



## FIFTH ITEM ON THE AGENDA

**Report of the Working Party on Policy  
regarding the Revision of Standards****Contents**

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## Introduction

1. The Working Party met on 11 March 2001 under the chairmanship of Mr. J.-L. Cartier (Government, France). The Employer Vice-Chairperson and the Worker Vice-Chairperson were, respectively, Mr. B. Noakes (Australia) and Mr. U. Edström (Sweden).

### A. Follow-up to the recommendations of the Working Party – General document <sup>1</sup>

2. The Chairperson recalled that the Working Party examined each year, during the March session of the Governing Body, the follow-up to its recommendations.
3. The Employer members noted that this document provided a useful overview of the follow-up by the Office to the recommendations of the Working Party. They indicated however that they would have liked to see recent changes highlighted in order to follow developments more easily. The emphasis on the promotion of the ratification of up-to-date instruments could have been complemented by an emphasis on invitations to denounce outdated instruments. Furthermore, more attention could have been given to specific action undertaken to give effect to the recommendations of the Working Party and less to regular promotional activities of the Office.
4. Regarding the reference to a publication on the Committee on Freedom of Association (footnote No. 5), the Employer members noted that the activities of this Committee did not concern standards-related activities. The work of the Committee on Freedom of Association was based on the constitutional principles of freedom of association. As concerns the country profiles mentioned in paragraph 6, the Employer members considered that an example of such a profile could have been appended to the document. Regarding paragraphs 85 and 86 of the document, the Employer members drew the Office's attention to the importance of promoting the constitutional amendment concerning abrogation and suggested that the Office should launch a ratification campaign in order to see further progress made in this respect.
5. The Worker members congratulated the Office for its excellent publication on international labour standards (paragraph 5). A CD-ROM could be produced on the basis of this publication and should be widely distributed among the constituents. In response to the comments made by the Employer members, the Worker members noted that the activities of the Committee on Freedom of Association were standards-related as this body also examined allegations regarding countries which had ratified the fundamental Conventions on freedom of association. The Worker members noted with satisfaction that thanks to a contribution by the French Government, country profiles could be produced on all ILO member States. They welcomed the training activities for national civil servants mentioned in the document as well as the conduct of seminars, which had been organized on a tripartite basis as a means of strengthening social dialogue.
6. They recalled that the Office should invite governments to consult with the social partners in the preparation of reports to the Office. They noted with interest that the Asian regional meeting had called upon member States to ratify Convention No. 144 as mentioned in paragraph 17 of the document. Promotional efforts should expand beyond fundamental

<sup>1</sup> GB.283/LILS/WP/PRS/1/1.

Conventions also include the priority ones. Only 50 ratifications had been registered for the priority Conventions since November 1995 and only 40 countries had ratified three out of four priority Conventions. Promotional efforts were particularly welcome in the context of workers' seminars for homeworkers and young workers in Latin America which would assist vulnerable groups and help workers' organizations to participate in economic and social development. Regarding the employment database (paragraph 26) they wished to know whether it was accessible to the public. The Workers also welcomed the entry into force of Convention No. 183 and encouraged Office activities for its promotion. They also suggested that the *Conditions of Work Digest on Maternity* be translated into both French and Spanish.

7. Finally, they noted that the process of ratification of the constitutional amendment on the abrogation of obsolete Conventions was slow since only 70 member States had ratified or accepted it so far. They inquired about the follow-up to their previous request to launch a ratification campaign concerning this amendment. Copies of such a letter should also be sent to employers' and workers' organizations. An appeal to ratify the amendment should also be made by the Chairperson to the members of the LILS Committee when the report of the Working Party was presented.
8. On the occasion of the last meeting of the Working Party, the Worker members had noted that ILO member States and its tripartite constituency shared a common conviction on the need to improve working conditions universally, including securing fundamental human rights in the world of work and securing decent work for every worker. The constituents had made a commitment to each other to work in good faith to accomplish this goal. They had agreed to establish universal minimum labour standards, which were a core feature of this Organization. To this end they had, a long time ago, established constitutional mechanisms, inter alia, through articles 19 and 22, to ensure that due attention was given at the national level by governments and the social partners to the decisions adopted by the whole ILC in relation to the universal labour and social minimum standards.
9. This was the third time in the last 25 years that a working party has been set up to review and assess the body of labour standards developed by the ILO since its inception in 1919. The ILO was unique in the sense that no other UN or international organization had carried out such a regular revision and updating of its own standards. The Worker members considered that outdated standards should be revised, withdrawn or abrogated. It was in the interest of workers to have ILO standards that were relevant, in order to be better equipped in their struggle for the improvement of working conditions worldwide.
10. At the same time, however, the Workers had a lingering concern that the Working Party only partially had tackled the problem of non-ratification by member States of ILO Conventions. The Working Party had repeatedly requested that more should be done to increase the awareness and understanding of, and respect for, ILO's standard-related activities including the results of this Working Party. This was why the Worker members were keenly interested in the country profiles. When the Workers returned to their respective countries, the reality they faced was quite different from the one they left in Geneva. Sometimes ratifications would never seriously be considered despite whatever flexible provisions were included in the Conventions.
11. The Worker members wished to find appropriate answers to actual problems. If non-ratification was due to inherent problems with the adopted ILO standards, they were prepared to discuss these problems. But if non-ratification was due to other factors, for instance, lack of political will in several countries, this placed the Workers in an entirely different situation. That was why they wished to conclude their intervention with an appeal to all Government representatives and the Employer members to evaluate and propose means and measures to overcome such difficulties. The Worker members made this plea

based on the conviction that all parties concerned shared common objectives and that particular emphasis should be placed on the realization of the results of the work of the Working Party outside the confines of the headquarters in Geneva.

