with a view to achieving a minimum coverage of each of the strategic objectives, with special emphasis on the instruments regarded as most significant from the viewpoint of governance;<sup>1</sup>
  - (iv) taking appropriate steps to ensure adequate coordination between positions taken on behalf of the member State concerned in relevant international forums and any steps they may take under the present Text;
  - (v) providing on a bilateral, regional or multilateral basis, in so far as their resources permit, appropriate support to other Members' efforts to give effect to the principles and objectives referred to in Section I of this Text;
- and, in pursuit of the goals above, consulting with representative organizations of employers and workers on any steps that could be taken.
- C. Other international and regional organizations with mandates in closely related fields have an important contribution to make to the implementation of this integrated approach.

### III. Final provisions

- A. The Director-General of the International Labour Office will ensure that the present Text is communicated to all Members and, through them, to representative organizations of employers and workers; to international organizations with competence in related fields at the international and regional levels; and to such other entities as the Governing Body may identify. Governments, as well as employers' and workers' organizations at the national level, should make the Text known in all relevant forums where they may participate or be represented, or otherwise disseminate it to any other entities that may be concerned.

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<sup>1</sup> For example, the Labour Inspection Convention, 1947 (No. 81), the Employment Policy Convention, 1964 (No. 122), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), which are all priority Conventions.

- B. The Governing Body and the Director-General of the International Labour Office will have the responsibility for establishing appropriate modalities for the expeditious implementation of Section II of this Text, taking into account the guidelines contained in the annex.
- C. At such time(s) as the Governing Body may find appropriate, and in accordance with modalities to be established, the impact of the present Text, and in particular the steps taken to promote its implementation, will be the object of a review by the International Labour Conference with a view to assessing what further course of action, possibly of a standards-related nature, would be appropriate.

## Possible annex

### Follow-up to the Text

#### I. Overall purpose and scope

1. The aim of this follow-up is to address the means by which the Organization will guide, coordinate and assist the efforts of its Members to give effect to their commitment to pursue the four core objectives of strategic importance to implementing the constitutional mandate of the Organization.
2. This follow-up seeks to make the fullest possible use of the means of action provided under the Constitution to the Organization to fulfil its mandate. Some of the measures to assist the Members may entail some adaptation of existing modalities of application of article 19, paragraphs 5(e) and 6(d), of the ILO Constitution.

#### II. Action by the Organization to assist its Members

##### *Administration, resources and external relations*

- A. The Director-General will take all necessary steps, including making proposals to the Governing Body as appropriate, to ensure the means by which the Organization will guide, coordinate and assist the Members in their efforts under this Text. Such steps should take into account the need to promote:
  - (i) coherence, coordination and collaboration within the International Labour Office for its efficient conduct;
  - (ii) adequate competencies and knowledge base, and effective governance structures; and
  - (iii) operational partnerships within the United Nations system and with other relevant actors to strengthen ILO operational programmes and activities or to otherwise promote ILO objectives.

##### *Understanding and responding to Members' realities and needs*

- B. The Organization will introduce a scheme of cyclical reviews by the International Labour Conference so as to:
  - (i) understand better the realities and needs of its Members with respect to each of the strategic objectives, respond more effectively to them, in particular those of Members at a less advanced stage of development, with all the means of action at its disposal, including through standards-related action, technical cooperation, and the technical and research capacity of the Office, and adjust its priorities and programmes of action accordingly;
  - (ii) assess the results of its programmes of action; and
  - (iii) mobilize additional voluntary resources in support of strategic priorities.

*Technical assistance and advisory services*

- C. The Organization will provide, upon request, all appropriate assistance within its power to support Members' efforts to make progress towards the strategic objectives through an integrated and coherent national strategy, inter alia by:
  - (i) strengthening and streamlining its technical cooperation activities within the framework of country programmes for Decent Work and that of the United Nations system;
  - (ii) providing general expertise and assistance, which each Member may request for the purpose of adopting a national strategy, and exploring innovative partnerships for its implementation; and
  - (iii) developing appropriate tools for effectively evaluating the progress made and assessing the impact that other factors and policies may have on the Members' efforts.

*Research, information collection and sharing*

- D. The Organization will consider appropriate steps to promote more actively empirical knowledge and understanding of how the strategic objectives interact with each other and contribute to social progress, sustainable development and the eradication of poverty in the global economy. These steps may include the tripartite sharing of experiences and good practices at the international and regional levels in the framework of:
  - (i) studies conducted on an ad hoc basis with the voluntary cooperation of the governments and representative employers' and workers' organizations in the countries concerned; or
  - (ii) any common schemes such as peer reviews which interested Members may wish to establish or join.

**III. Evaluation by the Conference**

- A. The impact of the Text, in particular the extent to which it has contributed to promoting, among Members, the aims and purposes of the Organization through the integrated pursuit of its strategic objectives, will be the subject of evaluation by the Conference, which may be repeated from time to time, within the framework of an item placed on its agenda.
- B. The Office will prepare a report to the Conference for evaluation of the impact of the Text, which will contain information on:
  - (i) actions or steps taken as a result of the present Text, which may be provided by tripartite constituents through the services of the ILO, notably in the regions, and by any other reliable source;
  - (ii) steps taken by the Governing Body and the Office to follow up on relevant governance, capacity and knowledge-base issues relating to the pursuit of the strategic objectives; and
  - (iii) the possible impact of the Text in relation to other interested international organizations.

- C. Interested public international organizations will be given the opportunity to participate in the evaluation of the impact and in the discussion. Other interested entities may attend and participate in the discussion at the invitation of the Governing Body.
- D. In the light of its evaluation, the Conference will draw conclusions regarding the desirability of further evaluations or the opportunity of engaging in any other appropriate course of action, including action of a standards-related nature.



## II. Introduction: Purpose and significance of the debate

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1. The question of strengthening the ILO's capacity to assist its Members in the context of globalization appears for a second time on the Conference agenda. This is of course a reflection of the breadth of the subject and the diversity of perspectives required to do it justice. But it is also a reflection of a sense that this is a debate of historical significance for the ILO and its future, and that it requires the attention and patience which such historical importance merits. This feeling, which was widely shared and expressed during the discussions, may indeed appear objectively justified when the following three factors are taken into consideration.

2. First, from a purely formal point of view it is, as noted last year, the first time since the Declaration of Philadelphia that the constituents have taken the opportunity to engage, on a universal basis,<sup>1</sup> in an overall reflection on the way in which the basic changes that have affected the international system have repercussions on the implementation of the ILO's mandate, and to do so in a legal framework that enables them to formally express the views of the ILO as an organization.

3. Second, from a substantive point of view, and as also noted last year, it may be said that for the first time since its creation the context makes it possible – and necessary – for the ILO to do exactly what it was established to do with the methods and means of action placed at its disposal. The ILO was created in the context of what was called “our first globalization”<sup>2</sup> to reconcile the economic prosperity and expansion made possible by new technologies and open trade with the requirements of social justice, using methods and means which did not entail imposed obligations but rather the voluntary conciliation of the will and interest of those concerned through their freely chosen and representative organizations. The economic depression, the Second World War and the division of the world into two closed and opposing economic and political blocs successively and severely undermined the possibility of implementing that vision and testing the efficacy of that method, to the point of casting doubt on that voluntary method in some quarters and causing it to be perceived as either inefficient or unnecessary. With a few years' hindsight, it now seems clear that the very complexity of the present economy and rapidity of change requires a degree of sophistication and adjustment, which is less and less compatible with solutions imposed from above and outside, but rather requires constant adjustment through social dialogue.

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<sup>1</sup> The membership of the ILO is currently three-and-a-half times larger than in 1949 when the Organization had 49 member States.

<sup>2</sup> S. Berger: *Notre première mondialisation: leçons d'un échec oublié*, Paris, La République des Idées/Le Seuil, Paris, 2003.

4. Third, this occasion has special historical significance because tripartite constituents are not just being called upon to restate their commitments and expectations as was, in a way, the case with the Declaration of Philadelphia. They are being invited to clarify the implications of such commitments and expectations from the viewpoint of institutional practices. They will have to consider in very specific terms how these expectations may be fulfilled through appropriate adjustments to the Organization's institutional practices, as well as through greater consistency in their own efforts.

5. But even if one leaves aside this historical perspective and significance and looks to the future, it seems clear that the possible adoption of an authoritative document which could constitute the framework within which the Organization would be called upon to fulfil this mandate as it approaches its second century of existence is of fundamental institutional significance.

6. From both perspectives, this requires patience, a great sense of responsibility, and compromise. As with similar exercises in the past, the widest measure of participation and consensus through social dialogue is of the essence. To quote from the Delegation on Constitutional Questions, which in 1946 also reviewed the ILO Constitution and examined an issue that is similar in many ways to that of strengthening the ILO capacity, one should never forget that "no Constitution can work successfully unless there is general agreement on its fundamental provisions".<sup>3</sup> While there is no question of amending the Constitution in the present case, this warning still seems perfectly relevant to the present exercise of restating the ILO's *raison-d'être* and adjusting its institutional practices.

7. This is why it has been agreed, from the outset, that the objective of achieving consensus should be kept in mind at all stages of the process and that the Office would have an important role to play in making this effective. The document submitted to the Governing Body in March 2006 (GB.295/16/5) pointed out at the same time that seeking a consensus is not tantamount to reaching agreement on the lowest common denominator. It rather means that every effort should be made to achieve "that which is most important to each party without being unacceptable to others". The unprecedented process of consultations which has preceded and followed the decision of the Governing Body to place the item on the agenda bears witness to the fact that this objective has been taken very seriously.

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<sup>3</sup> ILO: *Constitutional Questions*, Report II, Part 1: Reports of the Conference Delegation on Constitutional Questions, International Labour Conference, 29th Session, Montreal, 1946, p. 15.

### III. Overview of previous discussions

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8. In its report, the World Commission on the Social Dimension of Globalization (2002–04)<sup>1</sup> took an important step towards embracing the idea that globalization could not be sustainable without strengthening its social dimension, and that the ILO had been and was expected to play a major and unique role in a rapidly emerging global market economy. However, this raised the issue of its institutional capacity being commensurate to the challenge.<sup>2</sup>

9. The Director-General's Report to the 92nd Session of the International Labour Conference in 2004, concerning ILO follow-up to the Commission's report, gradually gave rise to the idea of giving the tripartite constituents the opportunity to examine this institutional dimension in greater depth, within a legal framework that would allow the Organization to express its opinion as such. The question of the follow-up to be given to the discussions at the Conference was therefore put to the Governing Body in November 2004: first, it was invited, in the context of the Working Party on the Social Dimension of Globalization, to give its views on the implications of the Commission's report for the ILO's future activities and programmes; and second, in the context of the preliminary discussion on the 2007 Conference agenda, it was asked whether it wished to be presented with proposals on this matter, from the standpoint of any possible institutional implications.<sup>3</sup>

10. Following informal consultations in February 2005, the Governing Body confirmed that it wished, with an eye to future consultations, to be presented with a proposal on the matter. This was the object of a document prepared after tripartite consultations in October 2005, on the basis of which the Governing Body then reached a broad consensus in November 2005 on placing on the agenda of the 2007 Conference an item

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<sup>1</sup> ILO: *A fair globalization: Creating opportunities for all*, Report of the World Commission on the Social Dimension of Globalization, International Labour Conference, 92nd Session, Geneva, 2004.

<sup>2</sup> The Commission's mandate was to embark independently upon a global review that would be useful to the international community as a whole. This mandate went well beyond the specific concerns of the ILO. (When presenting the Commission's report to the International Labour Conference in June 2004, President Halonen took pains to point out that: "the recommendations in the World Commission's report cover a much wider field than the ILO's direct scope" (ILO, *Reply by the Director-General to the discussion of his Report*, International Labour Conference, *Provisional Record* No. 25, 92nd Session, Geneva, 2004, para. 2)). The Commission's report nevertheless brought to the fore a number of aspects that particularly concerned ILO action and the opportunity it had to strengthen its institutional capacity. One of the proposals aimed, for example, to reinforce the capacity of the ILO to promote respect for core labour standards (ILO: *A fair globalization: Creating opportunities for all*, Report of the World Commission on the Social Dimension of Globalization, International Labour Conference, 92nd Session, Geneva, 2004, para. 426); see also para. 513: "We invite the ILO, taking advantage of its wide-ranging Constitution and its constituency of workers' and employers' organizations as well as governments, to develop new instruments and methods which can promote coherence between economic and social goals in the global economy."

<sup>3</sup> ILO: Follow-up to the report of the World Commission on the Social Dimension of Globalization, Governing Body, Working Party on the Social Dimension of Globalization, 291st Session, Geneva, November 2004, GB.291/WP/SDG/1.

for general discussion entitled “Strengthening the ILO’s capacity to assist its Members’ efforts to reach its objectives in the context of globalization”.<sup>4</sup>

11. Given the significance of this issue and the need to define its purpose and limitations as clearly as possible, the Governing Body requested the Office to submit a further document to it in March 2006. Albeit unusual, this step proved useful, as it enabled the Office to explore a certain number of questions by initially outlining the main issues that would be included in the future report,<sup>5</sup> and to have a better idea of the potential key concerns of the tripartite constituents in the quest for a consensus, which, as noted above, is of the essence for such a debate.<sup>6</sup>

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<sup>4</sup> ILO: Minutes of the 294th Session, Governing Body, 294th Session, Geneva, November 2005, GB.294/PV, para. 43.

<sup>5</sup> ILO: *Fifth Supplementary Report: Strengthening the ILO’s capacity to assist its Members’ efforts to reach its objectives in the context of globalization*, Report of the Director-General, Governing Body, 295th Session, Geneva, March 2006, GB.295/16/5.

<sup>6</sup> ILO: Minutes of the 295th Session, Governing Body, 295th Session, Geneva, March 2006, GB.295/PV, paras 251–272.

## IV. Consideration of strengthening the ILO's capacity by the 2007 session of the Conference

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12. The purpose of Report V presented to the International Labour Conference in June 2007 was to help constituents reflect on what might be useful ways to strengthen the machinery of the Organization and thus its capacity to assist its Members.<sup>1</sup> The Report pointed out that the present context made ILO objectives more relevant than ever, as their achievement encapsulated in the concept of Decent Work is increasingly recognized as a key condition for the sustainability of an open economy and society confronted with growing dissatisfaction. And despite doubts expressed at the time of the transition between the Cold War and the globalization context, the ILO's means and methods – based as they are on voluntary action by the State on the basis of tripartite dialogue at the national and international level – remain the most sustainable way of attaining ILO objectives in today's very complex world.

