



## TENTH ITEM ON THE AGENDA

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

	<i>Page</i>
Legal issues .....	1
I. Possible improvements in the standards-related activities of the ILO: Proposals regarding submission to competent authorities .....	1
II. Standing Orders of the Conference: Practical arrangements for the discussion, at the 93rd Session (June 2005) of the International Labour Conference, of the Global Report prepared under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work .....	4
III. Practices for the preparation of international labour Conventions: Handbook on good drafting practices .....	6
IV. Consolidation of rules applicable to the Governing Body .....	7
V. Flag of the International Labour Organization .....	9
VI. Other legal issues .....	10
International labour standards and human rights.....	10
VII. Improvements in the standards-related activities of the ILO: A progress report.....	10
VIII. General status report on ILO action concerning discrimination in employment and occupation .....	20
IX. Form for reports on the application of unratified Conventions (article 19 of the Constitution): The Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105).....	22
X. Form for reports on the application of ratified Conventions (article 22 of the Constitution): The Human Resources Development Convention, 1975 (No. 142).....	25
XI. Arrangements and procedures under Article 5, paragraphs 6-8, of the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185) .....	26
XII. Other question.....	28
Agenda of the next session of the Committee on Legal Issues and International Labour Standards .....	28

*Appendices*

I.	Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities .....	29
II.	Draft resolution concerning the flag of the International Labour Organization.....	37
III.	Report form for the following instruments: Forced Labour Convention, 1930 (No. 29); Abolition of Forced Labour Convention, 1957 (No. 105).....	41
IV.	Report form for the Human Resources Development Convention, 1975 (No. 142).....	45
V.	Arrangements concerning the list of Members which fully meet the minimum requirements concerning processes and procedures for the issue of seafarers' identity documents .....	56
VI.	Proposed procedure for establishing the list referred to in Article 5.6 of Convention No. 185 .....	63
VII.	Checklist concerning the required processes and procedures for the issue of seafarers' identity documents, including quality-control procedures .....	65

1. The Committee on Legal Issues and International Labour Standards (LILS) met on 18 March 2005. The following members served as Officers:

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

## Legal issues

### I. Possible improvements in the standards-related activities of the ILO: Proposals regarding submission to competent authorities

2. The Committee had before it a paper<sup>1</sup> containing proposals regarding the obligation of submission to the competent authorities in accordance with article 19 of the Constitution, in the form of a new draft of the proposed revised *Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities*.
3. The Employer members recalled that the item on the *Memorandum concerning the obligation of submission to the competent authorities* had already been discussed at the previous session of the Governing Body. The new version of the revised Memorandum was in line with the opinions expressed at the Committee's previous meeting. Given the fact that a large number of the Conventions adopted by the International Labour Conference were not afterwards ratified, the Memorandum should contribute towards an overall improvement in standards-related activities by clarifying and emphasizing the obligation to submit instruments adopted by the Conference to the competent authorities, following prior tripartite consideration of the instruments at the national level. The Memorandum was therefore a step towards greater coherence in the work of the ILO.
4. The Employer members expressed their satisfaction with the new text, but with one reservation: the phrase in point I(a) of the Memorandum which stated that "the procedure also aim[ed] to promote ratification" of Conventions and Recommendations, went beyond the provisions of the texts and was inconsistent with point III(b). This phrase should therefore be deleted.
5. The Worker members recalled the reasons for adopting the Memorandum. It was intended to help governments to better understand their obligations in this respect, since certain governments failed to submit the instruments with the result that parliaments did not even get a chance to ratify them. Another problem was that certain parliaments were only informed of the instruments adopted by the Conference; the Governments did not propose any action, ratification or otherwise, with respect to them.
6. The Worker members could not accept the amendment proposed by the Employer members; on the contrary, they felt that the current text of point I(a) was rather weak and defensive in its approach and not fully in line with article 19, paragraph 5(a) and (b), of the Constitution. They therefore proposed to reverse the order of the sentences in point I(a) to emphasize that Conventions were, in the first place, supposed to be ratified. It was also felt that point III(b) constituted a negative incentive to ratify, whereas the aim should be to promote ratification. Concerning point I(b), the Worker members considered that in order

<sup>1</sup> GB.292/LILS/1(Rev.)

to be helpful, the Memorandum should not only state that governments remain entirely free to propose any action which they may judge appropriate, but it should spell out that they may propose to ratify or not to ratify the Conventions submitted.

7. Regarding point VII(d), the Worker members were of the view that tripartite consultations through a simple exchange of letters was not sufficient and that it should be specified that any “competent advisory body” should be tripartite in nature. There was a need for real tripartite dialogue, and the requirements of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), should be met by all Members. With regard to Part VIII, the speaker wished the wording to be clarified in two respects: it should be stated that governments should enter into a dialogue before any decision is taken at national level, and they should be encouraged to add the views of the employers’ and workers’ organizations to their submission to the competent authority and in their submission of information to the ILO. In addition, the same should be done in the case of a proposal to denounce a Convention. Moreover, the questionnaire, and possibly also the whole Memorandum, should also be sent to the employers’ and workers’ organizations. The speaker considered that the Decent Work Teams had a role to play in helping governments to cope with their obligation of submission.
8. The representative of the Government of El Salvador, speaking on behalf of the Group of Latin American and Caribbean States (GRULAC), noted with satisfaction that the new draft Memorandum reflected the views expressed by GRULAC, in particular as regards the purpose of the obligation of submission. As was well expressed in point III(b), the obligation to submit the instruments did not imply any obligation to propose the ratification of Conventions or to accept the Recommendations; he noted that governments remained free in this respect. Part VII on tripartite consultations, which was based on Convention No. 144 and its accompanying Recommendation No. 152, was considered to be relevant since the submission procedure constituted an important moment of dialogue between government authorities, the social partners and parliamentarians, as was well expressed in the Memorandum. In Latin America and the Caribbean, the submission procedure was particularly important for making known the instruments adopted by the Conference.
9. The representative of the Government of the United States considered that the changes made to the Memorandum adequately reflected the detailed discussions that had taken place at the last session of the Committee. She could support the revised Memorandum, subject to one amendment to Part VII, which would consist in reversing the order of subparagraphs (b) and (c) so as not to suggest that Members that had not ratified Convention No. 144 “must” consult with the representative organizations of workers and employers before making proposals to the competent authorities. This proposal was endorsed by the representative of the Government of Nigeria and the Employer members.
10. The representative of the Government of Nigeria, speaking on behalf of the Africa group, expressed satisfaction with the revised Memorandum and in particular with the explanation given in point VII(d) on the need for effective consultation in accordance with Convention No. 144. The special reference as to the possible modes of tripartite consultation was considered acceptable. She also supported the amendment proposed by the United States. The group endorsed the point for decision.
11. The representative of the Government of India recalled that his Government’s view on the question of submission to competent authorities had been that the present arrangements should be applied more meaningfully. Regarding the text of the draft revised Memorandum, he suggested that the second sentence in point VII(c) be deleted.

12. The representative of the Government of Brazil was satisfied with the adoption of the new Memorandum on submission at a time when a new tripartite committee on industrial relations had just been created in his country in line with Convention No. 144, which would soon examine the instruments whose submission was pending, on the basis of the new Memorandum.
13. The Legal Adviser recalled that the central section of the Memorandum was based on comments by the Committee of Experts on the Application of Conventions and Recommendations and the Conference Committee on the Application of Standards. Quotations could be deleted or added or the style modernized, but the substance could not be changed. The text presented was balanced, and its purpose was to define more precisely the extent of constitutional obligations with regard to submission without adding any new obligations.
14. Concerning the Worker members' request for clarifications to the text of Part VIII of the Memorandum, the Legal Adviser recalled that the obligation laid down by article 23(2) of the Constitution was in addition to tripartite consultations. Since Part VII of the Memorandum dealt with such consultations, Part VIII pertained only to the obligation to inform the representative organizations of employers and workers of measures that had been taken under the obligation of submission. With regard to the possibility of sending the questionnaire also to organizations of employers and workers, in addition to the added financial cost that this would involve for the Office, there was the problem of knowing to which organizations it should be sent. In any case, the document could be consulted on the International Labour Standards Department web site. Lastly, the Legal Adviser noted that the logical order of the provisions of Part VII would be improved by the amendment proposed by the United States.
15. The Employer members proposed that the wording of point VII(d) be strengthened by replacing the words "may be" with "will be". Furthermore, they too, like the Worker members, regretted that this provision gave the false impression that the consultation of representative organizations by means of a simple exchange of written communications was equivalent to the exchanges that took place in a tripartite advisory body.
16. The Worker members endorsed the amendment suggested by the Employer members and shared their concerns as to the need to privilege genuine tripartite dialogue in the framework of an advisory body over written consultations, as the aim was to have serious consultations at national level. The speaker reiterated his impression that the Memorandum still had a negative slant. Concerning point I(a), he suggested adhering to the text of the Constitution, and as regards I(b), he reiterated his proposal to specify the action to be proposed by the governments, namely to ratify or not to ratify.
17. The representative of the Government of Canada opposed the amendment to point I(b) proposed by the Worker members, as it could cause difficulties in federal States, where parliaments to which ILO instruments were submitted may require consultations with subregional governments before deciding to ratify or not to ratify them. She considered that the text of the revised Memorandum well reflected the discussion in the Committee and recognized the limited opportunities for amendments.
18. The representative of the Government of Germany supported the reservation made by Canada to the Workers' amendment proposal, and noted that it had often happened in her country that after the 18-month time limit it was not clear whether ratification could be proposed or not. She supported the text as it stood, as it was well balanced.
19. The Legal Adviser recalled that the quotations contained in the Memorandum had been approved by the Committee of Experts and examined by the Conference Committee on the

Application of Standards, and were therefore authoritative. The negative tone of certain comments, which had been mentioned by the Worker members, was due to the fact that they were often taken from observations criticizing particular practices. He also pointed out that the text sent to governments had included a quotation of the relevant provisions of article 19 of the Constitution from the very beginning, and the parameters of the text were therefore well defined by those provisions. Finally, he proposed the deletion of the expression in the first sentence of point VII(d) referring to the means by which representative organizations were consulted. This proposal was endorsed by both the Employer and the Worker members.