12. The representative of the Government of Trinidad and Tobago noted that her country had benefited from a country profile like the ones mentioned in paragraph 6. She strongly recommended the extension of this project to all member States. She also wanted to know how to access the database mentioned in paragraph 26 of the document. With reference to the ratifications of the instrument for the amendment of the Constitution, she reiterated her proposal to examine the level of ratifications by region. This might be useful in the context of targeting action to increase the level of ratifications.
13. The representative of the Government of Malaysia invited the Office to increase its efforts to ensure that two-thirds of ILO member States ratified the constitutional amendment at the earliest possible date.
14. A representative of the Director-General noted that the document contained a description of both the promotional activities undertaken concerning the up-to-date Conventions along with other follow-up measures for the other categories of decisions taken by the Governing Body following the recommendations of the Working Party, such as the demands for information or decisions for withdrawal. The database on the promotion of employment and human resource development was not yet accessible on the Internet. A CD-ROM copy of this database was also under preparation.
15. The Chairperson stated that this was a valuable Office document. The follow-up of the recommendations of the Working Party would not stop at this meeting; this question was bound to be re-examined by the new Governing Body, which would be elected next June. The country profiles played an essential role in the follow-up of the recommendations of the Working Party and would serve as real "road maps" for member States. One of the conditions for the entry into force of the Constitutional amendment had already been met as six member States of chief industrial importance had ratified or accepted it. It now remained to concentrate the efforts on the second condition, that is to say to get the 117 required ratifications. It seemed appropriate to ask the Director-General to launch a ratification campaign for this constitutional amendment. The members of the Working Party have approved this suggestion.
16. Referring to Annex III of the document concerning the denunciations of the shelved Conventions registered between 1 November 1995 and 31 December 2001, the Chairperson highlighted that the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937 (No. 60), had only one ratification still in effect. Moreover, the last State party to the Convention had just denounced it. Therefore, there would soon be no State party to the Convention. The question arose as to which procedure should be applied in such a situation, should it be withdrawn or abrogated? This issue, which was not urgent, could be examined by the legal service of the Office. However, it was important that this examination took place as this case was not unique; other similar cases could be expected to arise in the future.
17. The Employer members noted that in their view this situation should entail a withdrawal of the Convention.
18. The Chairperson agreed with the Employer members but the legal service should be consulted on this subject.
19. Although the Worker members agreed that these instruments be put aside, they were not convinced that it was appropriate to withdraw Conventions which had entered into force.

In any case, the Working Party was not in a position to decide on this matter, which should be further examined by the Office.

## **B. Information note on the progress of work and decisions taken concerning the revision of standards<sup>2</sup>**

20. The Chairperson recalled that the information note consisted of a summary of the work undertaken and the recommendations made by the Working Party.
21. The Employer members emphasized the usefulness of this document, but again indicated that they would have liked to see recent changes highlighted in order to follow developments more easily. Referring to paragraph 6, they stated that while they supported the paragraph, the fact that eight Conventions were considered fundamental did not mean that they would remain unchanged indefinitely. Paragraph 10 emphasized the importance of the ratification of up-to-date Conventions following the denunciation of corresponding outdated instruments. Nonetheless, the Employers were of the view that this principle could not apply to every situation, especially with regard to Conventions which did not enjoy support of the Employer members.
22. The Worker members also noted the usefulness of the document. They requested that it be distributed widely to the social partners and made available on the ILO web site. Greater emphasis could be placed on the definition of terms used, such as “shelving” and “withdrawal” of Conventions. With regard to paragraph 10, they were of the view that the denunciation of an outdated Convention should be followed by the ratification of a corresponding up-to-date one. This principle had already been agreed upon by the Working Party.
23. The Chairperson noted that the report of the debates would reflect the remarks expressed by the members of the Working Party on this subject. Concerning the information note, the Office proposed a review of the form of the document in order to make it easier to read and understand. A simplified version of this document could be published on the Internet. This document was very technical and it was not easy to use outside of the context of the Working Party. The glossary of terms used would appear in the guide intended for the wider public that the Office planned to publish.
24. A representative of the Director-General indicated that the document was already available on the Internet and that the Office intended to develop a database on the decisions of the Governing Body resulting from the work of the Working Party.

## **C. Deferred examination of instruments concerning maternity protection<sup>3</sup>**

25. The Chairperson recalled that the Working Party was called upon to re-examine the Maternity Protection Convention, 1919 (No. 3), and the Maternity Protection Convention (Revised), 1952 (No. 103), together with its accompanying Recommendation (No. 95) in

<sup>2</sup> GB.283/LILS/WP/PRS/1/2.

<sup>3</sup> GB.283/LILS/WP/PRS/2.

the light of the newly adopted Maternity Protection Convention, 2000 (No. 183), and Recommendation (No. 191). In this context it should be recalled that it was not within the mandate of the Working Party to give its views on instruments adopted after 1985. These recent and modern instruments were, as a matter of principle, considered to be up to date.