13. Against this background, the Report suggested that the real challenge for the ILO was not to reconsider its values, objectives or means of action. Rather, the real challenge was a matter of “governance” and working methods to make more systematic and rational use of the whole range of tools at its disposal for promoting Decent Work as well as making the most of its exceptional comparative advantage – its universal and tripartite composition. Report V itself referred to the strengthening of three dimensions of ILO governance: “vertical”, “horizontal” and “external”.

14. First, as regards “*vertical*” governance: the re-articulation of ILO constitutional objectives around four main pillars described as “strategic objectives” represented a significant step in the rationalization of the ILO's mandate both for internal application and from the viewpoint of understanding and visibility vis-à-vis the general public. But at the same time it more explicitly begged the question of how efficient the Organization's present action and institutional practices are in objectively assessing and effectively meeting its Members' actual needs in relation to each of these objectives.

15. A fairly straightforward possible solution gradually emerged, which was to establish a much clearer and more effective institutional link between needs and means, and between action to meet such needs and evaluation of the actual impact of such action. It related to the possibility of introducing a regular cycle of reviews of trends and policies relating to the ILO objectives of strategic importance, which would improve the ILO's ability to have a better understanding of its Members' real needs, in order to mobilize more consistently the wide range of ILO means of action.

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<sup>1</sup> ILO: *Strengthening the ILO's capacity to assist its Members' efforts to reach its objectives in the context of globalization*, Report V, International Labour Conference, 96th Session, Geneva, June 2007.

16. Second, improving “horizontal” governance was designed to remedy another serious shortcoming in the ILO’s capacity to effectively assist its Members: the fact that these objectives are complementary and interdependent as recognised by the Decent Work concept, whereas the traditional approach seemed to reflect a segregated “self-service approach”. There are several ways to overcome this segregation and promote the integrated approach implied in the Decent Work strategy within the Organization, and among its constituents. As will be seen below, one of them would be the adoption of an “authoritative Text” that would, inter alia, encourage Members to draw out the implications of their support for the Decent Work strategy. But for such encouragement to be effective, it has to be informed by empirical comparative evidence or other mutual incentives or examples of best practice which will be sufficiently convincing to persuade them that they stand to benefit from such an integrated approach.

17. Third, “external” governance concerned the ILO’s capacity to influence new actors in their efforts relevant to the attainment of ILO objectives. The Report pointed out that the ILO was established in a context where there were no international actors other than States and a handful of international organizations, including the ILO. Its work was centred on assisting and coordinating state action towards social progress. The context has changed radically with the emergence of a constellation of influential new actors, both public and private. Their influence could be detrimental to the capacity and/or willingness of States to discharge their responsibilities in relation to social progress, but at the same time they could also play an effective role in promoting such progress. The Report made it clear in that respect that the question was not to shift responsibilities to the new actors, with the risk of further undermining state capacity and will. It was to find specific ways in which they could make a contribution or otherwise support ILO action to help strengthen state capacity and will. Various options were considered in the Report, including possibilities for associating relevant actors in an appropriate way with assessing the impact of the authoritative Text.

18. The Report made it clear that none of the options considered above involved change in the ILO’s constitutional framework or in its means of action. The practice of cyclical reviews could be introduced by the Governing Body as part of discharging its responsibility to establish the Conference agenda. But the opportunity to spell out the underlying message concerning the relevance and reaffirmation of the ILO’s irreplaceable role, method and objectives, and the consolidation of the Decent Work concept and integrated approach, would be missed. This is why the Report considered the adoption of an authoritative Text which would both convey and consolidate the message and provide the necessary institutional framework for future action covering all the abovementioned dimensions.

19. While many questions were asked and certain doubts were expressed during the discussion on specific points contained in the Report, as reflected in the Committee’s own report,<sup>2</sup> the identification of the main challenges and possible delineation of solutions seemed to be generally acceptable, as underlined in the conclusions. They were the basis of the resolution defining the mandate given to the Governing Body and the Office to follow up on the matter and place an appropriate item on the agenda for that purpose, as well as providing specific instructions regarding method and timing.<sup>3</sup>

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<sup>2</sup> Fifth item on the agenda: Strengthening the ILO’s capacity to assist its Members’ efforts to reach its objectives in the context of globalization (general discussion), Report of the Committee on Strengthening the ILO’s Capacity, *Provisional Record* No. 23, International Labour Conference, 96th Session, Geneva, 2007.

<sup>3</sup> Resolution and conclusions of the Committee on Strengthening the ILO’s Capacity, *Provisional Record* No. 23, International Labour Conference, 96th Session, Geneva, 2007 (see Appendix 1).

20. The resolution requested the Governing Body (1) to decide on placing an item on the agenda of the next session of the International Labour Conference with a view to the possible consideration of an authoritative document and follow-up,<sup>4</sup> and (2) to adopt a programme of work to follow up on the conclusions of the various governance aspects of strengthening ILO institutional capacity.<sup>5</sup> For the discharge of this mandate, the Conference placed express emphasis on the widest intersessional consultations among constituents who are in the “driver’s seat” for the purpose of reaching the necessary consensus.

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<sup>4</sup> *ibid.*, para. 2(a).

<sup>5</sup> *ibid.*, para. 2(b).



## **V. Steps taken to implement the mandate given by the International Labour Conference**

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### **October consultations and action taken by the Governing Body in November 2007**

21. In accordance with the outcome of the Conference discussion, a round of consultations took place in October 2007<sup>1</sup> in order to obtain inputs from the tripartite constituents, including all interested governments both within and outside the Governing Body, so that the Office could take the discussion on the various elements one step further. For the purpose of the consultations, the Office prepared a non-document circulated in mid-September, recalling the framework of the mandate given by the International Labour Conference and providing some insight as to what the possible content and form of an authoritative document could be.<sup>2</sup>

22. Taking into account these consultations and their results, which were the subject of a separate oral report, the Governing Body took the decisive step at its 300th Session in November to formally place an item on the agenda of the 97th Session of the International Labour Conference (2008). This enables the Conference this year not only to continue the discussion but also to adopt “an authoritative document, possibly in the form of a Declaration or any other suitable instrument, together with any appropriate follow-up, and the form they may take”.<sup>3</sup> In addition, the Governing Body endorsed the programme of work as outlined in the oral report, and agreed on the principle of establishing a steering group of the Governing Body whose exact membership would be fixed during the next round of informal consultations in February 2008.

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<sup>1</sup> These consultations took place in two phases; a first phase involving the Government group on 3 October, and a second tripartite phase from 16 to 17 October, preceded by a meeting between the Office and the Workers’ and Employers’ groups on 15 October.

<sup>2</sup> Also a chart illustrating a possible programme of work was made available during the tripartite consultations.

<sup>3</sup> The Governing Body: (a) decided to place on the agenda of the 97th Session (2008) of the International Labour Conference the following item: “Strengthening the ILO’s capacity to assist its Members’ efforts to reach its objectives in the context of globalization: Continuation of the discussion on strengthening the ILO’s capacity and possible consideration of an authoritative document, possibly in the form of a Declaration or any other suitable instrument, together with any appropriate follow-up, and the form they may take”; (b) requested the Director-General to report to its 301st Session (March 2008) on relevant developments for the preparation of the Conference discussion. (GB.300/2/1, para. 8.)

## **Draft elements of a possible authoritative Text**

23. It was agreed that, in order to meet the requirement of submitting a report under the relevant item and to take advantage of the time available before the Conference, a first step in the programme of work would be to draft the elements of a text before the end of 2007, which would then be subject to another round of consultations at the beginning of February. This preliminary draft (“Draft elements of a possible authoritative text”, December 2007, reproduced in Appendix II) was circulated on 20 December. In order to facilitate consideration of this text, the Office presented it in synoptic form, indicating sources for elements in the text, as well as relevant comments from earlier consultations, in the appropriate places beside the main text.

24. This preliminary draft was then revised in the light of comments and suggestions made during these consultations, and the revised Text (which can be found at the start of this Report) will serve as the basis for the Conference discussion. The following section gives a general overview of the content and structure of the preliminary draft, as well as an explanation of how it sought to reconcile the ideas, requests or concerns presented during the various phases of the debate, while maintaining an appropriate degree of coherence and balance. This overview, which was presented to constituents during the February 2008 consultations, has been reproduced in some detail in this Report, both as an important part of the record, and because it remains relevant for consideration of the revised Text.

25. The preamble, in addition to stating some obvious references, highlighted the fact that the recent experience of globalization had provided further evidence that translating an increase in economic prosperity into effective social progress (and vice versa), which is necessary for the very stability and sustainability of open economies and societies, is no more automatic now than it was in the past. Achieving such social progress requires sustained efforts from Members, assisted by an efficient ILO, and this is the reason why there is the need to strengthen the ILO's capacity.

26. The section on principles was designed to underline the contemporary significance and relevance of ILO objectives as re-articulated around the four strategic objectives and the Decent Work concept, for efficacy and for greater visibility. In so doing, the draft sought to carefully reconcile concerns that were sometimes divergent – in particular the very clear repeated message from the Employers and some Governments that there should be no question of defining the concept of Decent Work, which was a matter to be dealt with exclusively at the national level, and the point made by the Workers and others that, as the authoritative Text was aimed at a wide audience beyond the ILO, it could not be limited to a bureaucratic listing of the strategic components of Decent Work, which at the outset had been formulated essentially for internal purposes. The initial draft tried to reconcile these two positions as follows.

27. First, by elaborating the significance, relevance and interdependence of the strategic objectives from the viewpoint of contemporary concerns, mindful, on the one hand, of the need to anchor their description in the existing constitutional texts defining the ILO mandate (including the Declaration of Philadelphia) to avoid the risk, of a loss of substance and the fear of “mandate creep” and, on the other hand, of the need to take into account more recent formulations which, while not having the same legal status, are more in resonance with contemporary expectations and concerns.

28. Second, by making it clear that the Decent Work strategy was not about new content but about an (integrated) method to give greater efficiency and impact to Members' efforts to promote objectives that were already clear and agreed upon. The preliminary draft emphasized that the objectives were interdependent and mutually supportive, but that the specific content and weight to be given to each of them had to be determined at the national level, taking into account national specificities and the wishes of the workers' and employers' organizations concerned.

29. The section on the role of the ILO and its Members took as a basis the point that the principles spelled out in the first section were of general application – equally valid for the Organization and its Members. It should be recalled in this respect that, as reflected in article 1(1) of the Constitution, the establishment of the Organization cannot be a substitute for the efforts of the Members. Thus, ILO efforts to promote an integrated approach will be moot if they are not rooted in the express will of the Members to draw these consequences themselves. There is no question of shifting the focus of the exercise from the strengthening of the ILO's capacity to the question of the Members' responsibilities; rather, the intention is to address what are two sides of the same coin.

30. As regards more specifically the role of Members, the preliminary draft made it clear that there was no question of imposing any new obligation on them, but rather of including a reminder of the desirability for all concerned to be consistent with their (vocal) support for the Decent Work strategy. The list of possible steps that could be contemplated to translate the "integrated approach" into action at the national level was purely indicative. It reflected the abovementioned principle that there is no question of the Organization being a substitute for the competent authorities at the national level. The only common denominator is the need to involve social partners in the process in a way which is adapted to national practices. The subsection concerning the Organization reflected the previous discussion about the detailed list of steps that could be taken by the Governing Body to improve "vertical", "horizontal" and "external" governance, which are familiar to all.<sup>4</sup>

31. The final section endeavoured to meet two concerns that had been expressed during previous discussions. As regards the first concern, that the exercise might result in an (unacceptable) additional reporting burden on Members, it was made clear that the assessment of the impact of the authoritative Text as a whole would be the subject of a separate report submitted at such intervals as the Governing Body may deem appropriate and would not involve reporting from Members.<sup>5</sup> As regards the second concern, that governance and capacity issues which for many Members are central to this exercise would be overshadowed by the priority given to the authoritative Text itself, the follow-up section provided a clear guarantee that this would not be the case. In addition to the fact that the cyclical reviews would provide the framework in which the performance of the Office can be directly assessed, this follow-up would oblige the Office and the

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<sup>4</sup> See the 2007 conclusions of the Conference Committee on Strengthening the ILO's Capacity, which gave a mandate to the Governing Body to further explore proposals relating to the "vertical", "horizontal" and "external" aspects of governance: the possibility of introducing cyclical reviews (paras 5–6), the strengthening and streamlining of DWCPs (para. 8), the possibility of developing a framework for voluntary country studies (para. 9), and new partnerships for decent work (para. 13) (*Provisional Record* No. 23, International Labour Conference, 96th Session, Geneva, 2007).

<sup>5</sup> The question of the reporting workload involved in the cyclical reviews is discussed in a separate note reproduced in Annex 1 of the document entitled: The cyclical review scheme: Parameters relevant to its possible modalities.

Governing Body to report to the Conference on what specific steps they have taken. Thus, the authoritative Text and the adoption thereof will be the best guarantee that these issues are not neglected.

## VI. Report on the February 2008 consultations

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32. It should be recalled here that the oral report on the October 2007 consultations on Strengthening the ILO's Capacity (SILC), delivered to the Governing Body in November, established that tripartite consultations on the basis of the preliminary draft would take place from 4 to 6 February 2008 in Geneva. It was further agreed that "for the sake of continuity and efficacy, these consultations should be chaired by a government moderator with good knowledge of the SILC process".<sup>1</sup> After informal consultations, Ambassador Jean-Jacques Elmiger from Switzerland, the Chairperson of the Committee on Strengthening the ILO's Capacity during the 2007 Conference, was invited to act as moderator.

33. Preceding the consultations, several separate meetings were held with the Government group so that the Office could present the draft text and answer any queries.<sup>2</sup> Similar meetings took place with the Employers' and Workers' groups on Monday, 4 February.

34. The two days of tripartite consultations were chaired by the moderator, and it was agreed that after a general discussion of the preliminary draft, the consultations would be organized around the four main sections of the Text (that is, the Preamble and the sections on principles, respective roles and follow-up).

35. The objective of the consultations, as agreed at the outset, was not to enter into a negotiation exercise, which was to be left to the Conference, or to discuss specific drafting proposals. Rather, the objective was to have an exchange of views on the key elements of the preliminary draft, thereby playing an important role in consensus building in advance of the Conference.

36. Substantial progress was indeed made in this regard, and as a result of the discussions it became clear that broad consensus was emerging on many aspects of the preliminary draft; many additional inputs were received from the Governments and from the Employers' and Workers' groups, which provided a valuable guide for the Office in making necessary adjustments to the preliminary draft – striving to create what one intervention referred to as "an enriched text" that was also "carefully balanced".