20. The Committee adopted the point for decision, subject to the amendments to the draft revised Memorandum referred to in paragraphs 9, 15 and 19 above.

21. *The Committee recommends that the Governing Body adopt the draft revised Memorandum contained in Appendix I.*

## **II. Standing Orders of the Conference: Practical arrangements for the discussion, at the 93rd Session (June 2005) of the International Labour Conference, of the Global Report prepared under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work**

22. The Committee had before it a document<sup>2</sup> proposing practical arrangements for the discussion, at the 93rd Session of the International Labour Conference, of the Global Report prepared under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work.

23. The Worker members agreed with the proposal that the provisional ad hoc arrangements adopted for the discussion of the Global Report at the 92nd Session (June 2004) of the International Labour Conference be recommended once again by the Governing Body to the Conference for adoption at its 93rd Session, as the discussion of the Global Report was generally viewed as a positive experience by the Workers. However, the speaker pointed out that greater attention and emphasis could be placed on the tripartite aspect of the discussion and that the Chairperson could encourage more interactive dialogue rather than a sequence of speeches. The Workers also considered that the choice of topics for discussion should be made as a result of tripartite consultations. The Worker members noted with satisfaction that the document before the Committee, as corrected, omitted the reference to simultaneous sittings on the Global Report and of the plenary. The Worker members considered that simultaneous sittings diverted interest. Further, they noted that Workers' and Employers' delegations from developing countries tended to be small, thus making it impossible for them to attend simultaneous sittings.

24. The Employer members agreed with the proposal that the provisional ad hoc arrangements adopted for the discussion of the Global Report at the 92nd Session of the Conference be recommended once again by the Governing Body to the Conference for adoption at its 93rd Session. While the Employer members noted improvements in the discussion on the Global Report, further steps were called for to make it a complete success. In this regard, they recalled that the purpose of the discussion on the Global Report was not simply formal; rather, the intention was to assist the Director-General in identifying conclusions for the preparation of a report to be submitted to the Governing Body, which would then

<sup>2</sup> GB.292/LILS/2 (&Corr.).

enable the Governing Body to draw conclusions with regard to the priorities and plans of action for technical cooperation to be implemented for the following four-year period. The Employer members proposed that the point for decision be amended so as to recommend to the Governing Body that it invite the Conference at its 93rd Session to adopt the practical arrangements for the discussion on the Global Report for the upcoming four-year cycle or until such further time as the Governing Body decides, with a view to easing the agenda of the Committee.

25. The representative of the Government of the United States, speaking on behalf of the industrialized market economy countries (IMEC), noted the significant improvement in the discussion on the Global Report during the 92nd Session of the Conference over previous years and therefore endorsed the proposal. Notwithstanding, she observed that despite the improved format, the goal of generating a spontaneous, lively and interactive debate had proved elusive; rather, participation in the Global Report discussion continued to decline, and she therefore considered that the Office should continue to consider, and consult on, further improvements. Suggestions put forward included tripartite consultations that could be held by the Office on the Director-General's proposed points for discussion, as well as their earlier distribution with a view to enhancing the points for discussion and the actual debate. She also considered that the Global Report should only focus on important developments since the preceding one; that it should be shortened; and that it could include substantive questions that would contribute to a more truly interactive discussion. Finally, she reiterated the call to the Governing Body to conduct an overall review of the manner in which the follow-up to the Declaration was implemented with a view to ensuring its meaningfulness and effectiveness. In this respect, she stated that the Committee should continue to review these arrangements on an annual basis.
26. The representative of the Government of Nigeria, speaking on behalf of the Africa group, endorsed the proposal as amended by the Employer members.
27. The Executive Director for the Standards and Fundamental Principles and Rights at Work Sector (Mr. Tapiola) noted the call by the Committee to make available the points for discussion on the Global Report earlier and stated that efforts would continue to be made by the Office to advance their availability, but that these would be provided, at the latest, at the commencement of the Conference. Noting the support for the Employer members' amendment, the Executive Director assured the Committee that it could have this item placed on its agenda as necessary, thus addressing the concerns expressed within the Committee. In addition, he noted that the possibility remained to have simultaneous sittings where the Conference schedule required them and if the Conference Officers were to agree, but this should be avoided if at all possible and should be used only in exceptional circumstances. Finally, he requested the cooperation of the groups with regard to certain aspects of the proposed arrangements (i.e. the withholding of publishing a speakers' list).
28. On the basis of the explanations provided by the Executive Director, the Worker members endorsed the proposal as amended by the Employer members. In response to the IMEC group's statement, they stressed the need for a comprehensive report. In conclusion, they emphasized that the discussion on the Global Report remained important and that it should provide an accurate picture of the real situation.
29. The Employer members reaffirmed the view that this item could be placed on the Committee's agenda, as necessary.
30. ***The Committee accordingly recommends that the Governing Body invite the Conference, at its 93rd Session, to adopt the provisional ad hoc arrangements set out in the appendix to document GB.292/LILS/2(&Corr.) concerning the***

*discussion of the Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work, with effect for the rest of the current four-year cycle, starting with the present session, or until such further time as the Governing Body decides.*

**III. Practices for the preparation of international labour Conventions: Handbook on good drafting practices**

31. The Committee had before it a document<sup>3</sup> on the preparation of a *Manual for drafting ILO instruments*.
32. The Legal Adviser stressed the important work of the experts in preparing the Manual for drafting ILO instruments and thanked them for their enthusiastic participation. He explained that for reasons of economy the text of the Manual had not been distributed in hard copy but only made available on the ILO web site.
33. The Worker members thanked the experts and the Office for preparing the Manual and, confident in their good work, accepted the point for decision.
34. The Employer members also thanked the experts and the Office for their remarkable work and, in the light of paragraphs 8 and 9 of the Office document, expressed the wish to see the version intended for Conference delegates at the November 2005 session of the Governing Body.
35. The representative of the Government of Nigeria, speaking on behalf of the Africa group, recalled that the need for such a document had been expressed in the past. She noted paragraphs 5, 6 and 7 of the document and supported the point for decision.
36. The representative of the Government of Canada praised the excellent work done by the experts and added that the Canadian expert in the group also conveyed her own appreciation for the expertise of the Office and for the collaborative spirit of other experts. The speaker felt that the Manual would be a valuable tool for delegates and urged governments to make it known to their delegates before the next session of the Conference. She was particularly pleased to see the section on gender-inclusive language included in the Manual.
37. The representative of the Government of the United States congratulated the Office and the experts for the text, pointing out that the Manual would become an invaluable reference tool for everyone involved in the process of developing and drafting international labour standards. She emphasized its comprehensive and non-binding nature. She also urged the Office to make the electronic version of the Manual truly user-friendly.
38. The Chairperson joined the speakers in congratulating the experts and the Office.
39. ***The Committee recommends that the Governing Body:***
  - (a) ***take note of the document entitled Manual for drafting ILO instruments;***

<sup>3</sup> GB.292/LILS/3.

- (b) *request the Office to adapt the Manual along the lines indicated in paragraphs 8-10 of document GB.292/LILS/3, financing this work through savings;*
- (c) *request the Office to inform the Governing Body of progress in work to adapt the Manual at its 294th Session (November 2005).*

#### **IV. Consolidation of rules applicable to the Governing Body**

40. The Committee had before it a document<sup>4</sup> proposing the consolidation of the rules applicable to the Governing Body.
41. The Legal Adviser stated that the Office document presented the method leading to the formulation of a final draft, rather than the draft itself. He hoped that, following the discussions within the Committee and further consultations afterwards, the Office would be in a position to prepare a draft for November 2005. In particular, there were certain practices that should be defined in the introductory note without necessitating amendment of the Standing Orders. For instance, when the Chairperson of the Governing Body came from the Employers' or the Workers' groups, this had the effect of suspending another, unwritten rule – that of regional rotation between Governments. Another example was the size of Government delegations to the Governing Body, where the Office applied, *mutatis mutandis*, the rules of the Conference. He specified that this exercise might also be an opportunity to reorganize the Standing Orders of the Governing Body by the prudent addition of certain provisions whose usefulness had been proved by experience. Lastly, he also recalled that the appendices proposed for inclusion in the consolidated version referred solely to rules adopted by the Governing Body.
42. The Worker members agreed with the proposed plan and made the following suggestions. In paragraph 5 of the document on composition and participation, the list should begin by referring to titular members, in accordance with article 7(1) of the ILO Constitution, supplemented by other relevant provisions from article 7. They also suggested listing all committees in paragraph 8 of the document and welcomed the reference to the autonomy of groups in paragraph 11 of the document.
43. The Employer members approved the step-by-step approach to consolidation. They considered it fundamentally important to consolidate the rules and practical arrangements of the Governing Body. While they stressed the importance of interactive debate in the Governing Body, in which a speaker could ask to take the floor more than once, they considered that long speeches of over ten minutes were bad practice. They trusted that the Office's creativity would enable it to find a solution to this problem.
44. The representative of the Government of the United States, speaking on behalf of IMEC, stated that the consolidation of Governing Body rules and practices would contribute to more efficient functioning of the Governing Body, by incorporating, inter alia, into the Standing Orders some directly relevant provisions contained in the Constitution or the Standing Orders of the International Labour Conference. She considered, however, that the Committee should proceed very carefully with regard to the addition of new provisions in the Standing Orders. Some of the provisions presently dealt with by way of practice, such as the geographical distribution of seats, functions delegated to the Officers, the creation of

<sup>4</sup> GB.292/LILS/4.

committees or working parties, or the procedure for adopting committee reports, might be more appropriate for inclusion in the Introductory Note than in the Standing Orders.