26. As regards Convention No. 3, it had been adopted in 1919 during the first Session of the Conference, which demonstrated the importance attributed to this topic. This Convention had currently 30 effective ratifications. It had continued to receive some ratifications; one ratification had even been registered after the adoption of Convention No. 183. Convention No. 3 did not contain final provisions concerning its automatic denunciation in case of the ratification of a revising Convention. It thus remained open to ratification. As for Convention No. 103, it had received 38 ratifications. It had been closed to ratification since the entry into force of Convention No. 183.
27. The Worker members noted that Convention No. 103 had been closed to ratification and that the ratification of Convention No. 183 by the States parties to Convention No. 103 would entail the automatic denunciation of the latter. This left open the question of what to do with member States who had ratified Convention No. 3 and who were not in a position to ratify Convention No. 183. The Office proposed the maintenance of the status quo for Convention No. 3 and the re-examination of the status of this Convention in due course. This suggestion was based on the idea that Convention No. 3 was likely to serve a useful purpose during a transition period and should continue to be a possible option for certain States. The Worker members endorsed the proposals made by the Office.
28. The Employer members considered maternity protection as an important means to facilitate the employment of women and the effective utilization of human resources. The instruments on this subject should be flexible and take account of the different conditions which prevailed in different parts of the world in order to avoid adversely affecting enterprise competitiveness and the position of women in the labour market. Noting that Convention No. 183 was not the object of the discussion, the Employer members wished to state that they did not support Convention No. 183, which was far too prescriptive and oriented towards industrialized countries. They therefore did not agree to extend an invitation to contemplate ratifying Convention No. 183 to States parties to Convention No. 3, and did not agree with the point for decision in paragraph 5(a). As to point 5(b), they agreed with the Worker members on the maintenance of the status quo. Regarding point (c), they also agreed that the LILS Committee re-examine this question at a later stage.
29. With reference to paragraph 6 of the document, the Employer members did not agree with the invitation extended to States parties to Convention No. 103 to ratify Convention No. 183. They considered that Convention No. 103 continued to be of interest to a significant number of member States and that the status quo should be maintained in its regard. Finally, the Employer members accepted the point for decision in paragraph 7 to the extent that it simply called for taking note of the replacement of Recommendation No. 95 by Recommendation No. 191. The Employer members considered however, that the latter Recommendation was objectionable for the same reasons as the Convention to which it was related and that Recommendations should be not used for disposing of all the proposals that were not included in Conventions.
30. The representative of the Government of India noted that Conventions Nos. 3 and 183 contained two different sets of balances, thus creating difficulties for countries bound by both instruments. Convention No. 183 was the modern standard in the area of maternity protection. The ILO had initiated a process to categorize standards with a view to strengthening them and promoting the modern standards in each area. The criterion of relevance should guide the Working Party in its work in order to avoid the enormous

reporting burden related to older Conventions. There was therefore a need to do away with Convention No. 3 rather than maintaining the status quo. His country had no objections to the other points for decision.

- 31.** The Worker members emphasized that they would not accept changes in the procedure of the Working Party at this late stage. As a rule the Working Party had invited States parties to outdated Conventions to ratify the more recent instruments without going into a discussion of their content that, as far as the instruments that were adopted after 1985 were concerned, was outside the mandate of the Working Party. In any case the Working Party was bound by decisions taken by the highest political organ within the organization, namely, the Conference. These decisions had been taken on the basis of democratic procedures to revise Convention No. 103 by adopting Convention No. 183. It would be illogical to ask for the maintenance of the status quo for Convention No. 103 as this instrument had been closed to further ratifications. They insisted that the Working Party should follow the practice as explained by the Chair.
- 32.** Regarding the suggestion by the Government of India, the Worker members also believed that governments should ratify the updated maternity protection Convention. They favoured the maintenance of the status quo regarding Convention No. 3 as this Convention had 30 ratifications and was likely to retain its value for some time. When the ratification rate had dropped, the Workers would be ready to re-examine the status of this Convention.
- 33.** The Employer members noted that, if the status quo should be maintained for a Convention with 30 ratifications, such a conclusion was even more relevant in the context of Convention No. 103, which had 38 ratifications. The fact that a Convention was regarded as up to date because it was adopted after 1985 did not mean that this Convention was perfect or that it should be supported by employers' and workers' organizations and ratified by governments. Even though this Convention was adopted by the majority of the delegates to the Conference, the Employers did not give their support to it and did not accept the proposal in the document to invite member States to contemplate ratifying this instrument.
- 34.** A Worker member from the United Kingdom (Vice-President of the Governing Body), was concerned with the principle behind the stance of the Employer members. Although every Convention, except Convention No. 182, had been adopted by majority vote with some delegates abstaining or voting against, those in the minority group had never aimed at stopping the ratification process. The new stance of the Employer members involved denying the validity of the democratic process by opting out of it. This was not in accordance with the constitutional provisions on the adoption of standards. The Worker members understood the point of view of the Employers with regard to the shortcomings of the instrument and expected to be able to avoid such situations in the future through a new approach to standards-related activities. However, their current stance was dangerous for the future of the ILO.
- 35.** The Employer members noted that this could actually be the second time that the Working Party had failed to reach an agreement.
- 36.** The Chairperson questioned the utility of maintaining a string of three Conventions. The members of the Working Party had reached an agreement on the maintenance of the status quo concerning Convention No. 3. Regarding Convention No. 103, this instrument was now closed to further ratifications. Finally, as regards Convention No. 183, it was recalled that an examination of this Convention was not within the mandate of the Working Party. The opinion of the Employer members on this Convention had been clearly expressed at the Conference and could be reiterated before the Governing Body. Nevertheless,

according to the working methods of the Working Party, the most recent Conventions were considered to be up to date.