37. A number of constituents, while recognizing that the preliminary draft was by necessity a working document at that stage, underlined the need for the final text to achieve a balance between aspirational and governance/operational aspects. Achieving the right balance between these two aspects was crucial to ensuring that the authoritative Text could speak clearly and eloquently to a wide audience outside the ILO in keeping

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<sup>1</sup> Oral report on the basis of the SILC consultations, para. 7.

<sup>2</sup> Such meetings took place notably with the Asia-Pacific group (ASPAG), the Central and Eastern European Group (CEEG), the Group of Latin American and Caribbean Countries (GRULAC) and the Industrialized Market Economy Countries (IMEC).

with its recognized historical significance, while at the same time meeting its essential governance aims.

38. It was also emphasized in several interventions that the authoritative Text would have to stand the test of time. In this regard, it should address fundamental issues rather than “short-term frustrations”, and do so in a meaningful way which went beyond a mere reaffirmation of previous texts. The Employers also cautioned that the concept of Decent Work should not be used in the Text as a substitute for all aspects of the ILO's mandate.

## **Draft elements of a possible authoritative Text**

### **Preamble**

39. As regards the Preamble, a number of constituents suggested that the objective of the SILC exercise should be explicitly set out, thereby explaining the rationale of, and need for, the authoritative Text. The Workers and some Governments expressed the view that the Preamble should highlight more clearly the tripartite nature of the ILO.

40. A number of constituents raised questions or made suggestions concerning the list of texts referenced in the first part of the Preamble. The Employers and some Governments noted that this list should not mix up references which varied in nature and importance. Some speakers questioned the reference to the 1919 International Labour Charter, suggesting that it should be removed or clarified. The Employers and some Governments questioned the need to refer to the Global Employment Agenda (GEA) and the Millennium Development Goals (MDGs), and expressed concern on the broad reference to “the satisfaction of basic needs”. The Workers, together with some Governments, however supported reference to the GEA and the MDGs, and suggested in this respect that the authoritative Text should also refer to paragraph 47 of the 2005 World Summit Outcome document.<sup>3</sup> In addition, the Workers suggested that reference also be made to the 2006 ECOSOC Ministerial Declaration.<sup>4</sup>

41. There was also considerable discussion on the question of globalization. Several interventions from both the Workers' and Governments' benches called for the references to globalization to be strengthened and, in particular, for reference to be made to the report of the World Commission on the Social Dimension of Globalization, since it was considered to have inspired the SILC exercise. The Employers and some Governments were of the view that the existing references to globalization could be more positive, in particular under the third preambular paragraph (“Persuaded ...”), and that this include reference to the important role of enterprises and the promotion of competitiveness. The Workers underlined the importance of reflecting not only the opportunities arising from globalization, but also the challenges. In this context, the Workers also suggested that reference be made to the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (1977).

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<sup>3</sup> United Nations General Assembly document A/RES/60/1 (24 Oct. 2005).

<sup>4</sup> United Nations document E/2006/L.8 (5 July 2006).

42. Additionally, the Workers and some Governments were of the view that the Preamble should reflect more strongly the needs of developing countries, and the Workers also underlined the importance of reflecting the needs of rural economies and the informal sector.

## Section I: Principles

43. As regards section I of the preliminary draft, there was some discussion of the ordering of the paragraphs dealing with the four strategic objectives and also of the language in which they were expressed. A number of constituents stressed the value of setting out clearly what is meant by the strategic objectives, the Workers in particular underlining the importance of going beyond standard in-house formulations in order to speak to a wider audience. At the same time, some caution was expressed with regard to avoiding any process of “redefining” these objectives.

44. The Employers emphasized the importance of the authoritative Text striking the right balance between economic and social aspects, especially in relation to the strategic objective of social protection. Also, they were of the view that the strategic objective of employment should underline the important role of enterprises, particularly the importance of enterprise sustainability and the promotion of competitiveness, which was partly dependent on the macroeconomic environment.

45. There was also some discussion of the question of “national circumstances” being taken into account in determining the specific content and relative importance of the strategic objectives. A number of constituents felt that this “relativizing” tended to weaken the subsection on the strategic objectives, and that such references should be avoided; others felt that they were important and had to remain. The Office explained that the need to take into account national conditions and realities in framing ILO instruments was stated in the Constitution itself; what was important was recognition of the interconnectedness of the strategic objectives at the national level.

46. On the question of the various domains referred to in the second subsection of the preliminary draft, the interventions suggested that some constituents felt the list of domains, as well as its terminology, was too broad, while others felt that it should be supplemented. One intervention at the end of this discussion suggested that the essential point of this paragraph, which could be more clearly conveyed, was that Decent Work outcomes cannot be achieved by labour market regulation alone, but rather require the integration of different policy elements. Some constituents expressed unease that this subsection suggested some “mandate creep”; while there was general consensus that any “mandate creep” was to be avoided, it was also stressed that the authoritative Text should preserve the integrity of the established mandate in full, and that issues around which consensus had already been achieved in other meetings should not now be reopened.

## Section II: Respective roles

47. As regards section II of the preliminary draft, some constituents felt that too much focus was placed on the role of Members as compared with the role of the Organization. Some governments suggested that the role of the Organization should be highlighted more than the role of Members; other governments suggested that these two subsections be made into separate sections. Some participants suggested that a reversal of the order

of the subsections would be one way to ensure a better balance in the authoritative Text in this regard.

48. There was some concern expressed about the possibility of the authoritative Text giving rise to new legal obligations on Members. Members were reassured by the clarifications provided by the Office in this regard, that the Text was declarative rather than normative in nature, and therefore could not impose legal obligations; the specific (modal) language used in the preliminary draft was a reflection of this. At the same time, the Workers and a number of Governments pointed out that the fact that the authoritative Text would not impose legal obligations on member States should not mean that the Text would have no impact on action at the national level, which was indeed the very essence of the exercise.

49. As regards the subsection on the “ratification record”, some Governments requested confirmation that this provision did not involve any additional obligations to ratify ILO instruments. In a similar vein, some objections were voiced on the use of the term “gaps”. However, at the same time, it was also underlined by the Workers and some Governments that the normative role of the ILO could be highlighted more. More specifically, the Workers were of the view that reference should be made to a number of priority Conventions dealing with labour inspection, employment and tripartite consultation (Conventions Nos 81, 122, 129 and 144).

50. As regards the subsection relating to the role of the Organization, one suggestion made by a number of different constituents was to move some of the paragraphs on implementation details to the follow-up section or to a technical annex. This could also be a way to provide a better balance in the preliminary draft between aspirational and operational aspects – a point which, as noted above, had also been raised. As regards the possibility of conducting regular reviews of the trends relating to each strategic objective, a number of constituents highlighted the importance of the authoritative Text not undermining the ILO's supervisory machinery. The Workers and some Governments supported a greater emphasis on the importance and relevance of the supervisory system, and it was pointed out that the impact of the authoritative Text and cyclical review process would not be to alter the existing supervisory system but rather to provide a valuable complement to it.

### Section III: Follow-up

51. During the discussion of section III, the Employers pointed out that this constituted the operational part of the Text and it was not sufficiently strong yet. In order to reinforce this section, constituents emphasized the need for clear and effective language to be used.

52. As regards the subsection describing the Director-General's responsibility to circulate the authoritative Text, the Employers remarked that this provision was not the most important element of the follow-up and therefore proposed that it should be mentioned last. In addition, one Government delegate argued that the provision should also cover the obligation to distribute the Text to the Organization's national, regional and field offices.

53. With regard to the subsequent subsection dealing with the necessary steps to be taken by the Director-General to give effect to the authoritative Text, the groups agreed that the Director-General had wide discretion to take certain action on his own initiative, in addition to submitting proposals to the Governing Body. In this context, it was also agreed that the capacity of the staff should be seen as a tool, not as a constraint. Moreover, it was suggested that it would be more useful to speak of the “development of staff capacity” to communicate the idea that its strengthening is a continuous process.

54. Furthermore, it was felt that the elements in the authoritative Text relating to the coordination within the Organization and with other United Nations actors were of a different nature and should be separated accordingly. Some Governments stressed that coherence, coordination and collaboration within the Office should clearly convey the sense of efficiency. As for the engagement of the ILO with other multilateral organizations, the Workers’ representative emphasized that such interaction should foster rather than dilute understanding and respect for the ILO’s unique tripartite mandate; this was particularly important to ensure that ILO priorities and tripartite concerns were fully reflected in “One UN” programmes at the national level.

55. Lastly, some Government representatives asked for clarification regarding the mention of an evaluation report in the follow-up section. The Office explained that, as in the follow-up to the 1998 Declaration on Fundamental Principles and Rights at Work, this was a common provision that would allow the Conference to evaluate the impact of the authoritative Text as a whole. A few Governments pointed out that such an evaluation should not impose any additional reporting burden on member States and should primarily be concerned with the steps taken by the Office, including technical cooperation activities.

## **Conclusion**

56. Following the consultations on the preliminary draft, the Office has endeavoured to produce a revised text that takes account of the above inputs. A number of structural changes have been made, ensuring that the Preamble highlights more strongly the objective of the Text and that section II more closely reflects the balance of views expressed in the consultations. In order to simplify the Text and make it more readable for a wider audience beyond the ILO, the Office has moved the operational details in section III to an annex, as had been suggested by a number of constituents during the consultations. Moreover, the Office has incorporated a number of the more specific drafting suggestions, in so far as they did not seem to have given rise to objections, and it has also tried to preserve the balance of the Text and, as far as possible, reconcile points on which divergent views were expressed. The resulting draft authoritative Text for the consideration of the Conference may be found at the start of this Report.

## **Steering group of the Governing Body**

57. After concluding the discussion on the preliminary draft, the February 2008 consultations worked out procedural arrangements for a meeting of the steering group of the Governing Body on 13 March and an informal preparatory meeting on 7 March. In accordance with the oral report delivered to the Governing Body in November 2007 (para. 11), it was noted that the composition of the steering group would consist of eight members of each group, but recommended that it should not be a closed meeting and that other Members and constituents would be able to participate.

## Cyclical reviews

58. The steering group would take up the governance and capacity issues, particularly those relating to cyclical reviews, at the meetings in March. However, in accordance with the programme of work, the last part of the February consultations included a preliminary examination of the document on cyclical reviews that had been provided by the Office for information.<sup>5</sup> The Office indicated that the document was only a provisional text and would be supplemented inter alia with a section on the possible relation between the cyclical reviews and the follow-up to the 1998 Declaration, given that the introduction by the ILO Declaration Expert-Advisers to the compilation of annual reports for the March 2008 session of the Governing Body was now available.

59. The initial comments on the cyclical review document by the constituents concerned the following points. It was emphasized that the main objective of the cyclical reviews should be to establish Members' needs and evaluate ILO action to meet these needs. Some Governments raised concerns regarding the reporting burden notwithstanding the indication in Annex 1 to the document that a basis of information of the cyclical reviews would be General Surveys having a wider scope deriving from a greater number of instruments but using simplified article 19 questionnaires. Others cautioned that it was important not to focus on the problem of the reporting burden, but emphasized the potential of the cyclical reviews in the long term. However, in order to give adequate consideration to the introduction of the cyclical review scheme, it was regarded as important by many Governments to have a better insight into the costs/savings of such reviews.

60. In the light of this request, the Office has thus complemented the cyclical review document (attached in Appendix III) with information on the estimated cost of the cyclical review scheme using figures from current Conference reports and also with an annex on linkages with the follow-up to the 1998 Declaration.

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<sup>5</sup> The cyclical review scheme: Parameters relevant to its possible modalities (see Appendix III).

## VII. Possible form of the authoritative Text

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### Possible form of a text

61. In placing the item on the agenda of the 2008 Conference, the Governing Body referred to the form of the Text for possible consideration: the purpose was to “continue the discussion on strengthening the ILO’s capacity and the possible consideration of an authoritative document, possibly in the form of a Declaration or any other suitable instrument, together with any appropriate follow-up, and the form they may take”.<sup>1</sup> While the form will ultimately depend on the function the Conference determines for the Text, it is useful to recall several relevant aspects of the context for discussion of this item at the 2008 Conference which were already addressed at the time of the October 2007 consultations.

62. The fact that this discussion was placed on the agenda for 2008 has excluded the possibility of considering a normative form for the document at this time,<sup>2</sup> such as a Convention, Recommendation or Protocol to a Convention.<sup>3</sup> Nonetheless, while the document cannot formally request or recommend action in the form of a Convention or Recommendation, it is still possible to authoritatively confirm commitments in principle and extract some practical outcomes.

### Conclusions, resolutions and Declarations

63. ILO practice recognizes three main ways to express the outcome of a non-normative discussion of an item specifically placed on the agenda of the Conference: conclusions, a resolution or a Declaration. It may be useful to compare the three forms and in particular their adoption procedures, legal nature and practical effects.

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<sup>1</sup> GB.300/2/1 (Nov. 2007), para. 8. The 2007 Conference invited the Governing Body to place the item on the 2008 agenda for this purpose. See Resolution on strengthening the ILO’s capacity, *Provisional Record* No. 23, International Labour Conference, 96th Session, Geneva, 2007, para. 2(a).

<sup>2</sup> The procedure for consideration of such normative instruments requires the completion of preparatory stages that take more time, including gathering information on the law and practice of different countries by means of a questionnaire (see section E of the Standing Orders of the International Labour Conference).

<sup>3</sup> The ILO has adopted five Protocols to date. Like Conventions, Protocols are international treaties subject to ratification. In ILO practice, Protocols have been used to amend or supplement the Convention to which they are linked without superseding, or replacing, the underlying Convention.

64. In the context of the Conference, the term “conclusions” is normally used to refer to the summary of views and suggestions for action expressed during the discussion of an item in a technical committee which refers the document to the Conference for adoption. Once adopted by the Conference in an act requiring a simple majority, the conclusions represent the collectively endorsed views of the Organization. Depending on their scope and the circumstances, particular paragraphs of such conclusions may have operational consequences for the Organization or its Members or both.

65. Resolutions of the Conference, which are adopted by decision requiring a simple majority, follow various procedures and vary in scope as well as effect, both legal and operational. Some resolutions arise from specific proposals made within technical committees while others may be submitted directly to the plenary of the Conference or through one of its standing committees.<sup>4</sup> A resolution may deal with a specific matter, including one relevant to a particular item on the agenda, or it may address a general matter within the competence of the Organization. Some resolutions may be intended for consideration by the Governing Body, governments or any other body, without creating any precise legal obligation. Such resolutions may have an advisory effect, which can be strengthened by adoption of the resolution with unanimity or widespread consensus. Certain resolutions have value as precedents expressing the will of member States through the Conference; over time, these may gain authoritative character through general acceptance or implementation. Others again may have specific legal consequences, such as those addressing financial obligations of Members under article 13 of the Constitution.