45. The representative of the Government of Nigeria, speaking on behalf of the Africa group, stated that the proposed detailed draft plan of the compendium was acceptable. However, concerning the size of government delegations, she noted that the limitation on representation of member States might hinder the aims and objectives of the ILO, as effective participation of member States in deliberations was required.
46. The representative of the Government of Mexico supported the proposal and suggested that the flexibility mentioned in paragraph 8 of the document should also be applicable with regard to the modification or elimination of committees and working parties.
47. The representative of the Government of South Africa, supporting the statement of the representative of the Government of Nigeria on behalf of the Africa group, reiterated that the consolidation of the rules in a compendium would contribute to easy reference for new Governing Body members from the regions. He suggested that the appendices should also include the rules and decisions concerning working methods of the Committee on Freedom of Association and the Committee of Experts on the Application of Conventions and Recommendations, as well as a collection of references related to the decisions leading to changes in the Constitution. Aspects covered by the proposed Appendix III could be presented in the form of a booklet similar to the brochure entitled *Introduction to the Governing Body*, last updated in March 2002.
48. The Legal Adviser explained that the Office was aware of the need for a careful approach to consolidation and for the Compendium not to set in stone the practices of the Governing Body and its Committees. This was why it would not be advisable to establish provisions of the Standing Orders laying down practices that could remain flexible in order to comply with decisions made by a majority in the Governing Body – for instance, with regard to the number and mandate of Committees, or to restrictions on speaking time. These practices should be recalled in the introductory note. He also indicated that a limitation of the number of Government delegates to a reasonable level – which might be set at 15, by analogy with the Conference – would respond to two concerns. The first was to preserve the Governing Body's function as a decision-making body whose composition was necessarily limited for reasons of both practicality and efficiency. The second related to security issues and the process of obtaining visas. The ILO was one of the last organizations in Geneva that still provided help, where necessary, for Governments to obtain entry visas from the Swiss authorities for their delegations. It was all the harder to obtain these visas when the number of visas requested by the Office did not seem appropriate to the real needs of the Governing Body. In this regard, almost all Government delegations had fewer than 15 members, and many of those members were from permanent missions.
49. The Worker members agreed with the proposal to include the time limit for discussions in the Introductory Note, but considered that this limit concerned only individual government members, not those who spoke on behalf of their respective groups.
50. The Employer members explained that their proposal concerned everyone who took the floor.
51. The Legal Adviser clarified that the Office, for the purpose of consultations, intended to make the new proposal as well as any comments thereto available on the web site of the ILO Office of Legal Services in September 2005 with a view to producing the final draft for the Governing Body already at the beginning of October 2005.

52. The Worker members said they looked forward with interest to seeing if this type of consultation were effective.
53. *The Committee recommends that the Governing Body approve the detailed plan of the compendium of rules that govern it, with a view to the submission by the Officers of a draft compendium at the 294th Session of the Governing Body (November 2005).*

## V. Flag of the International Labour Organization

54. The Committee had before it a document<sup>5</sup> containing proposals relating to the adoption of an ILO flag, along with a draft code and regulations for its use.
55. The Employer members noted the depth of the detail provided in the document and, on this basis, proposed amending paragraph 6 of the draft flag code to provide that any deviations that the Director-General may authorize from the prohibited uses of the flag shall first require the approval of the Officers of the Governing Body. They also proposed a correction to paragraphs 3, 4 and 5 of Section IV of the draft regulations. With the above proviso in mind, the Employer members endorsed the proposal to recommend to the Governing Body that it approve the draft resolution concerning the flag of the International Labour Organization with a view to its adoption by the International Labour Conference.
56. The Worker members reaffirmed the view they had previously expressed,<sup>6</sup> to the effect that the emblem that would appear on the flag of the International Labour Organization should be the traditional symbol of the ILO and, consequently, proposed that the draft resolution concerning the flag of the International Labour Organization refer specifically to the tripartite nature of the emblem and that the draft flag code refer to the decision of the Director-General. The Worker members also endorsed the amendment proposed by the Employer members.
57. The representative of the Government of Nigeria, speaking on behalf of the Africa group, endorsed the proposal relating to the adoption of an ILO flag, as his group considered the draft flag code and regulations adequate.
58. The Legal Adviser, referring to the level of detail provided in both the draft flag code and the draft regulations, drew the Committee's attention to the complex protocol that the use of an official flag requires.
59. *The Committee accordingly recommends to the Governing Body that it approve:*
- (a) *the draft resolution concerning the flag of the International Labour Organization with a view to its adoption by the International Labour Conference; and*
  - (b) *the code and regulations for the use of the flag of the International Labour Organization, as amended, subject to their coming into force after adoption*

<sup>5</sup> GB.292/LILS/5.

<sup>6</sup> GB.291/9(Rev.), para. 86.

*by the Conference of its resolution concerning the flag of the International Labour Organization.*

**VI. Other legal issues**

60. No issues were raised under this point.

**International labour standards  
and human rights**

**VII. Improvements in the standards-related activities  
of the ILO: A progress report**

61. A representative of the Director-General (Ms. Doumbia-Henry, Director of the International Labour Standards Department) indicated that the document before the Committee<sup>7</sup> was intended to provide a status report of what the various bodies/organs of the ILO had done concerning standards-related activities since 1994. The paper focused on developments and the results achieved, including the 1998 ILO Declaration on Fundamental Principles and Rights at Work, the results of the Working Party on Policy regarding the Revision of Standards (the “Cartier Working Party”); the selection of items for the agenda of the International Labour Conference; standard-setting developments such as the integrated approach and the consolidation of ILO maritime instruments, and a review of a number of standards procedures. These various activities had resulted in a number of improvements and rationalizations, as well as the preparation of important new instruments. In paragraph 40 of the Office document, only one conclusion was drawn: that almost all aspects of the ILO’s standards system had been discussed over the last ten years. In addition, the Office had proposed for reflection a number of open-ended questions. It had not, however, suggested any specific areas for action at this stage.
62. The Worker members thanked the Office for the very useful and comprehensive document it had prepared. In terms of the issues covered, they referred to the ratification campaign for the fundamental Conventions. While they agreed that this campaign had been singularly successful, they recalled that certain countries, including some of the most populous countries in the world, had not yet ratified some of the core Conventions, especially those on freedom of association. They expressed the hope that all member States would soon ratify all the core Conventions and emphasized that the challenge remained to ensure that these Conventions were effectively implemented. In the document a reference to the Annual Reviews was missing.
63. As regards the Cartier Working Party, whose work had been based on a consensus approach, the Worker members recalled the active role they had played in its work and their repeated emphasis that the outcome of this Working Party had to be situated in the broader context of the ILO’s standards policy, including in the context of strengthening the supervisory system, the promotion of fundamental rights and the development of new standards. They noted that a consensus had been reached on the large majority of instruments examined. However, the fact that a consensus had not been reached on the Termination of Employment Convention, 1982 (No. 158), should not be overlooked. A disagreement thus remained on an issue of significant importance for workers around the world and which was an essential element of decent work, specifically in export processing

<sup>7</sup> GB.292/LILS/7.

zones. As regards the instruments that were considered to have an interim status (footnote 17 of the Office document), they sought reassurance that appropriate action would also be taken by the Office.

64. As regards the review of the follow-up to the work of the Working Party, the Worker members considered that it had become apparent that increased efforts had to be made in several respects. The 1997 amendment to the ILO Constitution that would allow the abrogation of obsolete Conventions – including the seven Conventions identified by the Working Party – had not yet been ratified or accepted by the required two-thirds majority of member States of the ILO. In order to obtain the 38 ratifications or acceptances that were still needed, the Worker members proposed that Governments as well as Worker and Employer representatives of countries that had not yet ratified this amendment be contacted directly during meetings such as the International Labour Conference, and that the Office offer relevant assistance, as appropriate.
65. With respect to the Conventions that had been revised by more recent instruments and where member States had been invited to ratify the more recent instruments, the Worker members also considered that additional efforts were called for. While the relevant country profiles, which contained important information in this respect, were available through the ILO web site, the Office should, inter alia, make access to it more user-friendly. They noted that, unless member States undertook a serious effort to follow up on the recommendations of the Working Party, yet another working party would soon be needed again.
66. The Worker members noted that member States apparently had encountered obstacles or difficulties in relation to some Conventions, for which the levels of ratification remained relatively low, and where information was requested. They queried the Office on the follow-up being carried out. As regards the 73 Conventions, 75 Recommendations and six Protocols which had been identified as up to date, the Worker members considered that they should be the object of serious promotion and sustained efforts to implement them. While they had noted that the Programme and Budget proposals for 2006-07 included several express references to the promotion of standards, the Worker members hoped that in the future the specific standards relevant to all ILO activities be identified and promoted by all ILO sectors and units. In the meantime, and with reference to the decision to launch a ratification campaign concerning the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), the Worker members proposed that this campaign be extended to include the three other priority Conventions, i.e. the Labour Inspection Convention, 1947 (No. 81), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Employment Policy Convention, 1964 (No. 122).
67. The Worker members also expressed their appreciation for the increasing emphasis placed on consensus building, as summarized in paragraphs 14-16 of the Office document. They noted, in particular, that the informal consultations had been very helpful in this respect. With regard to the selection of items for the agenda of the Conference, they considered that this question should remain in the hands of the Governing Body. Concerning the identification of potential items for future standard setting, both the Office and the constituents should actively contribute by closely monitoring ongoing relevant debates. Further consideration should also be given to follow-up on the proposals – including proposals for standard setting – made by the World Commission on the Social Dimension of Globalization in its report.
68. As regards the supervisory procedures, the Worker members recalled that the reports of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) contained all the necessary and relevant information. They noted with great concern, however, that owing to a lack of resources a significant number of reports from member

States, some dating back to 1997, had not yet been examined by the Office. Sustained efforts had to be made to deal with these reports.