37. The Worker members wished to point out that the Governing Body had already adopted a decision on Convention No. 103, i.e. that it should be revised. The Working Party could not go back on this decision and recommend the status quo. The Working Party could not undo decisions already adopted or discuss the value of Convention No. 183. The Worker members did not agree to any changes in the rules and procedures at the last meeting of the Working Party. The Working Party had failed in the past to come to an agreement on a Convention, but that instrument fell within the mandate of the Working Party while Convention No. 183 did not.
38. The Employer members stated that they had carefully avoided discussing Convention No. 183 and had simply expressed their general point of view on this instrument.
39. The representative of the Government of Denmark associated herself with the point of view expressed by the Worker members on the question of principle. A discussion of the substance of Convention No. 183 was beyond the mandate of the Working Party.
40. The representative of the Government of Canada supported the points for decision contained in the document. It was a longstanding practice of the Working Party to invite member States to ratify the revised Conventions. This kind of recommendation had been used in similar situations in the past and there was no reason why the Working Party should deviate from this practice.
41. The representative of the Government of the United States associated himself with the views expressed by Canada. The recommendations employed standard language that had been used throughout the seven years that the Working Party had been in existence. Convention No. 183 had been adopted by the Conference in 2000 and member States should be invited to ratify it. He fully supported the points for decision in paragraphs 5, 6 and 7.
42. The representatives of the Governments of the Netherlands, Trinidad and Tobago, New Zealand and Namibia associated themselves with the statements previously made by Canada and the United States in supporting the points for decision.
43. The Worker members appealed to the Employer members to take account of the views expressed within the Working Party.

#### **I. Maternity Protection Convention, 1919 (No. 3)**

44. After an exchange of views, *the Working Party proposes to recommend to the Governing Body:*
  - (a) *that it invite the States parties to the Maternity Protection Convention, 1919 (No. 3), to contemplate ratifying the Maternity Protection Convention, 2000 (No. 183), and denouncing Convention No. 3 at the same time;*
  - (b) *that it invite the States parties to Convention No. 3 to inform the Office of the obstacles and difficulties encountered, if any, that might prevent or delay the ratification of Convention No. 183;*
  - (c) *the maintenance of the status quo with regard to Convention No. 3;*

*(d) that the Committee on Legal Issues and International Labour Standards re-examine the status of Convention No. 3 in due course.*

**II. Maternity Protection Convention (Revised), 1952 (No. 103)**

45. After an exchange of views, *the Working Party proposes to recommend to the Governing Body:*

*(a) that it invite the States parties to the Maternity Protection Convention (Revised), 1952 (No. 103), to contemplate ratifying the Maternity Protection Convention, 2000 (No. 183), the ratification of which will, ipso jure, involve the immediate denunciation of Convention No. 103;*

*(b) that it invite the States parties to Convention No. 103 to inform the Office of the obstacles and difficulties encountered, if any, that might prevent or delay the ratification of Convention No. 183.*

**III. Maternity Protection Recommendation, 1952 (No. 95)**

46. The Working Party agreed with the Office proposals. It *proposes to recommend to the Governing Body that it note the replacement of the Maternity Protection Recommendation, 1952 (No. 95), by the Maternity Protection Recommendation, 2000 (No. 191).*

**D. Follow-up to consultations regarding social security instruments<sup>4</sup>**

47. The Chairperson recalled that these instruments in the area of social security (seven Conventions and three Recommendations) had already been examined on one occasion. The present examination should be carried out in the light of, on the one hand, the general discussion on social security held during the Conference in June 2001 and, on the other hand, the results of written consultations with the constituents concerning the instruments in question, that took place during 2000 and 2001. The general discussion on social security had been conducted in a generally very positive atmosphere and resulted in an overview of this subject. While there was no specific discussion on the social security standards, the discussion had allowed for a reaffirmation of a certain number of principles and priorities listed in paragraphs 12-18 of the Office document. The conclusion of this discussion reaffirmed, amongst other things, that ILO activities in the area of social security should be anchored in the Declaration of Philadelphia, in the concept of decent work, and in the relevant standards of the ILO in the area of social security.

48. Taking account of the complex nature of the document presented, specialists of social security were available to respond, if needed, to any technical questions that the members of the Working Party might ask. It seemed appropriate to highlight that the Governing Body had previously invited member States to ratify certain of the Conventions examined

<sup>4</sup> GB.283/LILS/WP/PRS/3.

and to give effect to the three Recommendations. It did not seem possible, or desirable, to go back on these conclusions but they should be complemented. However, the question of clarifying the conclusions for the Social Security (Minimum Standards) Convention, 1952 (No. 102), remained.

- 49.** The Employer members noted that, generally speaking, they felt that the discussion on the social security instruments would be difficult due to the complexity of the instruments in question. In their view, these instruments did not correspond to present-day realities and the Office document was too optimistic in its view that the instruments offered pertinent provisions for social security systems and that ratification prospects were high. They believed that, in reality, the prospects for ratification were low due to the complexity of the instruments. The Employer members had difficulty in agreeing with the points for decision in the Office document except for the point concerning the shelving of the Unemployment Provision Convention, 1934 (No. 44). Furthermore, even though in the general discussion on social security held in June 2001 the Committee came to a unanimous conclusion, this general discussion had not addressed standards.
- 50.** The Worker members thanked the Office for a comprehensive document which provided a clear account of the evolution of international law on social security and of the results of the general discussion on social security. The proposals of the Office placed emphasis on technical assistance. The document relied on an analysis of replies received from member States in the course of written consultations conducted during 2000-01. In paragraph 4 of the document it was noted that Governments were invited to organize tripartite consultations and most replies indicated that this had indeed taken place. This was an absolutely vital point. A common reply was that ratification was not possible because national legislation was not in conformity with the provisions of the instruments. In such cases, member States should be encouraged to take measures to bring their legislation in conformity with standards through technical assistance. Regarding the argument that the economic and administrative situation did not permit ratification, it should be recalled that the social security Conventions offered a large set of options towards the goal of attaining universal coverage.
- 51.** The Worker members also underscored that, in the European context, article 12, paragraph 2, of the European Social Charter stipulated that the Contracting Parties undertake to maintain a social security system at a satisfactory level at least equal to that required for ratification of Convention No. 102. The Treaty of Amsterdam gave recognition to fundamental human rights including social rights. Convention No. 102 was the minimum benchmark for the countries seeking membership to the European Union. It was therefore an opportune moment to promote the ratification of this instrument and activities by the Office in this direction should be encouraged. Regarding five other Conventions, the document had noted positive ratification prospects and proposed to invite the Office to provide technical assistance to promote these instruments. The Worker members agreed with all proposals from the Office. They also agreed with the Chair that decisions had already been adopted on these instruments.
- 52.** The representative of the Government of the United States agreed that the subject was difficult and pointed out that, as noted in paragraph 341 of the document, technical cooperation including new information tools would be useful in order to help governments understand the detailed provisions of these Conventions.
- 53.** The representative of the Government of Trinidad and Tobago essentially agreed with the proposals in the document but wished to underscore the need to present the instruments as an interrelated whole for technical cooperation purposes. The invitation to ratify these instruments should not follow the standard format but actively encourage member States to seriously contemplate ratification. Before undertaking technical cooperation the Office