66. The form of a Declaration is more exceptional in the practice of the Conference. In line with general United Nations and ILO practice, a Declaration is an open expression of enduring commitment at the highest level. It has been defined as a “formal and solemn instrument suitable for rare occasions when principles of lasting importance are being enunciated”,<sup>5</sup> as was pointed out to the Conference in 1998, and also in the first discussion of this item last year.<sup>6</sup> Indeed, there have been only a few such Declarations in the history of the Organization: the Declaration of Philadelphia and also the Declarations on Equality of Opportunity of Women Workers, Apartheid; and on Fundamental Principles and Rights at Work. The Declaration of Philadelphia represents a special situation since, two years after adoption as a Declaration adopted by the Conference, the Text became incorporated into the Constitution in the package of constitutional amendments adopted in 1946.

## Effect of a Declaration

67. The question of the legal nature of a Declaration may be examined, first, by reference to the Organization itself and, second, by reference to its Members. In relation to the Organization, a solemn Declaration of the Conference is an act that commits the Organization as a whole. The discussion under this item in the present Conference presents an opportunity to give renewed relevance to the aims and purposes of the Organization, by expressing the significance of its entire mandate in the context of

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<sup>4</sup> Compare, for example, articles 15 and 63 of the Standing Orders of the International Labour Conference.

<sup>5</sup> Memorandum of the United Nations Office of Legal Affairs, E/CN.4/L.610 (1962).

<sup>6</sup> 1998, in the context of the discussion of the Declaration on fundamental principles and rights at work: Report VII, *Consideration of a possible Declaration of the International Labour Organization concerning fundamental rights and its appropriate follow-up mechanism*, Ch. III; 2007, in the first discussion of this item: Report V.

globalization. In the form of a Declaration, such a document would have legal effects with regard to all the bodies of the Organization – the Conference, the Governing Body and the International Labour Office – at least equal to those of a resolution.

68. In relation to the Members, such a Declaration would have the effect of advisory guidance to inspire the policies of its Members and their action, including through the Organization. While it would seek to underscore the importance of the principles enshrined in the Constitution and Declaration of Philadelphia, a Declaration would not establish, nor be capable of establishing, new or more detailed obligations, either directly or indirectly. Its very nature, which is in essence declaratory, is incapable of imposing or modifying legal obligations under the Constitution or ratified Conventions, nor of providing an authoritative interpretation of the constitutional obligations of its Members.<sup>7</sup>

69. A Declaration could thus serve as a guide for action by Members in consonance with the commitments already undertaken and for cooperation both with each other and through the Organization as it strives to fulfil the aims and purposes of its original mandate in the contemporary context.

70. The practical effects of a Declaration adopted by the Conference depend on the context in which it is adopted and on any provisions for follow-up mechanisms drawn up at that time. The Declaration relating to apartheid, for example, provided for a special report of the Director-General to monitor the situation through a standing item on the Conference agenda. As a result, the report could be sent for discussion in an ad hoc select committee, providing for a concentrated and interactive exchange, rather than in the plenary itself.

71. Similarly, in the more recent case of the Declaration of 1998, the Declaration provided for its own implementation in accordance with measures specified in its annex (1998 Declaration, paragraph 4). The follow-up found in the annex, in turn, provided for a review of its functioning “in the light of the experience acquired to assess whether it has adequately fulfilled the overall purpose ...” (annex, section IV, para. 2).

## Possible form of a follow-up

72. As just noted, in the case of the 1998 Declaration, the details of the follow-up mechanism were identified in an annex to the main Text, and the operation of the mechanism in the annex was made subject to a separate review by the Conference. ILO practice, as reflected in various Conventions and Recommendations, has recognized the utility of annexes for capturing technical details, or setting forth procedures and practices relevant to the subject matter of the underlying instruments.

73. Experience has shown that use of an annex provides a certain flexibility by both underscoring the fundamental and enduring nature of the underlying text to which it is attached while separating out details that may be more transitory in application. The annex may be the subject of a separate method for review and amendment. Where appropriate, a specific provision regarding the legal force of the annex has been mentioned. However, it is a generally recognized rule of legal interpretation that an

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<sup>7</sup> The Constitution itself provides that only the International Court of Justice has the authority to interpret Members’ obligations under the Constitution (article 37).

annex is an integral part of the instrument to which it is attached, thus having the same legal nature unless there are provisions which expressly state otherwise. Even so, it is useful to ensure clarity by stating the intent, as was done with the 1998 Declaration, which expressly referred to its annex as an integral part of the Declaration.

74. Whether the follow-up mechanism is incorporated directly into the main Text, or set apart in an annex, its practical effects will derive essentially from the legal basis on which it is designed. As pointed out in the context of the consideration of the Declaration of Fundamental Principles and Rights at Work, the main features of the follow-up mechanism under that instrument could have been established even in the absence of the said Declaration, on the basis of article 19 of the ILO Constitution.<sup>8</sup>

75. Similarly, the proposals now under consideration envisage the harnessing of opportunities afforded by article 19 reporting in order to adjust the ways in which the Organization takes action to accomplish its aims and purposes. These could also be pursued without necessarily depending on the adoption of a new Declaration. For instance, the Governing Body might make use of its capacity under article 19, paragraphs 5(e) and 6(d), to gather information, for a regular cycle of reviews, concerning the instruments which are relevant to the objective under consideration, as was done *mutatis mutandis* in the framework of the follow-up to the 1998 Declaration. The fact that such an opportunity is clarified through a follow-up mechanism in a possible Declaration, as is now under discussion, does not change the scope of the obligations of Members under the Constitution, nor does it create any further instrument with a legal effect beyond that which already exists.

## Title

76. While the title of an instrument has no normative value under international law, it can serve to reflect the purpose and scope of a document. In this regard, the practice of international organizations may offer some notable options for the title of the document under discussion, which in any case will be for the Conference to decide on the basis of the Committee's work.

77. At intergovernmental level, the title "charter" has been used for basic texts of a constitutional nature designed to embody fundamental elements of a social or political "contract". The term has been applied to texts that express essential values and principles shared by the members or signatories which are, in notable cases, used to guide and inspire specific action from the organs and members.<sup>9</sup>

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<sup>8</sup> ILO: *Consideration of a possible Declaration of principles of the International Labour Organization concerning fundamental rights and its appropriate follow-up mechanism*, Report VII, International Labour Conference, 86th Session, Geneva, 1998, Ch. III.

<sup>9</sup> Non-state actor declarations have also adopted the term, such as the World Social Forum Charter of Principles (2002) and the ICC Business Charter for Sustainable Development (1990).

78. In both UN and ILO practice, the title of Declarations of the Conference have typically used the construction “Declaration concerning” or “Declaration on” followed by the subject matter, in some instances also referring to the location where the Declaration was adopted, as in the case of the Declaration of Philadelphia. The ILO Governing Body entitled its non-binding document on multinationals the “Tripartite Declaration of Principles concerning” followed by the subject matter.<sup>10</sup>

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<sup>10</sup> Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, adopted by the Governing Body of the International Labour Office at its 204th Session (Geneva, November 1977), as amended at its 279th Session (November 2000) and 295th Session (March 2006).



## VIII. Other issues and final remarks

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79. In view of the time constraints resulting from the Conference mandate, and in accordance with the programme of work agreed during the October consultations, the first priority was given to the elaboration of draft proposals relating to the content and form of the authoritative Text. It was clearly understood, however, that there was no question of this priority being at the expense of the other issues – in particular capacity and governance issues – which are part of the mandate and must be addressed for the sake of achieving consensus.

80. As noted above, the best guarantee that these issues cannot be ignored would in any case be provided by the authoritative Text itself, which would establish a framework under the control of the Conference itself, containing specific instructions to the Governing Body and the Office to deal with and deliver on these issues; the Office would be called upon to review the impact of the authoritative Text from time to time, including the effect given to it within the Organization.

81. As envisaged in the programme of work preparing for the Conference discussion, some specific documents/outlines are to be prepared for the consideration of the Governing Body to address some particular concerns, and the Office submitted a separate document on reporting requirements and the elaboration of possible modalities to the February consultations (The cyclical review scheme: Parameters relevant to its possible modalities). However, as also pointed out in the oral report on the October consultations to the Governing Body and confirmed through the consequent adoption of the programme of work, developments relating to governance and capacity issues would continue to take place beyond the February consultations in connection with the meetings of the steering group of the Governing Body during the March 2008 session of the Governing Body (which are too late to be included in this Report). Therefore, developments on the governance and capacity issues will be reported on in a supplementary report to be made available before the start of the Conference in provisional record format.

82. As far as the draft authoritative Text is concerned, the fact that, in accordance with the present report, it had to be circulated well ahead of the Conference has the advantage of leaving ample time for the constituents to undertake an in-depth reflection and make suitable preparations. The Office will be available for any further clarification or consultations that may appear necessary. This should also give an opportunity to consider in advance what might be the most efficient arrangements for consideration of the draft authoritative Text. It will be for the Conference to assume its responsibilities on as fully informed a basis as possible.



## Appendix 1

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### **Resolution and conclusions of the Committee on Strengthening the ILO's Capacity (ILC 2007)**

#### Resolution concerning strengthening the ILO's capacity

The General Conference of the International Labour Organization, meeting in its 96th Session, 2007,

Having undertaken a general discussion on the basis of Report V, *Strengthening the ILO's capacity to assist its Members' efforts to reach its objectives in the context of globalization*,

1. Adopts the following conclusions;
2. Invites the Governing Body, taking into consideration the report of the Committee on Strengthening the ILO's Capacity, to:
  - (a) decide on placing an item on the agenda of the 97th Session of the Conference (2008), with a view to following up its discussion on strengthening the ILO's capacity, and the possible consideration of an authoritative document, possibly in the form of a Declaration or other suitable instrument, together with any appropriate follow-up, and the form they may take;
  - (b) take the appropriate measures to implement a programme of work to address the concerns of constituents, as expressed in the Committee, with regard to improving the capacity of the Organization to meet the needs of the constituents in the context of globalization;
  - (c) follow up on other relevant matters as provided in the following conclusions;
3. Requests the Director-General to:
  - (a) make arrangements to facilitate the widest consultations among the constituents, including intersessional consultations, the results of which should be considered by the Governing Body in defining the relevant item, in a manner that will provide the best possible chance of obtaining a consensus at the Conference;
  - (b) prepare, and make available at least two months before the opening of the 97th Session of the Conference (2008), a report to include the elements of a draft text of any authoritative document for consideration, and which takes due account of the views expressed during this session of the Conference, and any subsequent consultations.

## Conclusions on strengthening the ILO's capacity

1. The Committee held a general discussion on the basis of Report V entitled Strengthening the ILO's capacity to assist its Members' efforts to reach its objectives in the context of globalization.

2. Without prejudice to the individual views expressed by Members, which are reflected in detail in its report, the Committee reached the following conclusions.

3. The Committee agreed that the renewed relevance in the context of intensifying globalization, of the ILO's objectives as set out in the Constitution and the Declaration of Philadelphia, complemented by the 1998 Declaration on Fundamental Principles and Rights at Work and reflected in the Decent Work Agenda, should be recognized and reaffirmed. It also agreed that in a constantly changing context tripartite dialogue among governments, and the representative organizations of employers and workers, should be acknowledged as a crucial means for the effective achievement of the strategic objectives at the national, regional and international levels.

4. While the proposals contained in Report V do not cover exhaustively all aspects of the item on the agenda, the Committee recognized that the emphasis on three main aspects of governance was relevant to the achievement of the objective of strengthening the ILO's capacity to assist its Members. It was understood that the organizational implications for the ILO and the Office's capacity had to be taken into account, including by the Governing Body. ILO management processes, such as the field structure review, results-based management and review of the programming cycle, are also clearly relevant in this context. In no case should the proposed reforms weaken the ILO's existing procedures, including those relating to standard setting and to the supervisory mechanisms.

5. First, as regards the possibility of introducing cyclical or other periodic reviews, it was generally acknowledged that these reviews could be a means of providing to constituents as well as to the general public a regularly updated review of trends and policies relating to the strategic objectives. Such reviews could also serve to strengthen the knowledge base and analytical capacity of the Office. Above all, tripartite discussion on an annual basis in the International Labour Conference, of further operational reports of this kind could help to develop a more direct link between the needs of the constituents, and facilitate the selection of priorities for future action, including standard setting. The review of these reports could allow for a systematic evaluation of the validity of such priorities and the impact of steps taken to implement them, based on feedback from constituents.

6. The possibility of carrying out these reports, their modalities and their review, as well as their link with general surveys under article 19 of the Constitution, should be the subject of a more detailed consideration in the Governing Body, to ensure that such a procedure, if adopted, would not overstretch the Office's capacities, or add to the reporting responsibilities of member States. The Committee noted that it could considerably simplify the selection of items by the Governing Body for the Conference agenda.

7. Second, as regards the question of promoting a more integrated approach to the strategic objectives within the Organization, among its constituents and in the work of the Office, there was a general convergence of views that the adoption of such an integrated approach was a necessity on account of the interdependence and the complementary nature of these objectives. It would also be fully in line with the very concept of Decent Work and consistent with the wide support the Decent Work Agenda had received within and outside the Organization.

8. Such an integrated approach would also play a key role in promoting coherence in the formulation of Decent Work Country Programmes (DWCPs), consistent with the particular needs and specificities of the countries concerned. The Governing Body may therefore wish to establish appropriate institutional arrangements to review the DWCPs, in order to achieve an appropriate balance, as well as at the national level, to achieve greater coherence among these programmes, to make them more effective and to have a greater link with and impact on programmes of other

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relevant United Nations (UN) and multilateral agencies. The experience gained through the DWCPs could also enrich cyclical or other periodic reviews.

9. Concrete examples of how an integrated approach can help in terms of social progress, sustainable development and the eradication of poverty will help to persuade all member States of the merits of such an approach. The Governing Body may therefore wish to examine how past and present experiences with regard to country studies could be used to build up a coherent framework for voluntary country studies, designed to promote the understanding of the interrelation between these objectives and the cross-fertilization of experiences and good practices. The possibility and modalities of a voluntary system of peer reviews and self-assessment should, if appropriate, be examined by the Governing Body.