69. The Worker members also reiterated the fundamental importance they attributed to the Committee on Freedom of Association (CFA) and noted with satisfaction the reassurances they had received that the recent restructuring of the International Labour Standards Department would not affect the autonomy and resources needed for the functioning of this Committee. As concerned the article 24 procedure, they considered that the number of representations was not very high, particularly in the light of the growing number of ratifications of ILO Conventions and increased awareness of them. The Worker members further pointed to the fact that no reference had been made in the Office document to the developments concerning the Credentials Committee of the Conference, although the work of that Committee was, in their view, also relevant in this respect.
70. With reference to paragraphs 40 and 41, the Worker members stated that they were in favour of pursuing the discussion on implementation of these matters at the Governing Body session in November 2005, in the light of a document including proposals for action on points raised in paragraph 40. They wished to pursue this discussion, but only on the condition that matters already discussed and decided upon would not be reopened for renewed consideration in such a context.
71. The Employers congratulated the Office for having submitted a document that was remarkable in two ways. First, the first 39 paragraphs of the document gave a full and concise picture of what had been done in the area of standards. With these achievements, the Office demonstrated the dynamism of the ILO in a whole range of activities such as standards promotion, the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, the “Cartier Working Party”, the abrogation and withdrawal of standards, efforts undertaken with regard to selecting items for the Conference agenda, strengthening the supervisory system, technical cooperation and, lastly, the integrated approach. Obviously, one might still ask whether the Organization was progressing fast enough to keep up with the pace of change in the economic and social contexts in which it worked. However, the main thing was to establish a consensus based on trust, and that required time. Second, paragraph 40 should be welcomed for calling on the constituents to reflect on how to move forward in improving the standards-related activities of the ILO in order that the standards system should be both strengthened and adapted. Thus, this report should serve as a reference document and, as such, should be sent to the new members of the Committee to be elected next June.
72. With regard to the eight questions put forward in paragraph 40, the Employers emphasized the following: (1) the ILO should focus on promoting the application of standards, particularly by developing case studies or compiling good practices; an assistance strategy needed to be formulated; (2) the ILO should keep the body of standards permanently up to date; an examination of standards adopted between 1985 and 1995 should be planned; the process of updating should be carried out at regular intervals; (3) a campaign should be launched immediately on ratification of the 1997 constitutional amendment; steps should be taken to achieve the minimum number of 118 ratifications required for it to enter into force, and hence to abrogate obsolete Conventions, as soon as possible; (4) pending the entry into force of the instrument of amendment, the ILO should advise each Member individually with regard to the possibility of denouncing certain Conventions, unless it was possible that the Conventions in question might be withdrawn; in particular, the Employers asked whether a Convention with no ratifications might not be made subject to the withdrawal procedure; (5) as regards the supervisory system, the focus should be on the most important Conventions and the most serious violations; this consideration applied to all supervisory bodies and particularly to the CEACR, the CFA and the Conference Committee on the Application of Standards; (6) the integrated approach should be pursued

and refined; (7) the link between technical cooperation and the application of standards was essential; the task in hand was to provide countries with real help to overcome the difficulties they faced in applying the Conventions that they had ratified; (8) the specific promotion of particular Conventions should be the subject of tripartite agreement; (9) in respect of the final provisions of Conventions, the Employers believed that discussion should be continued, and that the constituents were not far from reaching an agreement; and (10) the Committee should be kept informed of the way in which the Office carried out its constitutional duty in the area of advice on labour law, to enable the Governing Body to give it guidance in this area.

73. The representative of the Government of the United States, speaking on behalf of IMEC, stated that the document had demonstrated that, in the course of the decade-long review of the ILO's standards-related activities, there had been significant successes and many lessons learned. This remarkable level of accomplishment had only been possible through tripartite willingness and consensus, supported by a responsive staff. The Governing Body had largely completed every task that it had set for itself. But now it needed to build on that work and keep it current. The process of improving standards was a continuous one. The Governing Body should not have to start over with a new review of standards-related activities ten or 15 years from now.
74. The speaker considered that, while the document laid out what the Governing Body had discussed and decided, it was not as clear on what was being done to implement those decisions. Before the Governing Body could determine a clear and coherent strategy for the future, it needed a better idea of present strategies, in order to weigh what was working, what was not working, and why. This was particularly true with regard the promotional and technical cooperation activities which were critical to ensuring that ILO standards activities had a real impact among ILO constituents. It did not appear from the document (e.g. paragraph 36) that there had been significant progress in developing country-specific, targeted assistance.
75. The speaker also noted that, while the eight questions posed in the conclusions were very relevant, it would be more helpful if the Office could put forward under each of them some suggestions and options for action: for example, how in its view the effectiveness of the supervisory system could be improved in the light of the increasingly high number of ratifications. Such an approach, as opposed to the open-ended nature of the current text, would better inform the discussion, while allowing member States to suggest further ideas if they so wished.
76. Taking this progress report as a starting point, IMEC therefore suggested that the Office prepare an additional document for November 2005 that would allow the Governing Body to engage in a detailed, substantive discussion of strategies for implementing the ILO's standards-related policies and procedures. Tripartite consultations would be advisable in developing such a document. In addition, IMEC considered that the Office should submit regular, periodic reports – on an annual or biennial basis – so that the Governing Body could continually monitor and evaluate ILO standards-related activities and determine if and when further steps needed to be taken. For example, the Governing Body might consider looking, within the next five years or so, at standards that were not included in the mandate of the Cartier Working Party by virtue of their date of adoption. As of now, the rate of ratification of some Conventions adopted since 1985 suggested that they were not, in fact, viable instruments.
77. Regarding those few areas that had not been resolved in the standards review process, IMEC believed that, notwithstanding the limitations on issuing interpretations, there was still a need to provide governments with consistent and reliable advice on the meaning and scope of the obligations they assumed in ratifying ILO Conventions. Moreover, IMEC

continued to believe that there was merit in reviewing the final provisions of Conventions. IMEC noted that, according to paragraph 19 of the Office document, the tripartite constituents had agreed to pursue the discussion on this issue informally.

- 78.** The representative of the Government of Nigeria, speaking on behalf of the Africa group, noted that the document had charted considerable developments in relation to standards-related activities. In paragraph 40, the document noted that almost all aspects of the ILO's standards had been discussed in the past ten years. The Committee thus faced the question as to whether this review could now be considered complete. The Africa group noted that the ILO now had a body of over 70 Conventions and 70 Recommendations, including the fundamental and priority Conventions, that were up to date and should be promoted. It was also important, however, to ensure that member States ratified and implemented provisions of up-to-date Conventions. The review of standards-related activities could therefore not be considered complete until the number of ratifications and the degree of implementation were in proportion to the number of member States. The supervisory system and reporting mechanism were effective. However, member States that were encountering difficulties should be encouraged by the ILO to seek technical assistance to enable them to meet the reporting and application requirements set by the Conventions. Technical cooperation and assistance strategies should be flexible enough to respond to the urgency of specific needs. Conventions that had been revised and brought up to date could be made the targets of specific promotion. This could further encourage their ratification and implementation. The Africa group therefore supported paragraph 41 as a point for decision.
- 79.** The representative of the Government of New Zealand indicated her Government's support for the statements by IMEC and the Asia-Pacific group on the document before the Committee. Her Government had been an early proponent of ILO standards reform and had offered its consistent support to the ILO over the course of its decade-long review of standards-related activities. The Government of New Zealand reiterated its support to the Director of the International Labour Standards Department and her team as they undertook continuous improvement in this regard.
- 80.** The speaker reiterated her country's position that there was a need for a strategic approach to the selection of standard-setting items at the International Labour Conference, drawing from the priorities set out in the Strategic Policy Framework. Furthermore, the ILO should continue to move towards principles-based promotional instruments with broad application, and away from sector-specific instruments, other than in the maritime sector. Fundamentally, her Government was of the view that ILO standards should, in the first place, be practicable in order to accommodate a variety of national circumstances, while promoting core universally accepted principles. Secondly, standards should focus on outcomes or results, so that countries could achieve the underlying principles, even if the means to do so differed according to national policy and practice. Thirdly, standards should have a broad application, meaning that minimum universal standards should be set to provide a framework of minimum protection for workers' employment and working conditions. On the implementation and promotion of ILO standards, the New Zealand Government believed that the effective promotion, ratification and implementation of these standards should be clearly linked to the ILO's strategic objectives and thus the goal of decent work.
- 81.** The speaker noted that reporting was the foundation for the entire standards process and was therefore a critical component in the improvement of the ILO's standards-related activities. More could be done to rationalize the various reporting requirements placed on countries by taking steps to share information across the ILO's departments in order to limit duplication in reports and questionnaires and to ensure that information was captured most efficiently. Her Government would also encourage the ILO to use, as much as possible, email and the Internet to transmit the questionnaires and receive responses.

82. Finally, the speaker noted that the ILO's supervisory mechanisms maintained an important balance between identifying serious breaches of standards and not acting as a disincentive for countries to ratify those standards in the first place. The New Zealand Government had consistently placed great importance on the transparency, objectivity and promotional nature of the ILO's supervisory mechanisms and supported the ILO's work in ensuring that these three elements remained central components of the supervisory mechanism in the future.
83. The representative of the Government of El Salvador, speaking on behalf of the Latin America and Caribbean group (GRULAC), found the summary prepared by the Office extremely useful. Nonetheless, he felt that the questions put forward in paragraph 40 of the document to guide standards-related activities did not fully meet the concerns expressed by GRULAC. For example, concerning paragraph 7, which stated that member States' contribution to the development of a more modern instrument had not led to ratification of such instruments, consideration should be given to whether the problem arose from a lack of awareness on the part of the ratifying State of the existence of more modern or updated standards, or from the perception that the new standards represented a step backward or weakening of existing standards.
84. Despite the progress achieved through the adoption of the integrated approach in avoiding automatic inclusion of standard-setting items in the Conference agenda, the speaker noted that there was still a tendency to elaborate standards without first seeking consensus on their relevance. To keep standards up to date, it was not enough to promote the entry into force of the 1997 constitutional amendment. Therefore, further thought should be given to the matter of final provisions of Conventions, since both the number of ratifications required for entry into force and the conditions and time limits for denouncing Conventions and introducing amendments were factors that had an impact on the rapid adaptation of Conventions to a constantly changing world of work.
85. Concerning the regular supervisory mechanism, the speaker recognized a certain amount of progress in grouping Conventions by subject matter for reporting purposes. It was to be hoped that, once the new system had completed a full cycle in 2008, the Office would submit to the Governing Body an evaluation of the impact of this process. The speaker emphasized GRULAC's concern at the small number of reports sent to the Office within the prescribed time limits. In this respect, consideration could be given to the possibility of revising the report forms. He also felt there was room for improvement with regard to the Conference Committee on the Application of Standards with a view to guaranteeing objectivity and an appropriate balance in the selection of individual cases, taking into account the diversity of standards, the various geographical regions and particular conditions of economic and social development.
86. With regard to special procedures, the speaker considered that the amendments to the representation procedure under article 24 of the Constitution were very useful. While GRULAC commended the in-depth review of its procedures and practices by the CFA, it encouraged it to apply the criteria for admissibility of complaints more strictly. He reiterated GRULAC's appreciation for the technical assistance provided to countries. However, in regard to the integrated approach and technical cooperation (paragraph 38), sufficient time would be needed to carry out a more detailed analysis of the information posted on the ILO web site in this respect. Lastly, the speaker considered that this exercise should be pursued in the Committee and in the Governing Body, without the need to establish a limited list of questions.
87. The representative of the Government of Japan, speaking on behalf of the Asia-Pacific group, stated that the supervisory and reporting mechanisms for standards were one of the ILO's most essential tools. His group was of the view that the three present supervisory