should communicate with the field in order to set up plans of action tailored to the specific needs of member States and ensure the provision of adequate resources.

**I. Social Security (Minimum Standards)  
Convention, 1952 (No. 102)**

- 54.** The Chairperson highlighted that 40 States had ratified Convention No. 102. It contained a large number of flexibility clauses, such as those concerning the modalities for its ratification as a ratifying State could accept its application only in respect of certain parts. Experience had shown that the usefulness of these flexibility clauses was not well known. During the first examination, the Working Party had not proposed any specific conclusions concerning this Convention to the Governing Body. The responses received from governments following the consultations were varied; some were positive, others referred to administrative and economic difficulties or highlighted obstacles related to the concepts on which the Convention was based. These responses were reflected in the document.
- 55.** It seemed appropriate to make three comments concerning Convention No. 102. Firstly, this Convention had a significant international impact (European Social Charter, European Code of Social Security). It was a point of reference for Eastern European countries that intended to join the European Union. Moreover, as family benefits were not regulated in any other instrument, the ratification of Convention No. 102 remained pertinent for this “contingency”. Finally, this Convention contained 87 Articles, and probably overawes due to its volume and level of complexity. The Office should therefore disseminate more information in order to popularize social security as outlined in paragraph 341 of the document.
- 56.** The Employer members expressed the view that although the European region was important other regions should also be taken into account. They were particularly concerned about Convention No. 102, which was probably the most complicated of all ILO instruments. Its flexibility clauses were not used, probably because governments did not understand them. The Employer members had great difficulties in accepting the point for decision to invite ratification of this instrument. They did not support point (a) in paragraph 344 but supported point (b) regarding the provision of technical assistance by the Office.
- 57.** The Worker members supported the point for decision on Convention No. 102. Although the Convention was complicated, it dealt with tremendously important questions and the proposal to disseminate information and assistance to facilitate its understanding was a good suggestion.
- 58.** The representative of the Government of Canada thanked the Office for the information on this complex issue but was not convinced that the instruments concerned were really up to date and that their ratification should be promoted. As noted in paragraphs 40 and 41 of the document, certain provisions might seem outdated and based on obsolete notions of gender. The follow-up to the conclusions of the general discussion would include technical cooperation to promote social security systems and extend coverage to the informal economy. But, in the light of gender concerns, she would support point (b), and not point (a) of the points for decision.
- 59.** A Worker member from Australia, who had served as spokesperson for the Workers’ group during the general discussion on social security, underlined the large consensus which had prevailed during that discussion. Globally, the majority of the population did not enjoy social security standards at a level that could be considered adequate. In some countries there was no social security whatsoever so that the sick or unemployed had to

look after themselves. In the 1944 Declaration of Philadelphia the ILO had undertaken a commitment to extend social security to all member States. As noted in the conclusions of the general discussion, this could not be achieved overnight, but part of the process was the adoption of standards and Convention No. 102 was the central standard. As noted in paragraph 18 of the Office document, the conclusions of the general discussion had stressed that ILO activities should be anchored to the Declaration of Philadelphia, the decent work concept and relevant ILO social security standards.

- 60.** After agreeing on this question of principle, the general discussion had gone on to examine the lack of social security in the world and especially the need for a campaign to extend coverage. The intention was to incorporate the notion that social security Conventions would be considered for ratification as was indeed proposed in the Office document. If a member State with a clear understanding of the provisions of the instruments decided that it could not ratify, it would be appropriate to consider other types of action. However there had been a total unanimity during the general discussion on the need to undertake this effort first. He called on the Government and Employer members of the Working Party to allow the Office to provide assistance and promote ratification by the member States. The Conventions were of great importance to many people and this was not the time for the ILO to step back.
- 61.** The Employer members noted that they did not disagree on the importance of social security and wished to see appropriate systems put in place in the world. However, the sole reference to standards in the conclusions of the general discussion on social security referred to “relevant” standards. The Employers considered that the standards under examination were not relevant. They were not in favour of maintaining and strengthening the current standards by inviting member States to ratify the Conventions.
- 62.** The Worker members noted that according to the practice of the Working Party, the level of ratification of an instrument was seen as a useful indicator of the relevance of that instrument and in order to assess whether it was up to date. Convention No. 102 had obtained 40 ratifications, which was a rather good rate and this needed to be taken into account. The Conference had called on the ILO to launch a major campaign and this could be done only on the basis of standards. Convention No. 102 was essential in this respect.
- 63.** A representative of the Director-General gave some details on the flexibility clauses. He indicated that out of the 40 States that had ratified this Convention, 35 had made use of the clauses allowing them to accept only certain parts of the Convention. Furthermore, it appeared that States used the flexibility clauses that provided for a reduction of the personal coverage as well as the level and duration of the benefits. The member States that had ratified Convention No. 102 thus made regular use of the flexibility clauses. Finally, concerning the terminology used to define the standard beneficiary, the reference to the skilled manual male worker or to the ordinary adult male labourer should not be considered as discriminatory. The intention of the Conference was to propose a model that allowed the maintenance of a minimum level of benefits, taking into account the fact that the level of male wages was higher than corresponding female wages.
- 64.** Another representative of the Director-General made a presentation in response to comments regarding gender equality. Convention No. 102 relied on reference wages either of the skilled manual male employee or of the ordinary adult male labourer. Recourse was made to these concepts because, in practice, the salary of men was higher than that of women. This situation still prevailed today. The use of a gender-neutral terminology would entail a reduction of the minimum or maximum amounts, as appropriate, of the benefits. Moreover, a smaller number of persons would benefit from adequate protection. Thus, these concepts aimed at ensuring a higher level of benefits and did not mean that the male beneficiary was the only model in society.