10. The ILO must improve its knowledge, skills base, data-gathering and processing as well as analytical capacities in all areas, both at headquarters and in the regions. The ILO's research and policy development should be of the highest quality and should be tested against impact consistent with its objectives and delivery of the Decent Work Agenda. By these means, the ILO will enhance its efforts to become a global centre of excellence. The tripartite structure of the ILO gives it a unique comparative advantage and credibility in drawing lessons from its research and the results of country studies.

11. Strong constituents lie at the heart of effective ILO action. The ILO should increase its support in building the capacity of its constituents to ensure their ongoing ability to engage in the ILO objectives and the Decent Work Agenda, realize these goals in the context of globalization and meet the needs of their constituents.

12. Reference was made to the fact that the Global Employment Agenda adopted by the Governing Body with full support provides important guidance to the constituents and the Office for implementing the Decent Work Agenda.

13. Third, as regards partnerships for Decent Work with the actors dealt with in Chapter 4 of Report V, there was agreement that while ILO objectives and methods were more relevant than ever, account had to be taken of both the new context of globalization as well as the existence of such actors with increasing influence on this subject. It was recalled that the United Nations Economic and Social Council (ECOSOC) Ministerial Declaration of July 2006 agreed that Decent Work should be a cross-cutting objective of the UN system and other multilateral institutions. It was considered essential that the ILO's tripartite legitimacy should be used to promote greater awareness and understanding and to establish appropriate partnerships with these actors in support of the ILO's efforts to strengthen member States' institutional capacity to achieve the strategic objectives of Decent Work. The means by which such partnerships can be further developed and made more effective should be further explored by the Governing Body.

14. In the context of UN reform, and "Delivering as One", it was agreed that Members and the ILO should seek to ensure that the reform process strengthens the ILO and its tripartite identity and practices at all levels, and that its tripartite character should define the selection and manner of implementing ILO operations and activities. This should also apply in partnerships within the UN system and in promoting an integrated approach to programme delivery.

15. There was a preliminary examination of whether the Organization should consider adopting an "authoritative document" reflecting the renewed commitment of its Members to the Organization's objectives and tripartism, which could encourage them to pursue these objectives in an integrated manner consistent with the Decent Work Agenda, to which they have given their support.

16. It was agreed that the Governing Body should consider placing an item on the agenda of the next session of the International Labour Conference (2008) to allow the continuation and conclusion of the discussions held at this session of the Conference, and the possible consideration of an authoritative document, possibly in the form of a Declaration or other suitable instrument, together with any appropriate follow-up, and the form they might take.

17. For this purpose, appropriate arrangements should be made by the Office at the earliest opportunity to facilitate the widest consultations among the constituents, including intersessional consultations. This should allow the Governing Body to define the relevant item in a manner that will provide the best possible chance of obtaining a consensus on it at the Conference.

## **Appendix II**

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**Draft elements of a possible authoritative text  
(December 2007)**

**DRAFT ELEMENTS OF A POSSIBLE  
AUTHORITATIVE TEXT**

<b>SOURCES</b>	<b>DRAFT ELEMENTS OF A POSSIBLE AUTHORITATIVE TEXT</b>	<b>COMMENTS</b>
	<b>Preamble</b>	
	The International Labour Conference meeting in Geneva on the occasion of its 97th session,	
	<b>Recalling:</b>	
Conclusions on strengthening the ILO's capacity (ILC 2007), para.3 - former article 41 of the original Constitution of the ILO (1919), also known as "workers' clause"	- the ILO Constitution and in particular, its Preamble, the "International Labour Charter" (1919) and the Declaration of Philadelphia;	General support throughout the ILC discussion (Provisional Record No.23 (ILC 2007)) and consultation process (Consultations, October 2007)
Conclusions on strengthening the ILO's capacity (ILC 2007), para.3	- the Declaration on Fundamental Principles and Rights at Work (1998);	
Conclusions on strengthening the ILO's capacity (ILC 2007), para.12	- the Global Employment Agenda endorsed by the Governing Body of the International Labour Office (2003);	
United Nations General Assembly resolution 60/1: 2005 World Summit Outcome, para.47 - Report V (ILC 2007), Appendix I, Introduction, 3 <sup>rd</sup> point	- the recognition inside and outside the International Labour Organization of the importance of Decent Work for the achievement of the Millennium Development Goals, the eradication of poverty, the satisfaction of basic needs and the promotion of gender equality,	Emphasis placed by Argentina on Decent Work as a key instrument for the reduction of poverty (Consultations, October 2007)
Report of the World Commission on the Social Dimension of Globalization (2004), para.73 - Document GB.295/16/5(Rev), March 2006, para.17	<b>Aware</b> of the unprecedented opportunities that the diffusion of new technologies, the circulation of ideas, goods and services, and the movement of persons in the global economy offer for enhancing the well-being of workers and peoples,	
Non-document for SILC consultations (October 2007), para.15 (ii)	<b>Persuaded</b> that Members' efforts to take advantage of these opportunities will fail to reach their objective unless they simultaneously take into consideration:	
Declaration of Philadelphia, Section III (d) - Report of the World Commission on the Social Dimension of Globalization (2004) para.206-207	- the great human and social costs, within and across borders, associated with the rapidity of the changes generated by globalization and technological change;	
	- the necessity to develop individual and collective capacities, the promotion of social cohesion and the stability of institutions and the rule of law, to ensure the sustainability and efficacy of these efforts;	
Preamble of the Declaration on Fundamental Principles and Rights at Work (1998)	- the lasting and universal aspiration for social justice in the sharing of the said costs and benefits,	Emphasis by European Union placed on equitable globalization (Consultations, October 2007)
	<b>Convinced that:</b>	
Report V (ILC 2007), para.3	- to meet the above needs and aspirations, the promotion of the values of freedom, human dignity, non-discrimination, dialogue and solidarity on which the Organization is based, and of the specific objectives set forth in the Constitution	Provisional Record No.23 (ILC 2007)

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of the International Labour Organisation and elaborated in relevant instruments, is more than ever necessary;

- efforts to promote these values and objectives should be pursued with renewed vigour, greater visibility and increased efficiency based on a integrated and coherent strategy/policy towards Decent Work,

**Adopts the present Text**, which may be cited as ...

Provisional Record No.23 (ILC 2007) + See in particular e.g. para. 157 (Nigeria), desirability of clarifying the ILO message – European Union support for a high profile, visible reference document (Tripartite consultations 16-17 October 2007)

**I. Principles relevant to the strengthening of the promotion of ILO objectives through an integrated and coherent strategy towards Decent Work**

Report V (ILC 2007), Appendix I, I/A, 1<sup>st</sup> bullet

GB.295/16/5(Rev.) March 2006, para.12

A) Members of the Organization recognize that in the present context of accelerating change their commitment to the principles and objectives set forth in the ILO Constitution requires continued efforts focused on the four strategic objectives below, which have been identified as the pillars of the Decent Work strategy:

Workers' request to elaborate the strategic objectives to the general public (Workers' Submission, November 2007) – Sri Lanka (Governing Body, Nov. 2007, item 2)

Declaration of Philadelphia Section III (a), (b), (c) and (d) – GEA (2003), GB.286/ESP/1(Rev.), in particular para. 29 – ECOSOC Ministerial Declaration, 5 July 2006, E/2006/L.8. – Non-document SILC consultations (October 2007), note 7

(i) [placing employment at the centre of economic and social policies and] creating an environment in which:

Employers input consultations October 2007

- individuals can develop and update the necessary capacities to be productively occupied, for their personal fulfilment and the common well-being, and  
- enterprises are encouraged to develop greater employment opportunities for all;

(ii) developing measures of social [and labour] protection which are adapted to national circumstances, as appropriate, with a view to:

Treaty of Versailles (1919), Part XIII, article 41 – Declaration of Philadelphia, Section III (f), (g), (w) and (i) – Committee on Economic, Social and Cultural Rights, General Comment N° 19, the Right to Social Security (article 9), 23 November 2007

- progressively extending social security to all [in need] and providing dynamic security to meet the new needs and anxieties generated by the rapidity of technological and economic changes;  
- ensuring safe and decent working conditions, keeping in mind the basic requirements of the above mentioned “International Labour Charter” and the legitimate expectation by the persons concerned to receive a fair share of the wealth which they have helped to generate;

SILC Workers' Submission, November 2007

Declaration on Fundamental Principles and Rights at Work (1998)

(iii) promoting social dialogue as the necessary corollary of tripartism and as the appropriate method to:

SILC Workers' submission November 2007 – Employers input consultations October 2007

Resolution concerning Tripartism and Social Dialogue (2002) – Report V (ILC 2007), para. 39.

- adapt the implementation of the strategic objectives to the needs and possibilities of each country, and  
- translate economic development into social progress and vice-versa, in the light of relevant international labour standards;

**SOURCES**

Preamble of the Declaration on Fundamental Principles and Rights at Work (1998)

Report V (ILC 2007), paras. 74-75 + Appendix I, I/B, 1<sup>st</sup> point (ii) – Non-document for SILC Consultations (October 2007), para.15 (ii)

Report V (ILC 2007), Appendix I, I/B, 2<sup>nd</sup> point – Non-document for SILC Consultations (October 2007), para.15 (iii)

Preamble to the ILO Constitution - Declaration of Philadelphia, Section I (c) – Non-document for SILC Consultations (October 2007), para.15 (iii) – Report V (ILC 2007), Appendix I, I/B, 3<sup>rd</sup> point

Document GB.295/16/5(Rev.), para.18 – Non-document for SILC Consultations (October 2007), para.15 (iii)

Non-document for SILC Consultations (October 2007), para.15 (iii)

Non-document for SILC Consultations (October 2007), para.15 (iii) – Report V (ILC 2007), Appendix I, I/B, 4<sup>th</sup> point

Report V (ILC 2007), Appendix I, II/B, 3<sup>rd</sup> point – Non-document for SILC Consultations (October 2007), para.17

(iv) guaranteeing fundamental rights at work as basic human rights and as the enabling condition without which none of the strategic objectives can satisfactorily be realised and whose violation cannot be invoked as a legitimate source of comparative advantage.

B) Members also recognize and declare that:

(i) the above objectives are indivisible, interdependent and mutually supportive. The failure to promote any one of them will hinder progress towards the others. To produce optimum results, efforts to promote them should thus, in line with the Decent Work strategy, be part of a coherent and integrated policy covering also other domains such as industry, agriculture, education, services, health, trade and the like;

(ii) without prejudice to their existing international obligations in related matters, the specific content and the relative importance to be given to the strategic objectives is a matter to be determined freely by the Members, giving due regard to:

- national circumstances, possibilities and priorities, and such preferences as those concerned may express through their freely chosen and representative organizations, and
- the requirements of interdependence, reciprocity and solidarity in the pursuit of these objectives among all Members, which are inherent in membership of the ILO under the Constitution, and which appear more than ever relevant in the context of a global economy.

**II. Respective roles of Members/tripartite constituents and the ILO in promoting an integrated and coherent policy/strategy towards Decent Work**

A) Members recognize that they have, in the first instance, the responsibility for giving effect to their commitment and support to the principles and strategy reflected in section I above, which may be exercised in various ways, including:

(i) translating the integrated and coherent strategy in the form of a policy/plan of action establishing priorities for the coherent pursuit of the strategic objectives giving due regard to national circumstances, as well as to relevant preferences reflected through appropriate consultations with representative organizations of workers and employers;

(ii) establishing, with the assistance of the ILO as appropriate, gender-sensitive indicators or statistics to

**COMMENTS**

Point raised during the discussion of document GB.295/16 by Canada (March 2006)

Support expressed for the need of taking into consideration the interdependence between objectives: SILC Workers' Submission, November 2007 – Employer's input consultations October 2007 – United States Government Comments on SILC (30 November)

Clarification intended to meet various concerns expressed during the consultations: China (Governing Body, Nov.2007, item 3) – United States Government Comments on SILC (30 November)

Emphasis placed on the importance of solidarity: SILC Workers' Submission, November 2007

Wording designed to meet some concerns that there is no question of creating new obligations/interfering with social policy: e.g. United States Government Comments on SILC (30 November)

Provisional Record No. 23 + see in particular Namibia (para.32) and Nigeria (para.109)

Provisional Record No. 23 + see in particular European Union (para.100), Argentina (para.108), Denmark (para.110) and Switzerland (para.113)

## SOURCES

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	objectively monitor and evaluate the impact of their efforts/policy;	
Report V (ILC 2007), para.23	(iii) reviewing their ratification/implementation record of ILO instruments [on a tripartite basis] to correct any gap or imbalance that may exist in the normative coverage of the strategic objectives;	Wording designed to meet concern that there is no question of creating obligations to ratify: Employer's input consultations October 2007
Non-document for SILC Consultations (October 2007), para.15 (iii) – Report V (ILC 2007), Appendix I, II/A, 3 <sup>rd</sup> point	(iv) ensuring that the policy/plan of action is appropriately taken into account by their representatives in all relevant/interested international fora, if necessary through the establishment of appropriate procedures/mechanisms to that effect;	Provisional Record No. 23 + see in particular Employers (paras.14 and 123), European Union (para.127), Nordic countries (para.138)
Report V (ILC 2007), Appendix I, II/B, 3 <sup>rd</sup> point	(v) encouraging, in so far as their resources permit, other Members in their efforts to give effect to the principles and strategy reflected in section I above in all appropriate ways, in particular through the funding of relevant technical cooperation activities and programmes, and	
	(vi) establishing procedures for the purpose of consulting representative organizations of workers and employers on possible steps that could be taken pursuant to (i) to (v) above.	
NB: It would be perfectly conceivable to switch sub sections II/A) and II/B)	B) At the same time, Members are firmly convinced that, for effectively discharging the above responsibility, a strong Organization is needed with sufficient capacity and focussed human and financial resources to effectively guide, coordinate and provide assistance to their efforts. To that end, the Organization should review and adapt its institutional practices and governance in order to:	GRULAC (Governing Body, Nov.2007, item 2) – United States Government Comments on SILC (30 November)
Report V (ILC 2007), Appendix I, II/A, 1 <sup>st</sup> point	(i) improve its capacity, through a regular cycle of reviews by the International Labour Conference of each strategic objective:	
	(a) to understand the realities and needs of all Members;	
	(b) to respond effectively and efficiently to the Members' needs, in particular those which are at a less advanced stage of development, by:	
	- mobilizing with all the means of action at its disposal including through normative action, technical cooperation, and the technical and research capacity of the Office, and	
	- adjusting its priorities and programmes of action accordingly;	
Conclusions on strengthening the ILO's capacity (ILC 2007), para. 5	(c) to objectively assess the results of its programmes of action, and	General support expressed during the ILC 2007 discussion (Provisional Record No. 23) and subsequent consultations in October 2007
	(d) to mobilize additional resources in support of better focused priorities.	