mechanisms, namely the CEACR, the Conference Committee on the Application of Standards and the CFA, provided transparent and adequate supervisory activities. His group wished to reiterate that creating any new supervisory mechanism was not necessary because it would be an additional burden not only on the ILO's but also members States' limited resources.

- 88.** The ILO should manage the present supervisory and reporting mechanisms for standards efficiently. The Asia-Pacific group could offer three suggestions in this regard. First, limited resources should be concentrated on the more important Conventions. The speaker welcomed the consolidation of Conventions, as was being undertaken in respect to the ILO's maritime standards and in the fishing sector. Second, a more transparent and visible supervisory procedure should be pursued. He noted the work on the consolidation of rules applicable to the Governing Body currently in progress. Such efforts could one day lead to a single manual which could include the Standing Orders and related documents concerning not only the International Labour Conference and Governing Body, but also all the supervisory mechanisms. Third, the Office should continue to make efforts to improve the format and content of the report of the CEACR. When analysing the situation of a country in relation to its application of ratified Conventions, the CEACR should ensure that it had access to reliable sources of information.
- 89.** The Asia-Pacific group supported the new strategies of the International Labour Standards Department and encouraged the Office to implement them. The ILO needed to focus on the ratification and effective implementation of Conventions. To this end, standards-related technical cooperation could play a vital role. The needs of member States should be assessed and taken into consideration at the time of the implementation of such technical cooperation programmes.
- 90.** The representative of the Government of Venezuela made a number of comments related to strengthening the supervisory bodies and the question of interpretation of international labour standards. He regretted that the consultations carried out by the Office with a view to improving the working methods of the Committee on the Application of Standards had not led to recommendations reflecting a tangible improvement in terms of the selection and appropriate handling of cases, as well as its conclusions. He pointed out in particular that the latter did not reflect the tripartite debate in the Committee in a transparent manner and that this aspect had been noted by several countries.
- 91.** Concerning special procedures, in the first place he recalled the need for the recommendations of the CFA to take the principle of specificity into account so that they could be applied in different national contexts. This also included the need to strike a balance in applying the principle of weighing the evidence, in order to avoid exceeding the mandate of the Committee, as well as the bounds of its own doctrine and case law. Second, in order to avoid arbitrary treatment in the procedure for presenting complaints under article 26, the speaker considered that the criteria for receivability and admissibility should be revised. Ways should also be identified to prevent the automatic discussion of such complaints for publicity or political purposes.
- 92.** With regard to the interpretation of ILO Conventions, he pointed to the need to revisit this issue in order to dispel doubts as to who could undertake such interpretations and as to their nature. He encouraged the Office to study this issue in greater depth and maintain effective communication with member States. Lastly, the speaker felt that the valuable work of this Committee should reflect the discussion in detail and that a document should be presented to the 294th Session of the Governing Body proposing possible solutions to the debate.

93. The representative of the Government of Belgium drew attention to the fact that there were several interesting aspects to the Office document, which would serve as a reference document. Improvement in the standards-related activities described in the document should be pursued. The most important paragraphs were 7, 8, 25 and 41, even if paragraph 41 did not really serve its purpose – the document deserved better than the point for decision proposed. The Office should therefore consider how it could make good use of the debate generated by the questions put forward in paragraph 40. The speaker stressed that, while there was an established hierarchy of standards, there was no such hierarchy in the supervisory system. Cooperation between the International Labour Standards Department and other services in promotion activities should be encouraged. He emphasized that, in light of paragraph 25, the Conference Committee on the Application of Standards ought to be able to carry out a more rapid selection of the cases to be examined, and that this selection should be as transparent as possible. With regard to the ratification of the constitutional amendment, the speaker suggested that the Director-General should write to governments, reminding them of how crucial the issue was for the ILO's activities. As regards the Conference agenda, he spoke in favour of feasibility studies on proposals concerning new standards. The debate could even take place at regional level. The speaker underlined the fact that standards should be central to technical assistance activities – including those funded from extra-budgetary resources. Assistance linked to labour code reform was also a significant issue. The Office should put more work into this area, to prevent any interference from other international organizations. As concerns the reports on ratified Conventions, the speaker called on the Office to bring its creativity to bear and to take account of the solutions implemented in regard to other international treaties.
94. The representative of the Government of France supported the statement made on behalf of IMEC. This discussion should make it possible to measure the progress achieved and to reach an agreement on new actions to be taken. In this regard, the speaker mentioned three different considerations. First, the significance of the standard-setting role of the ILO had to be recalled. The body of international labour standards was an important legacy, which needed to be updated regularly to ensure that it remained relevant. Effective application and the formulation of new standards – or the adaptation of existing ones – were concerns that called for a clear, coherent strategy. Moreover, the supervisory system of the ILO was unique within the United Nations system and, being the only guarantee of the effective application of standards, should be strengthened.
95. Second, the modernization of standards-related activities must, first and foremost, be based on a strengthened consensus. This applied to the process currently under way to draft a consolidated maritime labour Convention. If this operation were successful, the method should be extended to other sectors. In regard to this – as well as more generally – the speaker recalled that her Government supported the integrated approach, as the very purpose of the related general discussion was to reach a consensus that would make it possible to adopt a strategy and an action plan. To date, this new approach had been used only for the items on occupational safety and health (in 2003) and migrant workers (in 2004). The speaker welcomed the continuation of the approach and the fact that a new instrument creating a promotional framework in the area of occupational safety and health was to be discussed and drafted at the Conference this June. The Governing Body would also have to make choices at its current session with regard to the Office's proposals for the general discussion based on an integrated approach to be held at the International Labour Conference in 2007.
96. Lastly, the speaker regretted that the document submitted by the Office contained no specific proposals for the future. Guidelines could be formulated for the implementation of a coherent strategy to ensure the survival and development of the standards system. In this respect, the changes that had been made in the International Labour Standards Department were to be heartily welcomed. In conclusion, she emphasized that the development of

technical cooperation, promotional and awareness-raising activities and a more coherent and integrated approach to supervision were essential for the future of standards-related activities.

97. The representative of the Government of India supported the statement made on behalf of the Asia-Pacific group. India welcomed the efforts to revise and consolidate ILO standards. It had been the country's consistent view that the ILO should consolidate existing standards and revise, as a matter of priority, the instruments that were not found to be in tune with the present times. India also supported the integrated approach to standard-related activities, and it noted favourably the increased importance that had been placed in the document on the consensus-building process prior to the actual standard-setting process. India also supported the consolidation and grouping of standards for reporting purposes.
98. The speaker felt that certain changes were necessary with regard to the reporting mechanisms. A more simplified reporting system could be developed. India would support forgoing the practice of requesting a second detailed report, due after the first report on a ratified Convention, and it was in favour of exploring greater reliance on the tripartite consultation mechanism and social dialogue at the national level. The supervisory procedures were at present far too demanding. The speaker noted that States that had ratified Conventions Nos. 87 and 98 were scrutinized by the CEACR, by the Conference Committee on the Application of Standards, by the CFA, and finally in the discussion at the International Labour Conference of the Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work. This placed an enormous burden on the reporting country and its constituents.
99. The speaker considered that advocacy, training and technical assistance were acceptable forms and tools of action for the promotion of international labour standards. There was a need to integrate the ILO's technical assistance programme with the objectives of providing more gainful employment through skill upgrading. As far as the developing countries were concerned, concrete action in this area would be welcome. The review of the ILO's standards system could not be treated as complete, as there was much room for improvement and all possibilities needed to be examined in this respect.
100. The representative of the Government of China supported the statement on behalf of the Asia-Pacific group. The ILO's priority should be to promote the up-to-date Conventions. Technical cooperation in this regard should not only be aimed at ratification of these instruments but also at helping member States to implement them. The 1997 constitutional amendment should also be promoted more widely. It was more important than ever to ensure the efficiency of the supervisory mechanisms. A strategy for improving the efficiency of the supervisory bodies should take into account the need for technical cooperation and assistance to countries in implementing ratified Conventions. The CEACR should focus more on good practices and ensure the exchange of useful information on the application of standards. More time should be allocated for the Conference Committee on the Application of Standards.
101. According to the representative, the grouping of article 22 report requests by subject had somewhat relieved the burden on member States, but there continued to be redundancies among the report forms. The speaker noted that, in regard to article 19 reports, the selection of relevant and practical subjects for General Surveys might elicit a greater response rate from constituents. Moreover, a revision of the 1998 *Handbook of procedures relating to international labour Conventions and Recommendations* was needed and could be useful in improving the degree to which member States fulfilled their constitutional obligations. Finally, technical cooperation should address problems in countries with regard to the specific circumstances and conditions in the country in question.