65. In response to a question from the Employer members concerning the consequences of maintaining the status quo for a Convention, a representative of the Director-General noted that, according to the practice of the Working Party, Conventions to promote on a priority basis were up-to-date Conventions. Such a promotion did not extend to Conventions for which the maintenance of the status quo had been decided.
66. The representative of the Government of the United States requested a clarification on the implications of status quo for the second part of the proposed recommendation. In other words, how would a decision to maintain the status quo affect the provision of technical assistance?
67. A representative of the Director-General answered that a decision to maintain the status quo could prevent the Office from using the instrument as a point of reference for the provision of technical cooperation. Technical assistance activities usually had Conventions as one important point of reference, and the Office would not be in a position to use these Conventions if there was no clarity of their status.
68. The Employer members queried whether technical cooperation was not to be provided by the Office in response to requests from member States to receive assistance regardless of a possible decision to maintain the status quo. Conventions existed regardless of such decisions and could serve as the point of reference for technical assistance.
69. The Worker members emphasized that the standard language used was not particularly forceful and simply invited member States to consider ratifying a basic Convention that could not be neglected. It was clear that certain governments did not find the Convention suitable while in some cases the problems were due to a lack of understanding. The proposed recommendation did not impose any action while it provided a good basis for action towards improvements in protection.
70. A representative of the Director-General asked whether it would be possible to move ahead if technical assistance was emphasized by reversing the order of the paragraphs and adding a new paragraph to invite member States to inform the Office of obstacles and difficulties encountered, if any, in the ratification of the instrument.
71. The Employer members considered that they could accept such a proposal if a time frame for a review would be specified, for instance if it were mentioned that the situation would be reviewed in two years.
72. The Worker members could go along with the proposals made but proposed that standard language be used, such as “in due course”, regarding the re-examination of the Convention in the future. Their hesitation to fix a specific time limit was due to the fact that discussions were ongoing on future agendas of the Conference and they could not say at this point what the Governing Body would decide on such agendas. Nothing prevented one or the other group from asking for a closer look at these instruments when they considered that the time was appropriate. The term “due course” meant that the constituents would be able to raise this issue at a later stage.
73. The Employer members agreed with the wording but wished to make it clear that they intended to press the issue at a time they would consider appropriate.
74. *The Working Party proposes to recommend to the Governing Body:*
  - (a) *that it invite the Office to offer, in appropriate cases, technical assistance with respect to the Social Security (Minimum Standards) Convention, 1952 (No. 102), including the dissemination of information in the light of the*

*conclusions of the general discussion on social security that was held at the 89th Session (June 2001) of the Conference;*

*(b) that it invite member States to contemplate ratifying Convention No. 102;*

*(c) that it invite member States to inform the Office of obstacles or difficulties encountered, if any, that might prevent or delay ratification of Convention No. 102;*

*(d) that the Committee on Legal Issues and International Labour Standards re-examine the status of Convention No. 102 in due course.*

## **II. Other social security instruments**

75. The Chairperson recalled that the Working Party had already adopted conclusions concerning the other Conventions and that the current exercise was meant to complement them.

76. The Worker members agreed with the points for decision in the Office document.

77. In relation to Convention No. 118, the Employer members did not support paragraph 345(a) but agreed with paragraph 345(b).

78. The Worker members proposed to use the same formula as for Convention No. 102 on Conventions Nos. 118, 157, 130, 128 and 121 and take a common decision on all of them.

79. The Employer members agreed with the proposal of the Worker members.

80. The representative of the Government of the United States asked for a clarification regarding the proposed request for information on obstacles to ratification. This request seemed like a repetition since governments had just replied to such a request. He wished to know what kind of information would be acquired through additional reporting.

81. A representative of the Director-General responded that the re-examination would follow up on technical assistance that would have been provided as well as on information and promotional activities that would have taken place. The request for information would thus be more targeted and perhaps less imposing on governments.

82. The Employer members suggested that since governments had already been asked to report on obstacles to ratification, the proposal was to invite them to communicate any "additional obstacles" to ratification.

83. The Worker members considered that governments could refer to the information previously provided if the consultations were simply a repetition of previous requests for information.