**SOURCES**

**COMMENTS**

Report V (ILC 2007), Appendix I, II/A, 2<sup>nd</sup> point

(ii) support its Members' efforts to jointly pursue the strategic objectives in accordance with the principles and strategy reflected in section I above:

Conclusions on strengthening the ILO's capacity (ILC 2007), para. 8

- (a) by strengthening and streamlining its technical cooperation activities within the framework of Decent Work Country Programmes;
- (b) by providing general expertise and assistance, which each Member may request for the purpose of defining a policy/plan of action, and exploring innovative partnerships for its implementation, and
- (c) by developing appropriate tools for the objective evaluation of the impact of their efforts and the assessment of the impact that other factors and policies may have on these efforts.

(iii) contribute to a better empirical knowledge of how the strategic objectives interact with each other and link to sustainable development as well as to the sharing of experiences and good practices at the regional and international level, in the framework of:

Conclusions on strengthening the ILO's capacity (ILC 2007), para. 9

- (a) studies conducted either on an *ad hoc* basis with the voluntary cooperation of the government and representative workers' and employers' organizations in the countries concerned, or
- (b) of any common scheme[s] such as peer reviews that interested Members may agree to establish between themselves.

GEA (2003), GB.286/ESP/1(Rev.), in particular para.20 - Report V (ILC 2007), para.108 + Appendix I, II/B, 4<sup>th</sup> point

(iv) provide any assistance which may be requested and appropriate to Members wishing to jointly promote strategic objectives within the framework of bilateral or multilateral agreements to which they are or may become party, it being understood that they are free to enter into such agreements with or without ILO involvement as long as their ILO obligations and commitments are not adversely affected, and

Provisional Record No. 23 + see in particular Indonesia (para.126), Canada (para.136) - SILC Workers' submission November 2007, p. 4

Report V (ILC 2007), Appendix I, II/A, 2<sup>nd</sup> point (iii) - Conclusions on strengthening the ILO's capacity (ILC 2007), para.13

(v) review possibilities for developing new partnerships with or between other relevant non-state actors - as appropriate, through national and international workers' and employers' organizations - to enhance understanding of ILO operational programmes and activities, to enlist support for them in any appropriate way, and to otherwise promote ILO objectives.

United States Government Comments on SILC (30 November)

**III. Follow-up**

A) The Director-General of the International Labour Office will ensure that the present text is circulated:

- (i) to all Members and, through them, to representative

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Report V (ILC 2007), Appendix I, III, 2<sup>nd</sup> point

organizations of Workers and Employers, it being understood that efforts should be made on a tripartite basis to ensure its dissemination to other interested circles and the general public;

(ii) to intergovernmental organizations with competence in related fields at the international and regional level, and

(iii) to such other entities that the Governing Body of the International Labour Office may identify.

Report V (ILC 2007), Appendix I, III, 4<sup>th</sup> point

B) The Director-General will take all necessary steps to submit to the Governing Body proposals to give effect to section II/B above, it being understood that such proposals should take into account:

(i) staff capacity, available knowledge base and governance considerations;

(ii) the need to promote coherence, coordination and collaboration within the International Labour Office and to establish effective partnerships within the United Nations system and with other relevant actors for the purpose of international policy coherence.

Emphasis placed by the European Union, African Group, GRULAC, Workers to strengthen the role of the ILO in the one UN context

C) The impact of the present Text, meaning the extent to which it has contributed to promote, among its Members, the principles and strategy reflected in section I above, shall be the subject of evaluation by the Conference, which may be repeated from time to time, within the framework of an item placed on its agenda. A report shall be prepared by the Office on the basis of the attached guidelines. The Director-General shall ensure that other potentially interested intergovernmental organizations have the possibility to be associated in the evaluation of this impact and to participate in the discussion.

Concerns expressed by the European Union, United States and others not to increase reporting obligations

Report V (ILC 2007), Appendix I, III, 1<sup>st</sup> point

D) The Conference shall, in the light of this evaluation of impact, draw conclusions regarding the desirability of new evaluations, or the opportunity of engaging in any other appropriate course of action, including action of a normative nature.

**Guidelines for the preparation of reports under section III**

The report to be prepared by the Office for the evaluation of the impact of the Text pursuant to its section III shall contain information on:

(1) action or steps taken by Members as a result of the present text, that may be provided by tripartite constituents through the services of the ILO, notably in the regions, and

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any objective/reliable source;

(2) steps taken by the Governing Body and the Office to follow up on relevant governance, capacity and knowledge base issues relating to the strategic objective concerned;

(3) the possible impact of the Text on other interested intergovernmental organizations, it being understood that these organizations will be invited to participate in the discussion of the report. Other interested entities may also attend and participate in the discussion at the invitation of the Governing Body.

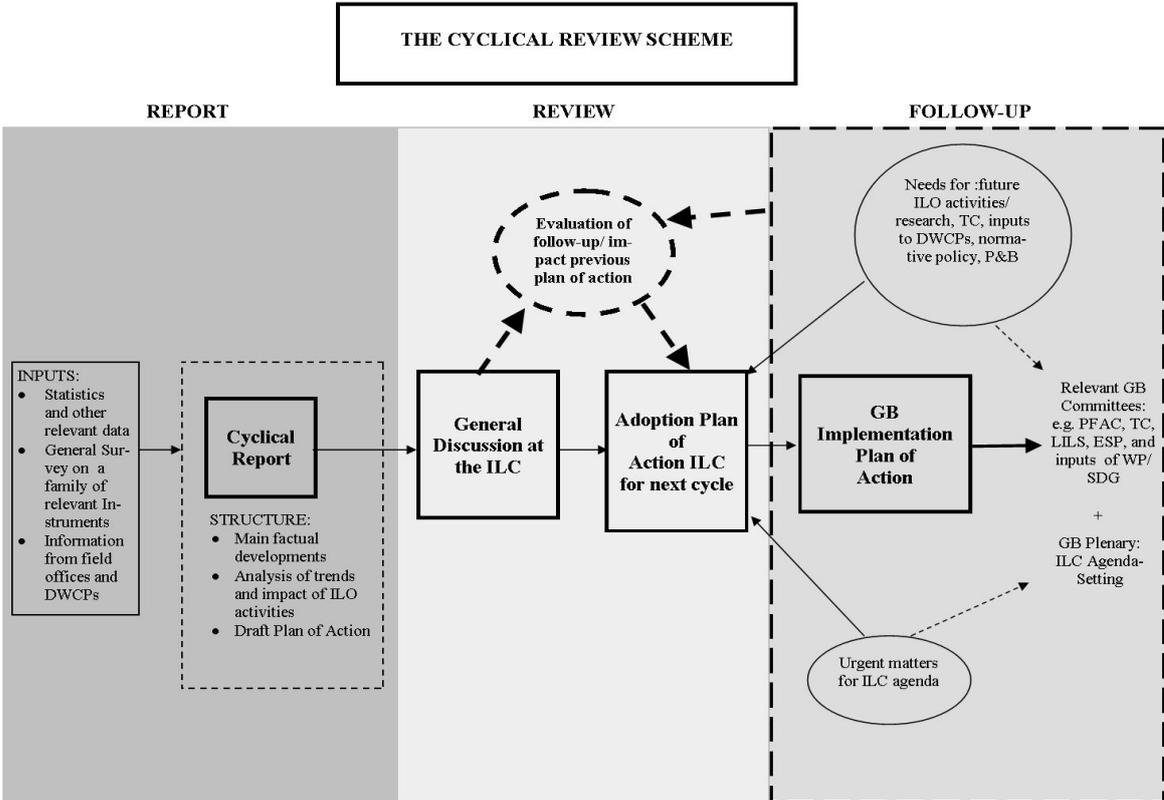
Wording designed to ensure that the priority concern of the government of the United States and other governments as regards governance considerations will not be left aside

# Appendix III

## The cyclical review scheme: Parameters relevant to its possible modalities

### Introduction

1. The programme of work endorsed by the Governing Body last November on the basis of the oral report indicated that the next round of consultations could resume the consideration of modalities for the cyclical reviews.
2. Even though it may be difficult in the short time available for the February consultations to engage in an in-depth discussion on the subject in addition to a discussion on the Draft Elements of a Possible Authoritative Text (Text), the Office considered that it might be useful to take advantage of these consultations to provide some brief additional elements for reflection. If time permits, they could be the object of a preliminary exchange, but they could in any case serve as a basis for discussions in March in the framework of the steering committee of the Governing Body.
3. This note takes as a basis the features and functions of the cyclical reviews as sketched out in the Draft Elements of a Possible Authoritative Text. These features are recapitulated in the diagram below.



4. Assuming that this framework would be broadly acceptable, the key issues to be considered here are as follows.

**A. Consequences for Members in terms of reporting burden**

5. A preliminary point to recall is that the main object of the scheme is to better meet the needs of ILO constituents and this should hopefully represent a major gain for all Members, apart from the simplification and rationalization it would represent for the ILO.
6. The concern has however been repeatedly expressed that the scheme might imply an increased reporting burden. In addition to the explanations already provided,<sup>1</sup> two additional considerations are relevant in this context.
7. First, as clarified in section III(C) of the Text and the attached guidelines, it is not intended that the impact of the Authoritative Text as a whole should be the object of additional reporting. The evaluation, which may be placed on the Conference agenda from time to time, will cover steps taken by the Governing Body, the Office and as far as action by Members is concerned will use information available through the field structure (as well as information gleaned in the process of preparing the cyclical reviews themselves).<sup>2</sup>
8. Second, the cyclical reviews may have implications on existing reporting under article 19 of the Constitution. This is why, as also already envisaged during the October consultations, it seemed opportune to address these implications in a separate note, which is now attached as Annex 1. As this annex expounds, the introduction of cyclical reviews may call for a synchronization between General Surveys and cyclical reviews, as well as a broadening of their scope to include families of instruments relevant to the particular category of Strategic Objective under review. How this would affect the reporting workload depends greatly on the type of questionnaire used. Annex 1 suggests that the use of a simplified questionnaire may actually considerably relieve the current workload. It would be even further relieved as a result of greater assistance/involvement from the ILO field offices.

**B. Workload and capacity implications for the Organization**

9. Again it should be recalled as a starting point that the scheme would represent a considerable simplification of the procedure for fixing the agenda of the International Labour Conference (ILC) and – even though it is difficult to quantify – a sizeable saving in terms of paper work and meeting costs. Another important point to recall is that the new scheme is neutral as regards Conference costs since the review would not involve an additional item, but would replace one of the items that are routinely placed on the agenda.<sup>3</sup>
10. The only remaining concern relates to the cost of the reporting, preparation and more generally the analytical capacity of the Office to be up to the challenge of establishing the report without drawing on additional resources. To meet this concern the following four questions must be addressed.
11. The first question which arises in this respect is that if the review as noted above is neutral, should not the same be true of the cost of the report which serves as a basis for that review? Since it would replace another general discussion item, and in both cases a report has to be prepared to serve as a basis for the discussion.

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<sup>1</sup> Non-document for SILC consultations (October 2007), Annex 2, last paragraph.

<sup>2</sup> Similar to the practice of the follow-up to the 1998 Declaration, which is now under consideration.

<sup>3</sup> This was also noted already in the non-document for SILC consultations (Oct. 2007).

12. The objective answer is that the review will undoubtedly require a significantly more substantive report than a standard report for general discussion. As indicated in Report V (ILC, 2007) and the non-document for the October consultations, the cyclical report is intended to embrace three main dimensions: (1) a factual dimension covering statistical and legislative trends; (2) an analytical dimension which considers how these trends fit with ILO objectives and to what extent ILO action has had an impact on the trends; and (3) the action-oriented dimension that will serve as a basis for an action plan for the next cyclical review.
13. The second question is then *to what extent does the cyclical report require additional work or can it make use of work that is (or should be) already being done?* The collection and dissemination of information is part of the Office's specific mandate under article 10 of the ILO Constitution. And beyond this strictly legal consideration, it seems to be an essential part of the ILO's visibility and credibility that it function as the source of reliable updated information relating to trends concerning its key objectives. From a more practical point, it should normally be a product of existing Office activities and of the presence of the ILO in the field through its offices. Information concerning trends in national legislation and practice should by and large be the by-product of article 19 reports, which is the object of Annex 1. While ILO managers seem confident that such products would indeed generally exist, it would certainly be hasty to conclude that all the necessary information will be readily available.
14. The experience of reports for the purpose of discussions based on the integrated approach, whose scope is very similar to that of the proposed cyclical reports, suggests that some additional efforts and resources had to be spent to establish reliable baselines in the form of country profiles. Annex 1 also indicates that the scope of the General Surveys would have to be broadened to make a more significant contribution to the reviews. This however leads to the third question.
15. To what extent is it a recurrent cost or a "one-time" investment? If, as indicated above, the necessary information does not yet exist, it seems equally clear, in the light of the integrated approach (and the annual reviews under the follow-up to the 1998 Declaration) that once the initial investment has been made to create a baseline, the following cycle will naturally be built on the work carried out for the preparation of the first report.
16. This reasoning brings about a fourth question which considers to what extent can any additional cost be offset by savings on activities or publications which become redundant as a result of the cyclical reviews. Two possibilities had already been identified during previous discussions relating to the Global Reports under the follow-up to the 1998 Declaration in their present form and the World Employment Reports. As regards the latter, it seems to have been generally agreed that, at least in the year where the cyclical report is produced it would make the other report redundant. This would represent a substantial saving that could largely offset the higher cost of the cyclical reports compared to a "standard" general discussion report.<sup>4</sup>
17. In the light of the above it would seem safe to conclude that: (1) the review of the cyclical report itself will not represent any additional cost since it will replace another item on the ILC agenda; and (2) the preparation of the report will require more resources than a standard general discussion report, but the savings that the new system will generate in terms of rationalization of current ILC reports and publications prepared by the Office are expected to largely offset this cost (see Annex 3 for possible savings arising from the cyclical review scheme).

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<sup>4</sup> Note that if, as proposed by some Members, the cyclical reviews would follow a three-year cycle (see below), it might be considered that one *World Employment Report* in the three-year interval would be sufficient, thus offering the possibility of even greater savings.