102. The representative of the Government of Germany, in response to a suggestion that the Internet could be a useful means of providing information on standards-related issues and on a preceding agenda item – the Handbook on good drafting practices – noted that she did not envisage having much time to participate in virtual Web forums. While it was useful to have information on the Web, substantive discussions of matters before the LILS Committee should still take place through meetings.
103. The representative of the Government of Brazil recalled that information available on the ground should be given greater consideration in order to preserve the credibility of the work of the CEACR.
104. The Worker members reiterated the need for a follow-up to the work of the Cartier Working Party in the same spirit of good faith demonstrated during the seven years of work within the Working Party. They were not averse to continuing discussion, provided issues already settled would not be reopened and the discussions would be based on clear facts and not on perceptions or myths.
105. The Employer members returned to the question of the special supervisory procedure for complaints made under articles 26-29 of the Constitution. Since this issue had already been debated in the Governing Body and no amendments had been deemed necessary, there was no reason for the position on the matter to be changed now. In addition, they shared the opinion of the representative of the Government of Belgium regarding paragraph 41 of the document, which should be made more substantial, at least by adding a reference to the request made by the Governing Body to the Director-General to launch a campaign to ratify the constitutional amendment.
106. The Chairperson concluded that there was a consensus in favour of the Office preparing a new document for November, which should contain ideas for the future strategic orientation for standards and for implementing standards-related policies and procedures. In doing so, it should elaborate on the questions contained in paragraph 40 of document GB.292/LILS/7, taking into account the comments made by the members of the Committee. In view of its usefulness, the present document should be included as an annex to the document for November to serve as a background text for the discussion. It would also be useful for the November meeting of the LILS Committee to begin with an information session using the current document as a basis. In addition, the Chairperson proposed an additional point for decision, according to which the Committee recommends that the Governing Body invite the Director-General to launch, as a priority, a campaign for the ratification or acceptance of the Constitution of the International Labour Organization Instrument of Amendment, 1997.
107. The Worker members recalled that they had made a proposal for a ratification campaign of the priority Conventions, in view of the campaign that was under way for Convention No. 144. They wished this item to be included in the Committee's conclusions.
108. The Employer members reiterated that it was a matter of priority to ensure that the minimum number of 118 ratifications was achieved to bring the constitutional amendment of 1997 into force. This did not mean, however, that other promotional campaigns could not be planned.
109. A representative of the Director-General (Mr. Tapiola, Executive Director of the Standards and Fundamental Principles and Rights Sector) clarified that the document that would be submitted in November would reflect all suggestions that had been made during this session and the proposal for a ratification campaign on the priority Conventions could be included in the document as part of the general strategy for promoting international labour

standards. The possibility of such a campaign would have to be examined in relation to the ILO's means and methods at its disposal for undertaking it.

**110. *The Committee recommends that the Governing Body:***

*(a) invite the Director-General to launch, as a priority, a campaign for the ratification or acceptance of the Constitution of the International Labour Organization Instrument of Amendment, 1997;*

*(b) invite the Office to prepare for its 294th Session (November 2005) a document on improvements in ILO standards-related activities: outlines of a future strategic orientation for standards and for implementing standards-related policies and procedures.*

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

**111.** The Governing Body had before it a document<sup>8</sup> on ILO action concerning discrimination in employment and occupation.

**112.** The Employer members wondered whether there was a need to maintain this report for discussion at every March session of the Governing Body. In their view, the contents of the report did overlap to some extent with the follow-up to the Global Report. This report should perhaps be discussed in the Committee on Technical Cooperation. Given that its purpose was primarily informative, they suggested publishing it on the ILO web site.

**113.** The Worker members disagreed with the suggestion made by the Employer members and stressed that a yearly discussion on the report was important to show the progress made and identify problems with regard to gender discrimination. Merely posting the report on the ILO web site would be counterproductive. While appreciating the overview of ILO activities in the area of discrimination and the increased efforts by governments to combat sexual harassment and discrimination on the basis of HIV/AIDS, they regretted nevertheless the marked increase in discrimination on the basis of political opinion, age and sexual orientation all over the world. Therefore, it would be desirable to have a critical analysis of the main weaknesses encountered in the Office's activities addressing discrimination and an indication of the involvement of constituents in the design and implementation of key activities and programmes.

**114.** With regard to specific issues, the Worker members thanked the Office for the information provided in the report and stressed the importance of moving forward on the shared policy objective on gender equality. They noted the progress made in capacity building of ILO staff and constituents and wished to see more information on the methodology and results of the gender audits undertaken by the Office. More attention should be given to the implementation of the two fundamental ILO Conventions on equality. Work on the Workers with Family Responsibilities Convention, 1981 (No. 156), and the Maternity Protection Convention, 2000 (No. 183), should increase, as these Conventions were crucial to overcome gender discrimination in employment. Valuable work was being undertaken by the International Training Centre of the ILO in Turin (the Turin Centre) to build the capacity of trade unions on gender equality, including on gender and migration, and to promote the adoption of gender policies by Member States of the European Union. There was, however, a need for specific training packages for labour inspectors on gender

<sup>8</sup> GB.292/LILS/8.

discrimination. Given the precariousness of the labour market and its impact on women in export processing zones, they particularly welcomed the InFocus Initiatives on export processing zones and on the informal economy proposed under the Programme and Budget proposals for 2006-07. However, in the current context of restructuring, attention should also be given to age discrimination.

115. While commending the Office on the work done on the linkages between discrimination, forced labour and child labour, for example in Nepal, the Worker members wished to see greater involvement of workers' organizations in the implementation of these programmes. There was a continued need to integrate gender equality fully in all ILO programmes, and more resources should be allocated to workers' and employers' organizations to develop and implement their own gender equality strategies. It was important to look at the interdependence of the four categories of principles and rights at work, especially Conventions Nos. 87 and 98, and to link the promotion of the equality Conventions to other Conventions, such as the Home Work Convention, 1996 (No. 177). The promotion of the 2002 resolution concerning decent work and the informal economy was particularly important to eliminate discrimination against the most vulnerable groups, including women and migrants.
116. The Worker members further acknowledged the work of the Office on discrimination based on racial, ethnic and religious and social origin, which was increasing around the world, and they commended the work of the ILO International Migration Branch. They proposed a mapping of priorities for specific interventions and programmes to empower trade unions on indigenous peoples' issues following positive experiences developed in Canada and Australia. Migration was of concern not only to industrial countries but also to developing countries. The follow-up to the 2004 resolution concerning a fair deal for migrant workers in a global economy, and in particular the preparation of a "non-binding multilateral framework for a rights-based approach to labour migration" would require a strengthened department on international migration, able to respond to increasing demands in this area. The ILO's programmes on migration should place a stronger emphasis on the promotion of the ILO Conventions concerning migrant workers, and the ILO should be seen as an authority in this area.
117. While the speaker welcomed the Office support to governments and the social partners to eliminate discrimination against disabled workers, more assistance could be provided to adopting new strategies on disability and to translate these into national policies. The legal framework should aim to eradicate discrimination and promote equal treatment in employment of disabled workers, including in the informal economy. Workers and employers could use the ILO code of practice *Managing disability in the workplace* adopted in 2001 to develop enterprise programmes aimed at integrating disabled people in the workplace and negotiate the adoption of good practices. ILO action on the adoption of legislation concerning HIV/AIDS had been crucial and the Worker members appreciated the impact of the ILO code of practice *HIV/AIDS and the world of work* on workplace policies. More attention should go, however, to tripartite partnerships to develop joint action plans on HIV/AIDS, and non-discrimination clauses should be included in collective bargaining agreements. The increase of cooperation and joint programmes with other international organizations, particularly the Global Fund to Fight AIDS, Tuberculosis and Malaria, with the full inclusion of the social partners, could also contribute to overcoming discrimination based on HIV/AIDS. Finally, the situation of the Palestinian workers remained deeply worrying and a matter of key concern to the Worker members. It was imperative to overcome fear, distrust and prejudice, and the ILO and the international trade union movement were making major contributions in this regard. It would be useful to identify the priorities and targets for the most vulnerable groups; in addition to women workers, attention should be paid to disabled and older workers. A constructive approach

between the social partners would be a pillar of social peace, and the ILO had considerable assets to contribute to peace and stability in that region.

- 118.** The representative of the Government of Saudi Arabia was concerned that paragraph 33 of the Office document contained only general information largely from the Director-General's 2004 Report to the Conference, *The situation of workers of the occupied Arab territories*. Updated information on discrimination could have been provided from the ILO office in the occupied territories. He stressed the need for technical cooperation and reiterated a request made by his delegation at the March 2004 session for an evaluation of the functioning of the Palestinian Fund for Employment and Social Protection. Finally, he hoped that the Director-General would produce his Report on the situation of men and women workers in the occupied Arab territories as soon as possible.
- 119.** The representative of the Government of Nigeria, speaking on behalf of the Africa group, stated that the discussions held under this item were important and enriching. Merely posting the information contained in the report on the Web would not be desirable. The African countries remained highly committed to the ILO's fundamental principles and rights, and many had ratified the Equal Remuneration Convention, 1951 (No. 100), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). Numerous seminars and training workshops had been held in the African region to promote the equality standards and the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, including specialized training for judges and lawyers. She commended the Office for its efforts with regard to gender mainstreaming, but stressed the continuous need for ILO technical cooperation and assistance to address discrimination on grounds such as race, religion, social origin, disability or HIV/AIDS.
- 120.** A representative of the Director-General (Mr. Tapiola) informed the Committee that the Director-General had constituted the mission team that would shortly travel to the occupied Arab territories.
- 121.** While emphasizing the importance of the topic of the report under discussion, the Employer members reiterated their request to cease discussing it in the LILS Committee.
- 122.** The Worker members stated that government speeches had shown the need for further discussion of this item at the March session of the Governing Body. They reiterated the need for an analysis of the problems that the Office had been encountering in implementing its work on discrimination.
- 123.** The Committee noted the information in the document.

**IX. Form for reports on the application of unratified Conventions (article 19 of the Constitution): The Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105)**

- 124.** The Committee had before it a document<sup>9</sup> on the proposed form for reports on the application of unratified Conventions (article 19 of the Constitution): the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105).