### **Equality of Treatment (Social Security) Convention, 1962 (No. 118)**

**84. The Working Party proposes to recommend to the Governing Body:**

*(a) that it invite the Office to offer, in appropriate cases, technical assistance with respect to the Equality of Treatment (Social Security) Convention, 1962*

*(No. 118), including the dissemination of information in the light of the conclusions of the general discussion on social security that was held at the 89th Session (June 2001) of the Conference;*

- (b) that it invite member States to contemplate ratifying Convention No. 118;*
- (c) that it invite member States to inform the Office of obstacles or difficulties encountered, if any, that might prevent or delay ratification of Convention No. 118;*
- (d) that the Committee on Legal Issues and International Labour Standards re-examine the status of Convention No. 118 in due course.*

**Maintenance of Social Security Rights Convention,  
1982 (No. 157)**

**85. The Working Party proposes to recommend to the Governing Body:**

- (a) that it invite the Office to offer, in appropriate cases, technical assistance with respect to the Maintenance of Social Security Rights Convention, 1982 (No. 157), including the dissemination of information in the light of the conclusions of the general discussion on social security that was held at the 89th Session (June 2001) of the Conference;*
- (b) that it invite member States to contemplate ratifying Convention No. 157;*
- (c) that it invite member States to inform the Office of obstacles or difficulties encountered, if any, that might prevent or delay ratification of Convention No. 157;*
- (d) that the Committee on Legal Issues and International Labour Standards re-examine the status of Convention No. 157 in due course.*

**Medical Care and Sickness Benefits Convention, 1969  
(No. 130)**

**86. The Working Party proposes to recommend to the Governing Body:**

- (a) that it invite the Office to offer, in appropriate cases, technical assistance with respect to the Medical Care and Sickness Benefits Convention, 1969 (No. 130), including the dissemination of information in the light of the conclusions of the general discussion on social security that was held at the 89th Session (June 2001) of the Conference;*
- (b) that it invite member States to contemplate ratifying Convention No. 130;*
- (c) that it invite member States to inform the Office of obstacles or difficulties encountered, if any, that might prevent or delay ratification of Convention No. 130;*
- (d) that the Committee on Legal Issues and International Labour Standards re-examine the status of Convention No. 130 in due course.*

**Invalidity, Old-Age and Survivors' Benefits Convention,  
1967 (No. 128)**

**87. The Working Party proposes to recommend to the Governing Body:**

- (a) that it invite the Office to offer, in appropriate cases, technical assistance with respect to the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128), including the dissemination of information in the light of the conclusions of the general discussion on social security that was held at the 89th Session (June 2001) of the Conference;*
- (b) that it invite member States to contemplate ratifying Convention No. 128;*
- (c) that it invite member States to inform the Office of obstacles or difficulties encountered, if any, that might prevent or delay ratification of Convention No. 128;*
- (d) that the Committee on Legal Issues and International Labour Standards re-examine the status of Convention No. 128 in due course.*

**Employment Injury Benefits Convention, 1964 (No. 121)**

**88. The Working Party proposes to recommend to the Governing Body**

- (a) that it invite the Office to offer, in appropriate cases, technical assistance with respect to the Employment Injury Benefits Convention, 1964 (No. 121), including the dissemination of information in the light of the conclusions of the general discussion on social security that was held at the 89th Session (June 2001) of the Conference;*
- (b) that it invite member States to contemplate ratifying Convention No. 121;*
- (c) that it invite member States to inform the Office of obstacles or difficulties encountered, if any, that might prevent or delay ratification of Convention No. 121;*
- (d) that the Committee on Legal Issues and International Labour Standards re-examine the status of Convention No. 121 in due course.*

**Unemployment Provision Convention, 1934 (No. 44)**

- 89.** On Convention No. 44, the Worker members supported the proposal made by the Office. They agreed that Convention No. 44 was outdated and should be shelved. The modern standard in this area was Convention No. 168.
- 90.** The Employer members underscored that the shelving of this Convention could be envisaged. A provision to invite member States to report on possible obstacles or difficulties encountered in the ratification of Convention No. 168 should be included in the point for decision. This information should be examined in the future.
- 91.** After an exchange of views, *the Working Party proposes to recommend to the Governing Body:*

- (a) *to shelve the Unemployment Provision Convention, 1934 (No. 44), with immediate effect;*
- (b) *that it invite the States parties to Convention No. 44 to contemplate ratifying the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168);*
- (c) *that it invite the States parties to Convention No. 44 to inform the Office on obstacles and difficulties encountered, if any, that might prevent or delay ratification of Convention No. 168;*
- (d) *that it invite the Office to offer, in appropriate cases, technical assistance with respect to Convention No. 168, including the dissemination of information, in the light of the conclusions of the general discussion on social security that was held at the 89th Session (June 2001) of the Conference.*

**Maintenance of Social Security Rights  
Recommendation, 1983 (No. 167)**

92. The Working Party agreed with the Office proposals. It *proposes to recommend to the Governing Body:*

- (a) *that it invite member States to contemplate giving effect to the Maintenance of Social Security Rights Recommendation, 1983 (No. 167);*
- (b) *that it invite the Office to offer, in appropriate cases, technical assistance with respect to Recommendation No. 167, including the dissemination of information in the light of the conclusions of the general discussion on social security that was held at the 89th Session (June 2001) of the Conference.*

**Medical Care and Sickness Benefits Recommendation,  
1969 (No. 134)**

93. The Working Party agreed with the Office proposals. It *proposes to recommend to the Governing Body:*

- (a) *that it invite member States to contemplate giving effect to the Medical Care and Sickness Benefits Recommendation, 1969 (No. 134);*
- (b) *that it invite the Office to offer, in appropriate cases, technical assistance with respect to Recommendation No. 134, including the dissemination of information in the light of the conclusions of the general discussion on social security that was held at the 89th Session (June 2001) of the Conference.*

**Invalidity, Old-Age and Survivors' Benefits  
Recommendation, 1967 (No. 131)**

94. The Working Party agreed with the Office proposals. It *proposes to recommend to the Governing Body:*

- (a) *that it invite member States to contemplate giving effect to the Invalidity, Old-Age and Survivors' Benefits Recommendation, 1967 (No. 131);*
- (b) *that it invite the Office to offer, in appropriate cases, technical assistance with respect to Recommendation No. 131, including the dissemination of information in the light of the conclusions of the general discussion on social security that was held at the 89th Session (June 2001) of the Conference.*