## C. Modalities

### A cycle of what duration?

18. The initial idea as proposed in Report V (ILC, 2007) was for the cyclical reviews to follow a four-year cycle corresponding to each of the Strategic Objectives. However, it soon became apparent that this solution might not be ideal in the light of the three main concerns that have been raised.
  - (a) The first concern is connected to the Strategic Objective of social protection, which embraces such a broad spectrum of issues that it seems impossible to realistically cover all of them in a single report.<sup>5</sup> The possible compromise to break down the topic over various cycles, as envisaged in Report V (ILC, 2007) was not found entirely satisfactory by some Members, as it would still mean that important issues relating to social security could be reviewed only every eight or 12 years. The tripartite Austrian formula, based on a three-year cycle, could indirectly help to meet this difficulty. If social protection were broken down into social security and labour protection, it would make it possible to deal with each topic every six years, which seems a reasonable interval.<sup>6</sup>
  - (b) The second concern expressed relates to the need to balance the vertical dimension with a horizontal dimension, i.e. reviewing efforts to promote a horizontal/integrated approach to the Strategic Objectives and their impact.<sup>7</sup> It should be noted that each strategic review will be a review of decent work considered, so to speak, through the lenses of each Strategic Objective in turn. But there would still be room (and value) once a cycle is completed, to take stock of the progress and needs among Members as regards all Strategic Objectives, as well as of the results of actions taken by the Office and the Governing Body to promote an integrated approach through Decent Work Country Programmes (DWCPs), country studies, etc. This possibility is reflected in the box below. It could either take the form of a Director-General Report to be discussed in plenary or a synthesis report to be discussed in a technical committee parallel to the committee dealing with the cyclical review.
  - (c) The third concern comprises the need to make the cycle consistent with the strategic policy framework. The latter is currently based on four years, but the intention is to bring it to six years and consultations to that end are ongoing.
19. The way and degree to which the various possible cycles between three and five years could meet these requirements/parameters/concerns are tentatively shown in the table below. As a final remark, it should be recalled that all the above is without prejudice to the possibility for the Governing Body to place items on the ILC agenda, which appear to require urgent consideration either in the light of a specific cyclical review or otherwise.

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<sup>5</sup> See Annex 2, this would imply taking the tentative table of contents of both social security and labour protection together.

<sup>6</sup> See for more details on this option Annex 2; another possibility would be to further split up social protection so it would be made up of three reports: social security, occupational safety and health, and working and employment conditions.

<sup>7</sup> In this context it has been proposed that this horizontal dimension should be dealt with in each cyclical report, i.e. every year.

**CYCLES — CYCLICAL REVIEWS**

N.B.

Strategic objectives:

1. Employment
  2. Social Protection    2a Social Security (see Annex 2)  
                                  2b Labour Protection (see Annex 2)
  3. Social Dialogue  
(3) Social Dialogue cross-cutting
  4. Fundamental Principles and Rights at Work
- DW Decent Work Synthesis Report

<b>5 year cycle</b>	<b>Comments</b>
Option 1    1 — 2 — 3 — 4 — DW	Difficulties meeting concerns A + C
Option 2    1 — 2a — 2b — 3 — 4 + DW in 5th year*	Could meet concerns A + B, but not C
<b>4 year cycle</b>	
Option 1    1 — 2 — 3 — 4 + DW in 4th year*	Does not address completely concerns B + C
Option 2    1 (3) — 2 a(3) — 2b(3) — 4 (3) + DW in 4th year*	Meets concerns A + B
<b>3 year cycle</b>	
Next cycle:    1 (3) — 2a (3) — 4 (3) + DW Report in 3rd year*	Meets concern B, to the extent that the social protection issues could be treated at a 6 year interval, and concern C as the strategic policy framework could cover two full cycles
1 (3) — 2b (3) — 4 (3) + DW Report in 3rd year*	

\* Either DG Report or in a parallel technical committee

**Process and outcome**

20. Without going into details, it seems useful to recall the three main procedural features of the “review” at the ILC of the cyclical reports:
  - the cyclical review is a recurrent item on the agenda of the Conference and will thus be discussed in a full-fledged committee;
  - the outcome of the review, including a proposed plan of action, will take the form of conclusions and will have the same authority vis-à-vis the Governing Body as conclusions

adopted by the ILC within the framework of a specific item on the agenda (without prejudice to the possibility for the committee to consider and adopt resolutions on matters of specific interest or urgency relating to the Strategic Objective under consideration);

- various devices could be considered to make the discussion more interactive as mentioned in Report V.<sup>8</sup>

#### **D. Possible link with the follow-up to the 1998 Declaration**

##### Relevant features of the 1998 Declaration follow-up

21. As a starting point for the examination of the possible link that could be developed between the cyclical review scheme and the follow-up to the 1998 Declaration, it is important to keep in mind the main characteristics of that follow-up.
22. First, while the text of the Declaration itself should not be changed, the follow-up (set out in the annex) was designed to be of an experimental nature and is explicitly subject (under annex, IV, 2) to a review by the ILC in the light of the experience gained.
23. Second, the follow-up is clearly of a promotional nature and designed to encourage Members to make progress towards application of the principles underlying the rights which are the object of the corresponding Conventions even when they have not ratified those fundamental Conventions. The follow-up consists of two main components:
  - the Annual Reviews, which are reviews on a yearly basis concerning progress made towards the respect, promotion and realization of the core rights in States which have not yet ratified the Conventions in question, which was the initial idea behind the follow-up; and
  - the Global Reports, which provide a dynamic global picture both in countries which have not ratified and those which have ratified. The philosophy behind these reviews was that it is not because a country has not ratified that it does not or cannot implement. And conversely it is not because a country has ratified that it necessarily applies the principles or cannot make further progress towards their realization.
24. Third, *the modalities of the review* are as follows:
  - (i) The progress of the Annual Reviews has been monitored by a group of Expert-Advisers whose report has been submitted to the Governing Body every March. Over the past ten years, these reviews have guided action, through technical cooperation, in several countries and subregions. The process has also greatly contributed to improving ratification records with respect to the fundamental Conventions. Progress seems however to have followed an asymptotic curve as regards both ratifications and, as noted by the Expert-Advisers, information on progress gleaned through the reviews.<sup>9</sup> It seems clear that in most of the remaining cases there will be limited significant developments to report on an ongoing annual basis.
  - (ii) The Global Reports are cyclical in that they cover each of the categories of fundamental principles and rights at work in turn. They are recognized as a key tool for knowing and following developments relating to the fundamental rights. But it must be recognized at the same time that their discussion has not had the expected impact as regards the mobilization of technical cooperation resources to meet identified priority needs among Members. Neither has there been full satisfaction on the debates at the Conference on these Global Reports, as a discussion in the Plenary can rarely be made interactive in practice.

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<sup>8</sup> ILO: *Report V, Strengthening the ILO's capacity to assist its Members' efforts to reach its objectives in the context of globalization*, ILC, 96th Session, Geneva, June 2007, Chapter 2, paras 47–49.

<sup>9</sup> Introduction by the ILO Declaration Expert-Advisers to the compilation of annual reports (Geneva, Mar. 2008), GB.301/3, para. 14.

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Possible synergies between the cyclical review scheme and the 1998 Declaration follow-up

25. The Conference has full authority to draw any consequence that may seem appropriate concerning the relations between any cyclical review scheme that may be established pursuant to the possible adoption of an authoritative text, and the elements and modalities of the follow-up to the 1998 Declaration recalled above. Without going into an in-depth analysis of all relevant questions at this stage, it seems useful for the purpose of this note to highlight the following aspects and possibilities for adjusting the two schemes in a way that would optimize synergies.
26. The first relates to the *scope of the cyclical reports* as compared to the existing Global Reports. The content of cyclical reports as contemplated in the present document seems quite compatible with that of Global Reports. But it would in principle be a “consolidated” report covering trends and needs in all four categories of fundamental rights. It would contain a corresponding draft plan of action to be discussed and endorsed by the ILC.
27. The next question is then whether, in the interim period, some form of report and review relating to each individual right could be maintained within the framework of the Governing Body.
28. The third main practical question relates to the *possibility of synchronizing Annual Reviews* of States that have not ratified with the “consolidated” cyclical review of fundamental rights. As already noted, the main lesson learned in recent years is that annual reviews have lost much of their *raison d’être* now that a ceiling of ratifications has been reached and that it is therefore unrealistic to expect developments on a yearly basis. Hence, it would make more sense to conduct the individual reviews on a three-, four- or even five-year basis (depending on the periodicity of cyclical reviews). It would also make sense from a substantive point of view – particularly in updating the country base-lines, which have the potential to contribute to the Office’s knowledge in the context of the cyclical reviews. A final important observation is that this harmonization would specifically address one of the recurrent concerns expressed during the SILC consultations, in that it would reduce the reporting burden on member States.

## Annex 1

### Guidance note on General Surveys and possible synergies between General Surveys and cyclical reviews<sup>10</sup>

#### Introduction

1. The cyclical reviews envisaged in the conclusions of the Committee on Strengthening the ILO's Capacity<sup>11</sup> that were adopted by the International Labour Conference in June 2007 are intended to provide constituents and the general public with a regularly updated overview of trends and policies relating to the Strategic Objectives, while also strengthening the knowledge base and analytical capacity of the Office. Developments in national law and practice in the areas under consideration are undoubtedly an important part of this Objective. This automatically raises the question of the contribution that could be made in this respect by General Surveys, based on the reports submitted by governments under articles 19 and 22 of the Constitution. In response to this question, this note aims to provide a brief overview of three aspects: the basis and purpose of General Surveys; the scope of these Surveys and its evolution; and possible synergies between cyclical reviews and General Surveys.

#### A. *Basis and purpose of General Surveys*

2. Under article 19, paragraphs 5(e), 6(d) and 7(b) of the Constitution, the ILO is entitled to examine, by investigating trends in national law and practice, the impact – the extent to which effect is given or not – of international labour Conventions in countries which have not ratified these instruments, as well as of Recommendations.<sup>12</sup> In 1950, the Committee of Experts on the Application of Conventions and Recommendations was called on for the first time to consider reports submitted under article 19 of the Constitution.<sup>13</sup> These reports covered six Conventions and six Recommendations. The questionnaires were very simple and were articulated around the provisions of article 19. Each instrument was reviewed in a separate Survey based on a questionnaire approved by the Governing Body and sent to the countries concerned.
3. It soon became apparent that it would be useful to have a clearer overview of the status of these instruments both in countries that had ratified them and in other countries, by combining the reports under articles 19 and 22. The first “General” Survey, which was based on both article 19 and article 22 reports, was prepared in 1956. The view was that the general discussion of the Conference Committee “could thus assume the character of a review by stages of the effect given to all the principal Conventions and Recommendations, which would make it possible for the Conference to have a fuller and

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<sup>10</sup> See also document GB.300/LILS/6.

<sup>11</sup> *Provisional Record* No. 23, ILC, 96th Session, Geneva, 2007.

<sup>12</sup> These provisions require all member States to report “at appropriate intervals, as requested by the Governing Body” on non-ratified Conventions and Recommendations; these reports are to cover in particular the status of law and practice concerning the matters dealt with in these instruments and should indicate the extent to which effect has been given or is proposed to be given to the instruments. These provisions came about as a result of an amendment to the Constitution which was adopted in 1946 and which entered into force in 1948.

<sup>13</sup> Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19 and 22 of the Constitution) and summary reports on non-ratified Conventions and Recommendations (article 19 of the Constitution), ILO, Geneva, 1950.

more useful picture of the effect of the Conventions and Recommendations than had been available in the past.”<sup>14</sup>

## **B. Trends in practices relating to the scope of General Surveys and the related questionnaires**

4. Following the initial request for reports under article 19, relating to 12 instruments,<sup>15</sup> the number of instruments on which reports were requested every year varied from one to eight, with the exception of a special General Survey that covered 17 key Conventions. This precedent, together with that of the “integrated approach” adopted by the Governing Body in November 2000,<sup>16</sup> merit particular attention in the context of this note, as Surveys based notably on article 19 and covering a large number of standards.

### **– Prospects for ratification after 50 years: Survey of 17 selected Conventions**

In 1967, in preparation for the 50th anniversary of the Organization in 1969, the Governing Body decided to request, under article 19 of the Constitution, a report on 17 non-ratified Conventions,<sup>17</sup> to enable the ILO to review the prospects and challenges relating to the ratification of certain key instruments of the international labour code. Because of the high number of instruments considered, governments were invited in the report form only to indicate briefly for each of the Conventions in question: (a) *the extent to which it is proposed to give effect to the terms of the instrument*; and (b) *any difficulties which prevent or delay ratification*. The form also specified that, in the absence of recent new developments as regards a given Convention, reference could be made to information previously supplied under article 19 of the Constitution.<sup>18</sup> The Survey was conducted in 1969 and was limited to an analysis of the reports submitted under this article. For each Convention, the Survey summarized the difficulties encountered, the measures taken or envisaged and the prospects of ratification. Given the importance of information on practice, if such a questionnaire were to be used for the cyclical review, it would be useful to include requests for more detailed information in this regard.

### **– ILO standards-related activities in the field of safety and health at work**

It may be recalled that, at its 279th Session (November 2000), the Governing Body decided to implement, on a trial basis, an integrated approach to the standards-related activities of the ILO in order to improve their coherence, relevance and impact. The purpose of the approach adopted in 2000 was to reach a consensus on an action plan in a specific area, in the context of a general discussion at the International Labour Conference. In this respect, this purpose converges with that of the present exercise. The first issue selected by the Governing Body was occupational safety and health.<sup>19</sup> A Survey covering 40 standards and 15 codes of practice was conducted among member States. The consolidated

<sup>14</sup> Minutes of the 129th Session of the Governing Body, 27–28 May and 24 June 1955, Annex X.

<sup>15</sup> See paragraph 2 above: in other words, the reports requested in 1949 for the purposes of the 1950 report of the Committee of Experts.

<sup>16</sup> See document GB.279/4 and ILO: *ILO standards-related activities in the area of occupational safety and health*, Report VI, ILC, 2003.

<sup>17</sup> Fundamental rights: Conventions Nos 87, 98, 29, 105, 111 and 100; social policy: Convention No. 117; labour administration (inspection): Convention No. 81; employment: Conventions Nos 88 and 122; salaries: Conventions Nos 26, 99 and 95; social security: Conventions Nos 102 and 118; minimum age: Convention No. 59; maternity protection: Convention No. 103.

<sup>18</sup> Document GB.170/S.C./D.1/4, Annex I.

<sup>19</sup> The report covered the following areas: standards and other instruments; the role of occupational safety and health in ILO activities; occupational safety and health at the global, national and workplace levels; the impact, coherence and relevance of standards; putting rules into practice through promotion, technical cooperation and information.

questionnaire covered: (1) *law and practice (15 points)*<sup>20</sup> and (2) *the need for promotional activities, the use of standards as a guide or model for national law and practice, intentions regarding ratification, obstacles to ratification, codes of practice, technical cooperation, information and the possible need for new standard-setting activities*. The provisions of the standards and codes of practice corresponding to each question were specified in the annex to the questionnaire. The responses were summarized in the report and set out in the form of graphs and tables.