<sup>9</sup> GB.292/LILS/9.

125. The Worker members reaffirmed their confidence in the capacity of the Office to elaborate the report forms. although they had certain comments on the report form, they were of the view that consideration by the LILS Committee of such report forms was not necessarily making the best use of its time.
126. The Employer members expressed the opinion that the questionnaire posed something of a problem, and that it fell within the remit of the Committee to examine the report form. The purpose of this Committee was to examine whether the questionnaire stayed within the scope of the Conventions to which it pertained. The draft questionnaire, which was based on article 19 of the Convention and intended for Members that had not ratified the Conventions, contained questions on matters not covered in the text of those instruments. This was the case, with regard to Convention No. 29, of point I(e)(ii), which concerned work done by prisoners for private enterprises outside prison premises, and of point I(g), which concerned the obligation to perform work as a condition for the payment of unemployment benefit. The same problem arose with regard to point I(d), on the right to strike, in the section of the questionnaire dealing with Convention No. 105.
127. The Worker members confirmed that the ILO Constitution required the Governing Body to decide on the report forms under article 22, but doubted that a similar obligation existed with regard to the report forms under article 19. According to that provision, the Governing Body should only decide on the appropriate time for requesting such reports, but not on their content. They pointed out that the questions included in the questionnaire of the report form reflected the experience accumulated during the whole period of application of the Conventions. The Governing Body should concentrate its discussions on the important issues, such as the difficulties in their implementation and the obstacles preventing their ratification. The Worker members concluded by saying that they trusted the Office and left it to the Office to prepare report forms and ask the correct questions. They accepted the report form as it was presented by the Office, but also expressed their readiness to discuss amendments.
128. The representative of the Government of Canada, while recognizing the importance of the General Survey on Conventions Nos. 29 and 105, which should contribute to the clarification of the principles of the forced labour Conventions, expressed her reservation about the inclusion in the report form of certain questions which did not correspond to the wording of the Conventions. She agreed with the Employer members that subparagraph (d) of Part I of the questionnaire relating to Convention No. 105 should not contain an express reference to the right to strike. She therefore suggested a reformulation of the subparagraph to read: “any conditions under which participation in strikes may be punished by the exaction of forced or compulsory labour”. She stressed that Convention No. 105 had been ratified by Canada, but that the principles contained in Conventions should be respected in drafting report forms.
129. The representative of the Government of Mexico referred to point I(h) of the report form for Convention No. 29, which requested governments to indicate “whether national legislation expressly prohibits trafficking in human beings and indicate the provisions defining this crime, as well as any measures intended to encourage victims to report such cases (protection from reprisals, authorization to remain in the country, etc)”. In her view, the Convention did not mention the subject of trafficking in human beings, and to ask member States to reply to point I(h) would run counter to article 19 of the Constitution, which provides that the report submitted by Members on unratified Conventions shall refer to “the position of its law and practice in regard to the matters dealt with in the Convention”.
130. The representative of the Government of Nigeria, speaking on behalf of the Africa group, observed that certain questions in the report form might raise problems, such as

subparagraphs (e) and (h) of Part I of the questionnaire relating to Convention No. 29. However, they could go along with the point for decision.

- 131.** The representative of the Government of the United States supported the statement of the representative of the Government of Canada concerning the wording of the report form with regard to the right to strike. She suggested amending the report form so that the information requested from governments was directly and strictly related to the Convention. In this particular case, the question should be limited to the information on sanctions involving recourse to forced labour for having participated in strikes, without any reference to the right to strike generally. She pointed out that all the ILO questionnaires should be carefully targeted to elicit the specific information needed.
- 132.** A representative of the Director-General (Ms. Doumbia-Henry), in response to the interventions, said that the report form reflected the comments made by the CEACR. The Office would ensure that all the suggestions made in the course of the discussions were duly taken into account, and subparagraph (d) of Part I of the questionnaire relating to Convention No. 105 would be redrafted accordingly.
- 133.** The Worker members fully agreed with the proposed questionnaire on Convention No. 29. As regards the questionnaire on Convention No. 105, they suggested a new wording of subparagraph (d) as follows: “the right to participate in a strike action without the threat of forced labour as a penalty for so doing”.
- 134.** The Employer members gave two reasons justifying an examination of the report form by the Committee. First, there was a need to verify that the questions asked accurately reflected the provisions of the Conventions concerned, as had been pointed out by the representatives of the Governments of Canada and the United States. Second, it would make it possible to ascertain the views of the governments that would be asked to respond to the questionnaire. As concerned Convention No. 105, the Employers preferred the proposal by the representative of the Government of Canada. Their approval of the report form was conditional on being assured that the aforementioned questions on Convention No. 29 truly reflected its provisions.
- 135.** The Worker members pointed out, as regards subparagraph (d), that a reference to the right to strike in relation to the application of Convention No. 105 was not new and was very widely used in the previous General Survey of 1979 on the abolition of forced labour. They expressed the view that the Committee was not the most efficient body to deal with the matter. Their proposed rewording was a compromise.
- 136.** A representative of the Director-General (Ms. Doumbia-Henry), in response to the interventions, provided clarifications as to the basis for the inclusion of the questions concerning prison labour, trafficking in human beings and an obligation to perform work as a condition for the payment of unemployment benefits. All these questions were based on the CEACR’s comments. Concerning unemployment benefits in particular, this issue had been dealt with in the “mini General Survey” of 1998 and in the 2000 direct request addressed to a country. She also referred to the intervention of the representative of the Government of the United States during the November 2004 session of the Governing Body supporting a General Survey on forced labour, and pointed out that developments with regard to prison labour and trafficking in persons made the subject all the more important.
- 137.** The Employer members stressed that the CEACR was not a tripartite body, and expressed reservations regarding any attempt to extend the obligations arising from Conventions by means of a questionnaire. Besides, it was a matter of common sense: to send a report form containing questions that went beyond the provisions of the Conventions to States that had

not even ratified those Conventions would not help to achieve the desired aim, i.e. the ratification of those Conventions by those States.

138. The Worker members recalled that prison labour was not a new issue and had been discussed already when Convention No. 29 was adopted in 1930.
139. The representative of the Government of Canada said that she could accept the wording suggested by the Worker members, on the understanding that there were two separate issues: the right to strike, on the one hand, and the sanction of forced labour for having participated in strikes, on the other. Not having the right to strike did not in itself constitute forced labour.
140. The representative of the Government of Nigeria expressed the view that, while preparing their replies to questionnaires, the Governments concerned were free to choose their own way of responding, as well as the volume and content of information to be provided.
141. A representative of the Director-General (Ms. Doumbia-Henry) considered that the new wording of subparagraph (d) proposed by the Worker members provided a possibility of a consensus.
142. The Employer members stated that, if agreement had been reached between the representatives of Governments, which would have to reply to the questionnaire, and the Office, which drew up the proposal for the questionnaire, they would not be opposed to its adoption. However, in the future, care should be taken to ensure that questionnaires were worded in a more straightforward manner and adhered strictly to the text of Conventions.
143. A representative of the Director-General (Mr. Tapiola) said that the Office had taken careful note of the discussions in the Committee and stressed the importance of the consultation process in the course of the preparation of the report forms.
144. *The Committee recommends that the Governing Body adopt the report form on the application of unratified Conventions (article 19 of the Constitution): the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105), as amended (see Appendix III).*

#### **X. Form for reports on the application of ratified Conventions (article 22 of the Constitution): The Human Resources Development Convention, 1975 (No. 142)**

145. The Committee had before it a document<sup>10</sup> on the proposed form for reports on the application of a ratified Convention (article 22 of the Constitution): the Human Resources Development Convention, 1975 (No. 142).
146. The Employer members expressed their approval of the form presented by the Office.
147. The Worker members also expressed their approval.
148. The representative of the Government of Nigeria, speaking on behalf of the Africa group, also expressed her support.

<sup>10</sup> GB.292/LILS/10.

149. *The Committee recommends that the Governing Body adopts the report form on the application of ratified Conventions (article 22 of the Constitution): the Human Resources Development Convention, 1975 (No. 142), contained in Appendix IV.*

**XI. Arrangements and procedures under Article 5, paragraphs 6-8, of the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185)**

150. A representative of the Director-General (Ms. Doumbia-Henry) introduced the Office document<sup>11</sup> and the appended "Arrangements concerning the list of Members which fully meet the minimum requirements concerning processes and procedures for the issue of seafarers' identity documents" under Convention No. 185. The arrangements proposed for adoption were an expansion of the outline which had been discussed by the Governing Body at its 291st Session in November 2004. The proposed procedures, which might appear complex, were illustrated by two explanatory flow charts.
151. The Employer members agreed with the proposals contained in the paper and its appendices and with the point for decision.
152. The Worker members noted the progress made in regard to Convention No. 185. The process for the establishment of the list of Members meeting the minimum requirements of the Convention needed to be fair and transparent. The Convention sought to establish a balance between the security concerns of States and the needs of the industry, as well as the human rights of seafarers. It laid down onerous obligations for Members issuing identity documents to seafarers. The issuing State and seafarers holding such documents should reap some benefits from the implementation of the Convention. Seafarers should be treated as partners in maintaining security and not as potential criminals. The Worker members called on Governments, and especially on the United States, to ratify this Convention. This would provide an incentive to other Members to ratify it. The Workers therefore supported the point for decision. They also reminded the Committee of the donor support needed to developing countries in this matter.
153. The representative of the Government of Nigeria, speaking on behalf of the Africa group, stated that the arrangements proposed were in general acceptable. However, she felt that a checklist of the minimum conditions required by the Convention should be attached to the document. She added that many countries required technical assistance in implementing the Convention but the promises made by developed countries had not materialized.
154. The representative of the Government of Canada referred to the exceptional work that had been done in respect of Convention No. 185 and to the fact that the many points raised by her Government had been addressed in the document. She noted that in paragraph 25 of the Arrangements, the Review Group would be responsible for deciding whether the evaluation report submitted by a member State seeking inclusion on the list meets an appropriate standard of independence and reliability. To assist the Group in fulfilling this important mandate, the Office would provide an assessment of the adequacy of the independent evaluation report. Her delegation considered this to be a critical element of the overall monitoring and control mechanisms. She asked whether guidelines would be established to ensure, and if necessary confirm, the independence and subject expertise of the evaluating body or organization. In developing such guidelines, she indicated that the Office should consider the review mechanisms used by other organizations, such as the

<sup>11</sup> GB.292/LILS/11.