## **E. Publication of the results of the work of the Working Party on Policy regarding the Revision of Standards<sup>5</sup>**

95. The Chairperson recalled that last November the Working Party examined the question of the dissemination and promotion of its results. A document concerning the integration of the results into the official publications of the Office was now before the Working Party. The dissemination of these results both within as well as outside the ILO was an important question. In regard to the compilation of Conventions and Recommendations, it would seem to be more useful to produce this publication in the form of loose-leaf folders, in order to facilitate maintaining it up to date.
96. The Employer members agreed with the Chairperson that the publication should allow for an easy updating. As standards were a constantly moving target, they felt that it would be better to put the results into an electronic form rather than a paper publication.
97. The Worker members fully agreed with the decision to publish the findings of the Working Party and were in favour of two types of publication. The first should be a file containing the instruments in chronological order and published with removable sheets. This publication would be aimed at providing a technical document for practitioners and specialists. The second publication would be a book, by category, targeted towards dissemination of information to the general public. The results of the Working Party should be included in this text along with each Convention, reproduced in full including the final clauses. They also asked the Office to explain paragraph 6 in more detail on the reasons why certain instruments are not to appear in the next edition of the compilation of Conventions and Recommendations and the consequences of this exclusion. They felt that it would be useful to have shelved instruments put into an appendix.
98. The Worker members were also in favour of setting up an electronic database to generalize the country profiles, a publication on international labour standards and a guide accompanied by a CD-ROM that also included the results of the Working Party. The outcome of the work of the Working Party should be widely disseminated. In this respect, they would have liked to see a point for decision on this in the Office document. They would also like the Office to provide an estimate of the costs entailed in these publications and how contributions, such as the French Government's donation, or cash surpluses from the 2000-01 budget, were to be used.
99. The Chairperson noted that the compilation was useful for labour ministries. It seemed difficult, from the point of view of resources, to produce it in the two forms proposed by the Worker members, both of which had certain advantages.

<sup>5</sup> GB.283/LILS/WP/PRS/4.

- 100.** A representative of the Director-General clarified that the shelving of a Convention also entailed a modification of how they were published in the reports, studies and research work of the ILO. For this reason, the Office proposed to continue to publish the text of instruments in the database on international labour standards and not to reproduce them in the compilation of Conventions and Recommendations.
- 101.** The Worker members stressed the importance of including the shelved Conventions in the publications as countries that had ratified the Conventions still had legal obligations in respect of them. The Worker and Employer representatives were still able to make representations if these obligations were not upheld – therefore the texts of those shelved Conventions should be available to them. These Conventions should not be treated in the same manner as the other Conventions; they should be reproduced in an appendix explaining the reasons for their status and the obligations that member States who had ratified these instruments continued to hold. The Worker members were concerned that, if the instruments were left out of the publication, the trade unions would find it difficult to access the texts of the Conventions.
- 102.** In response to the Worker members' concerns, the Employer members stated that one of the objectives of shelving Conventions was to reduce the web of international labour standards. They suggested that a list of shelved Conventions be included in the publication with a note stating that the texts of the shelved instruments were available from the International Labour Office.
- 103.** The Chairperson noted that the Office could reproduce the shelved Conventions, given that they could continue to have legal effects, by including them in a separate section from the other instruments. The collection of ratifications was a very useful document. A distinction should however be drawn between the total number of ratifications and the number of effective ratifications for each Convention.
- 104.** In response to the Chairperson's comment, the Worker members noted that the effective number of ratifications was already stated in respect of individual countries and that the same could be done for each Convention. They agreed that the Office should publish the shelved Conventions in an appropriate manner.
- 105.** The representative of the Government of Nigeria informed the Working Party that his country had just ratified three additional Conventions: the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182).
- 106.** The Employer members, noting that this was the last meeting of the Working Party, thanked the Chairperson for his efforts and commended him for his skilful guidance of the work of the Working Party.
- 107.** The Worker members also thanked the Chairperson for his successful leadership of the work of the Working Party. They also thanked the Employer members and the Government representatives for their cooperation and the secretariat for the quality of their work. They hoped that each member of the Working Party would contribute to an effective implementation of the recommendations of the Working Party in their own country.
- 108.** The Chairperson recalled that, at the time of the creation of the Working Party in 1995, observers tended to be pessimistic towards it. And yet, an atmosphere of reciprocal confidence rapidly developed between its members. The Office had also played a valuable role in the context of this work, in particular in the development of the methodology for the analysis of the Conventions and Recommendations. At the end of the day, the Working Party had been able to formulate conclusions on all the instruments within its mandate,

with the exception of one Convention and its accompanying Recommendation. The Governing Body had unanimously approved all of its proposals.

- 109.** The work of the Working Party had also led to other initiatives such as the adoption of the constitutional amendment on the abrogation of the obsolete Conventions and of the implementation of the withdrawal procedure. These innovations would allow for a concentration on the other instruments. To sum up, the work of the Working Party had resulted in a new approach to standards policy. It now remained to ensure the follow-up to its recommendations. Another working party might be set up in a few years. The Chairperson deeply thanked all those who had participated in the success of the Working Party by demonstrating a spirit of compromise. He also thanked the Office for the significant work it had accomplished.
- 110.** The representative of the Government of the United States commended the Office on the early availability of the documents.

\* \* \*

**111. *The Committee on Legal Issues and International Labour Standards is invited:***

- (a) to take note of the report of the Working Party on Policy regarding the Revision of Standards, based on the documents submitted by the Office;*
- (b) to adopt the proposals in the corresponding paragraphs of this report (paragraphs 44-46, 74, 84-88, 91-94) on which the Working Party has reached a consensus.*

Geneva, 13 March 2002.

*Point for decision:* Paragraph 111.