5. It seems that these initiatives and the related questionnaires were well received by constituents. In any event, these examples confirm that the Constitution allows a wide degree of flexibility in terms of adapting practices to needs. What is of particular relevance to this note is that the questionnaires may be very simple, as they were initially (see paragraph 2 above) and may be limited to the provisions of article 19, in order to obtain basic information from Members both on trends in law (in the broad sense) and in practice which relate to the topics covered by the instruments under consideration and also any foreseen modifications, including with a view to facilitating their possible ratification and/or ensuring their more effective implementation.

### **C. Possible synergies between the restructured General Surveys and cyclical reviews**

#### **– Possible contribution of General Surveys to the cyclical reviews**

6. Two points emerge from the above. First, General Surveys are an invaluable tool for gathering objective information about national law and practice and for evaluating emerging trends relating to the solutions advocated by the relevant instruments. Information of this kind should clearly be taken into account when preparing an objective and comprehensive overview of trends and developments relating to the Strategic Objective in question. Furthermore, the Constitution allows considerable flexibility in the way that procedures are adapted to changing conditions (in particular, the growth in the number of instruments and ratifications) and needs. The Governing Body is therefore perfectly at liberty to align the topics covered in cyclical reports with those covered in the General Surveys and to refashion the scope of these Surveys to ensure that they make the best possible contribution to the cyclical reviews.
7. Accordingly, the number of standards to be considered each year could exceed the average normally covered by the General Surveys. This does not exclude the possibility that, in certain areas, the Survey could focus on a small number of key standards relevant to the objective under consideration. In the case of a relatively large number of standards, certain measures should be taken to avoid imposing too heavy a workload on constituents, such as simplifying the questionnaires and ensuring that the Office's field structures give more support to Members to facilitate effective follow-up. The aim of the Survey would be to provide an overview of law and practice in regard to the matters being dealt with, as envisaged by the Constitution, rather than to focus on any specific provision. The loss of detail in Surveys of this kind would by and large be offset by the strengthened impact which they could have as a result of the cyclical reviews.

#### **– Contribution of cyclical reviews to strengthening the impact of General Surveys**

8. In accordance with the Standing Orders of the International Labour Conference<sup>21</sup> and current practice, General Surveys are submitted to the Conference Committee on the Application of Standards. Because the debate is focused mainly on legal issues and limited time is available for consideration of the General Surveys, it is not always possible to draw specific conclusions, where appropriate, either in terms of future standard-setting activities or in terms of the identification of activities to be undertaken in the field of promotion and

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<sup>20</sup> The questions required a simple yes/no answer.

<sup>21</sup> Article 7, para. 1(b).

technical cooperation.<sup>22</sup> Establishing a link, using modalities which are yet to be determined, between General Surveys and cyclical reports would allow for further consideration in a technical committee that has the time and the mandate to consider in more detail whether and in what way these General Surveys require specific action. According to the outline provided in Report V submitted by the Office to the Conference in June 2007,<sup>23</sup> it would be up to the technical committee to propose, on the basis of the report and its discussion, a plan setting a number of priorities for future action to be achieved by mobilizing, as and when appropriate, the different means of action of the Organization, including activities relating to promotion, technical cooperation and standard-setting, in cases where the discussions reveal a need to revise existing standards or introduce new ones (this would help the Governing Body in its task of making choices regarding future Conference agendas). In an effort to improve integration at all levels, cooperation should be increased between the International Labour Standards Department, which is responsible for processing reports under article 19, the technical departments, the Bureau for Employers' Activities (ACT/EMP) and the Bureau for Workers' Activities (ACTRAV), the field offices and the Turin Centre, in order to develop a shared commitment towards enhancing the impact of standards.

## Final comments

9. It is important to emphasize that the aspects discussed above do not involve any changes to the procedures currently applicable and in particular to the role of the Committee of Experts on the Application of Conventions and Recommendations in terms of the development of the General Surveys, and the Conference Committee on the Application of Standards in terms of their review. Cyclical reviews could either contain a summary of or make reference to General Surveys and draw conclusions about the priorities to be set by the Organization for the next cycle. As for the sequence of discussions within the Conference Committee on the Application of Standards on General Surveys and, in the case of cyclical reviews on the same subject, within a technical committee, two options are available:<sup>24</sup> (a) the General Survey could be discussed in the Conference Committee on the Application of Standards the year before the discussion of the cyclical review on the same subject within the technical committee; the technical committee responsible for considering the cyclical report would therefore be able to make better use of the conclusions of both the General Survey and the Conference Committee on the Application of Standards; (b) the General Survey and the cyclical report on the same subject could be discussed by both committees in the same year, which would mean that the technical committee would benefit from up to date information; the conclusions of the Conference Committee on the Application of Standards would therefore have to be swiftly brought to the attention of the technical committee at the Conference.

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<sup>22</sup> It should be noted that, on the basis of article 19 and article 22 reports, the Organization should be able, in an ideal situation, to provide country-specific overviews, giving a complete picture of the application of both ratified and non-ratified Conventions – and the potential obstacles to ratification – as well as the application of Recommendations. This information could be used to monitor regularly, thanks to the periodic nature of the Surveys, the progress made by member States in terms of national law and practice and in terms of enhancing the focus of assistance required. All countries, whether or not they have ratified the relevant Conventions, could benefit from such a source of data.

<sup>23</sup> ILO: *Strengthening the ILO's capacity to assist its Members' efforts to reach its objectives in the context of globalization*, Report V, ILC, 96th Session, Geneva, 2007.

<sup>24</sup> In both cases, transitional arrangements will have to be made, as the Governing Body has already chosen the subjects on which reports under article 19 should be requested for 2008 and 2009 (on the basis of General Surveys that will be discussed by the Conference in 2009 and 2010).

10. By way of conclusion, it is interesting to note in this regard that the Office took the opportunity at the last meeting of the Committee of Experts to organize an information session on the possible implications for General Surveys of the project to strengthen the ILO's capacity, which was attended by the spokespersons of the Employers' and Workers' groups of the Conference Committee on the Application of Standards. These implications aroused great interest and gave rise to a rich debate in a positive atmosphere.

## Annex 2

### Cyclical report on social protection

#### Tentative table of contents

Overview on trends, policies and ILO action in SOCIAL SECURITY	Overview on trends, policies and ILO action in LABOUR PROTECTION
<p><b>Part I – ILO mandate and priorities on social security</b></p> <p>This part will set the scene and will be especially important for the first report.</p> <p>The different social security areas – income support in case of poverty, income security and the life cycle, access to health care – will be dealt with under the following headings:</p> <ol style="list-style-type: none"> <li>1. Historical perspective.</li> <li>2. ILO standards and other instruments.</li> <li>3. Priority actions in the implementation of the Decent Work Agenda and DWCPs.</li> </ol>	<p><b>Part I – ILO mandate and priorities on labour protection</b></p> <p>This part will set the scene and will be especially important for the first report.</p> <p>The different social protection areas – social security, labour protection (i.e., occupational safety and health and working and employment conditions), and the cross-cutting issues of the protection of special groups (migrant workers and people living with HIV/AIDS) – will be dealt with under the following headings:</p> <ol style="list-style-type: none"> <li>1. Historical perspective.</li> <li>2. ILO standards and other instruments.</li> <li>3. Priority actions in the implementation of the Decent Work Agenda and DWCPs.</li> </ol>
<p><b>Part II – Current trends</b></p> <p>This part will provide general information on policies and practices as well as basic statistical data on the different social security areas.</p> <ol style="list-style-type: none"> <li>1. Income security and the life cycle – review of trends in the different regions: Africa, Arab States, Asia, Europe and OECD countries, Latin America.</li> <li>2. Access to health services (same regional breakdown).</li> <li>3. Social security and poverty reduction – (same regional breakdown).</li> </ol>	<p><b>Part II – Current trends <sup>1</sup></b></p> <p>This part will provide general information on policies and practices as well as basic statistical data on the different areas.</p> <ol style="list-style-type: none"> <li>1. Labour protection <ol style="list-style-type: none"> <li>1.1. Occupational safety and health: <ol style="list-style-type: none"> <li>(a) National level.</li> <li>(b) Subregional and regional level.</li> <li>(c) Global context.</li> <li>(d) Comparative analysis and trend setting.</li> </ol> </li> <li>1.2. Working and employment conditions: <ol style="list-style-type: none"> <li>(a) Employment patterns (forms of employment and contractual arrangements).</li> <li>(b) Working hours.</li> <li>(c) Wages and income (with a focus on gender pay gap).</li> <li>(d) Reconciling work and family.</li> <li>(e) Workers most at risk (youth, older workers, migrant workers, low-skilled women).</li> </ol> </li> </ol> </li> </ol>
<p><b>Part III – Main challenges</b></p> <p>This part will analyse the main challenges in the different social security areas. A special emphasis will be put on the role of social partners, social dialogue, and legislation and labour administration.</p> <ol style="list-style-type: none"> <li>1. Changing demographic, economic and societal context: new needs for social security in a globalized world.</li> <li>2. Globalization, global responsibilities and the changing role of the nation State.</li> <li>3. New roles for social security in national and international poverty alleviation and socio-economic development policies.</li> </ol>	<p><b>Part III – Main challenges</b></p> <p>This part will analyse the main challenges in the different areas. A special emphasis will be put on the role of social partners, social dialogue, and legislation and labour administration.</p> <ol style="list-style-type: none"> <li>1. OSH challenges at national, regional and global levels.</li> <li>2. Flexibility, working conditions and labour law: the gap between law and practice and the challenge of the informal economy.</li> <li>3. Policy issues for the improvement of working conditions: minimum wage, wage bargaining, working time, balancing work and family.</li> </ol>
<p><b>Part IV – ILO responses and activities</b></p> <ol style="list-style-type: none"> <li>1. The ILO response to the new challenges: <ol style="list-style-type: none"> <li>(a) The ILO contribution to new policy responses.</li> <li>(b) The extent and effectiveness of technical cooperation.</li> </ol> </li> <li>2. Directions for future activities: <ol style="list-style-type: none"> <li>(a) Research in knowledge deficit areas.</li> <li>(b) Advocacy and policy development.</li> <li>(c) Normative action.</li> <li>(d) Technical cooperation and international capacity building.</li> </ol> </li> </ol>	

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**Overview on trends, policies and ILO action in  
SOCIAL SECURITY**

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**Overview on trends, policies and ILO action in  
LABOUR PROTECTION**

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4. Labour migration and development: brain drain, remittances, recognition of skills, return migration.
5. Social and economic impact of HIV epidemic at macroeconomic and microeconomic levels.

**Part IV – ILO responses and activities**

1. The ILO response to the new challenges:
  - (a) The ILO contribution to new policy responses.
  - (b) The extent and effectiveness of technical cooperation.
2. Directions for future activities:
  - (a) Research in knowledge deficit areas.
  - (b) Advocacy and policy development.
  - (c) Normative action.
  - (d) Technical cooperation and international capacity building.

<sup>1</sup>This section will be considered with specific attention/reference to the protection of special groups:

1. Migrant workers:
    - (a) General trends in labour migration (flows and stocks, regional and interregional directions. Gender dimension).
    - (b) The employment of migrant workers:
      - impact of labour migration on labour markets (in countries of origin and destination);
      - sectoral structure of the employment of migrant workers;
      - terms and conditions of employment.
  2. People living with HIV/AIDS:
    - (a) Definition and scope of the HIV epidemic, actual and potential impact on the labour force and the labour supply.
    - (b) The risk of HIV to labour in general and to specific occupational groups.
    - (c) Risks of HIV in relation to age, to sex and to poverty.
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## Annex 3

### Possible savings arising from the cyclical review scheme

1. The Office has responsibility for preparing a number of reports for the consideration of the Conference each year. The accounting system does not allow yet for a precise estimation of the cost of all the various inputs to these reports (professional staff time, secretarial support, editing and translating and printing and distribution), some of which is absorbed by the units concerned.
2. Following requests made during the February 2008 consultations for further information on resource allocations needed to implement the cyclical review scheme, the Office has endeavoured to make approximate cost estimates for the preparation of some recent reports. This has allowed the Office to conclude with some confidence that the additional cost of the cyclical reports can be more than compensated for by the cost savings generated under the scheme.
3. The starting point is obviously that the cyclical report will substitute a report for a general discussion item and not add to the items on the agenda of the Conference. As previously acknowledged by the Office, it is however recognized that the cyclical report will involve more work and data collection than a normal report for general discussion.<sup>25</sup> The average cost for writing a report for general discussion at the Conference is around US\$600,000 (not including editing, translation, printing and distribution costs, which would bring the total closer to \$1 million). Taking into account the experience of the reports based on the so-called “integrated approach”,<sup>26</sup> which also required additional data collection, it is assumed that the additional cost for preparing this report would be in the range of \$250,000 – \$300,000 for the first report relating to each of the strategic objectives and that this additional cost would decline for subsequent reports.
4. The additional cost could basically be offset by the contemplated synchronization of the annual Global Report under the follow-up to the 1998 Declaration, the writing of which costs \$400,000 to \$500,000 (assuming that around half of this cost could be saved, with the other half required for a possible annual discussion in the Governing Body).<sup>27</sup>
5. Any further cost savings would therefore represent a net saving for the Office. There are at least three such potential savings: (1) the cost of one *World Employment Report* that could be replaced by the cyclical employment report in each cycle,<sup>28</sup> which is at least equivalent to the total cost (including editing etc.) of a report for general discussion referred to above; (2) the cost of a one-day discussion in the plenary of the Conference of the Global Report; and (3) the obvious but difficult to quantify savings associated with the forward planning made possible by the predictability of the Conference agenda.
6. Even though it is difficult to provide accurate figures for these estimated savings, a very conservative estimate of the total savings for a four-year cycle would be in the range of \$1,500,000. This saving could then be used to finance technical cooperation activities under the plan of action adopted pursuant to the discussion of the cyclical review at the Conference.

<sup>25</sup> See para. 14 of this document.

<sup>26</sup> Occupational Safety and Health (ILC 2003) and Migrants (ILC 2004).

<sup>27</sup> See para. 27 of this document.

<sup>28</sup> Currently, a *World Employment Report* is produced every other year. It is foreseen that under the cyclical review scheme, only one *World Employment Report* would be required per cycle, with the other substituted by a cyclical report on employment. Assuming a four-year cycle, the annual saving would therefore be \$250,000 – possibly more if a three-year cycle were adopted.