International Civil Aviation Organization (ICAO) and the International Organization for Standardization (ISO), to verify quality and control mechanisms. She also raised a question concerning the proposed procedures where a request to remove a Member from the list was received. She noted that the time limits for addressing such requests had not been included. In the interest of encouraging full cooperation with the investigation and timely disposal of cases, her delegation recommended that, where the Review Group had determined that there was a prima facie case justifying removal from the list, as provided for in paragraph 44 of the Arrangements, a ratifying Member could notify the Office of its intention to suspend recognition of the seafarers' identity documents (SIDs) issued by that member State until such time as a final decision was taken by the Governing Body.

- 155.** The representative of the Government of the United Kingdom asked what would happen if there was a tie in a vote within the Special Review Board. He suggested that the Chairperson could have a casting vote.
- 156.** A representative of the Director-General (Ms. Doumbia-Henry) replied to the points raised. A checklist could be added as requested by the Government of Nigeria on behalf of the Africa group. As for the point raised by the representative of the Government of Canada, she considered that States could take action, under Article 5, paragraph 9, of the Convention, not to recognize SIDs from certain countries even before a decision by the Governing Body. However, they would be on safer ground if there had been such a decision. The Review Group's conclusion that there was a prima facie case for the removal of a Member from the list would certainly be an element to be taken into account by States considering interim suspension measures as regards recognition of SIDs from the country concerned. Where the evidence went beyond a prima facie case, the Review Group might be encouraged to clearly state its conclusion that the minimum requirements were not being fully respected, thus providing reasonable grounds for measures to provisionally suspend recognition. She also referred to the possibility for a Member, when making a request for suspension, to ask that it be handled as a matter of urgency. As regards the assessment of the independence and qualifications of bodies performing independent evaluations, the Office intended to develop guidelines. The Office was preparing a number of other documents for the benefit of Members, such as concepts of operation, procurement documents, etc. With regards to much-needed technical cooperation in the implementation of the Convention, the Office was organizing a donors' meeting on 28 April 2005 and a demonstration of SID systems by vendors during the Tripartite Intersessional Meeting on the Follow-up of the Preparatory Technical Maritime Conference, to be held from 21 to 27 April 2005.
- 157.** After some discussion, the Committee agreed that a checklist should be added as suggested by the representative of the Government of Nigeria on behalf of the Africa group. It was also agreed that the following sentence would be added to paragraph 18 of the Arrangements, thus clarifying the procedure in the event of a tied vote in the Special Review Board: "In the event of an equally split vote, the Chairperson shall have an additional casting vote".
- 158. *The Committee recommends that the Governing Body:***
- (a) approve the Arrangements, as amended, set out in Appendix V of this report; and*
  - (b) take note of the elements contained in Appendices VI and VII of this report.*

## XII. Other question

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

159. A representative of the Director-General (Mr. Tapiola) summarized the questions that would be put before the Committee at its next session. They were as follows: Compendium of rules governing the Governing Body; progress in the work to adapt the Manual for drafting ILO instruments; improvements in the standards-related activities of the ILO; outlines of a future strategic orientation for standards and for implementing standards-related policies and procedures; form for the reports on the application of ratified Conventions (article 22 of the Constitution): the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185); and ratification and promotion of fundamental ILO Conventions.

Geneva, 22 March 2005.

*Points for decision:* Paragraph 21  
Paragraph 30  
Paragraph 39  
Paragraph 53  
Paragraph 59  
Paragraph 110  
Paragraph 144  
Paragraph 149  
Paragraph 158.

## Appendix I

### INTERNATIONAL LABOUR OFFICE Geneva, [year]

#### MEMORANDUM CONCERNING THE OBLIGATION TO SUBMIT CONVENTIONS <sup>1</sup> AND RECOMMENDATIONS TO THE COMPETENT AUTHORITIES

##### Article 19 of the Constitution of the International Labour Organisation

*Paragraphs 5, 6 and 7 of article 19 of the Constitution of the International Labour Organisation, concerning the obligation to submit to the competent authorities the Conventions and Recommendations adopted by the Conference, are as follows:*

“5. In the case of a Convention –

- (a) the Convention will be communicated to all Members for ratification;
- (b) each of the Members undertakes that it will, within the period of one year at most from the closing of the session of the Conference, or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than 18 months from the closing of the session of the Conference, bring the Convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action;
- (c) Members shall inform the Director-General of the International Labour Office of the measures taken in accordance with this article to bring the Convention before the said competent authority or authorities, with particulars of the authority or authorities regarded as competent, and of the action taken by them;

.....  
6. In the case of a Recommendation –

- (a) the Recommendation will be communicated to all Members for their consideration with a view to effect being given to it by national legislation or otherwise;
- (b) each of the Members undertakes that it will, within a period of one year at most from the closing of the session of the Conference, or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than 18 months after the closing of the Conference, bring the Recommendation before the authority or authorities within whose competence the matter lies for the enactment of legislation or other action;
- (c) the Members shall inform the Director-General of the International Labour Office of the measures taken in accordance with this article to bring the Recommendation before the said competent authority or authorities, with particulars of the authority or authorities regarded as competent, and of the action taken by them;

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

- (a) in respect of Conventions and Recommendations which the federal Government regards as appropriate under its constitutional system for federal action, the obligations of the federal State shall be the same as those of Members which are not federal States;

<sup>1</sup> The term “Convention” also refers to any Protocol adopted by the International Labour Conference in accordance with article 19 of the Constitution of the ILO.

- (b) in respect of Conventions and Recommendations which the federal Government regards as appropriate under its constitutional system, in whole or in part, for action by the constituent states, provinces, or cantons rather than for federal action, the federal Government shall –
  - (i) make, in accordance with its Constitution and the constitutions of the states, provinces or cantons concerned, effective arrangements for the reference of such Conventions and Recommendations not later than 18 months from the closing of the session of the Conference to the appropriate federal, state, provincial or cantonal authorities for the enactment of legislation or other action;
  - (ii) arrange, subject to the concurrence of the state, provincial or cantonal governments concerned, for periodical consultations between the federal and the state, provincial or cantonal authorities with a view to promoting within the federal State coordinated action to give effect to the provisions of such Conventions and Recommendations;
  - (iii) inform the Director-General of the International Labour Office of the measures taken in accordance with this article to bring such Conventions and Recommendations before the appropriate federal, state, provincial or cantonal authorities with particulars of the authorities regarded as appropriate and of the action taken by them;”

.....  
*In response to a request made by the Conference at its 36th Session (1953) and without prejudice to the authority of the International Court of Justice under article 37 of the ILO Constitution, the Governing Body of the International Labour Office established this Memorandum in 1954, more particularly in order to assist Governments in carrying out their constitutional obligations in this field and to facilitate the communication along uniform lines of the information requested.*

*Following suggestions made by the Conference Committee on the Application of Conventions and Recommendations, the Governing Body amplified the text of the Memorandum in 1958, and revised it in 1980 and, again, in 2005 in order to take into account subsequent developments.*

*The Memorandum does not impose new obligations on member States in addition to those provided for in the ILO Constitution, but is designed to draw their attention to comments of the Committee of Experts on the Application of Conventions and Recommendations and of the Conference Committee on the Application of Conventions and Recommendations concerning measures that appear necessary or desirable in the matter. The comments contained in the Memorandum have been chosen by the Governing Body which, in some cases, edited them in order to standardize the terminology used. The Memorandum also includes a questionnaire for the purpose of obtaining information on the measures taken.*

**Members are requested to take into account, as far as possible and in the interest of the implementation of Conventions and Recommendations, the points given below and to supply information in reply to the questions listed at the end of this Memorandum.**

**If the Committee of Experts or the Conference Committee on the Application of Conventions and Recommendations has requested additional information or has made an observation on the measures taken to submit Conventions and Recommendations to the competent authorities, please supply the information asked for or indicate the action taken by your government to settle the points in question in accordance with the requirements of the ILO Constitution.**

#### I. AIMS AND OBJECTIVES OF SUBMISSION

- (a) The main aim of submission is to promote measures at the domestic level for the implementation of Conventions and Recommendations. Furthermore, in the case of Conventions, the procedure also aims to promote ratification.<sup>2</sup>

<sup>2</sup> See International Labour Conference (ILC), 64th Session (1978), Report III (Part 4A), General Report, para. 115.

- (b) Governments remain entirely free to propose any action which they may judge appropriate in respect of Conventions or Recommendations. The aim of submission is to encourage a rapid and responsible decision by each member State on instruments adopted by the Conference.<sup>3</sup>
- (c) The obligation of submission is a fundamental element of the standards system of the ILO. One purpose of this obligation was, and still is, that the instruments adopted by the Conference are brought to the knowledge of the public through their submission to a parliamentary body.<sup>4</sup>
- (d) The obligation of submission reinforces the relations between the Organization and the competent authorities and stimulates tripartite dialogue at the national level.<sup>5</sup>

## II. NATURE OF THE COMPETENT AUTHORITY

- (a) The competent authority is the authority which, under the Constitution of each State, has power to legislate or to take other action in order to implement Conventions and Recommendations.<sup>6</sup>
- (b) The competent national authority should normally be the legislature.<sup>7</sup>
- (c) Even in cases where, under the terms of the Constitution of the Member, legislative power is held by the executive, it is in conformity with the spirit of the provisions of article 19 of the Constitution of the ILO and of practice to arrange for the examination of the instruments adopted by the Conference by a deliberative body, where one exists. Discussion in a deliberative assembly, or at least information of the assembly, can constitute an important factor in the complete examination of a question and in a possible improvement of the measures taken at the domestic level to give effect to the instruments adopted by the Conference.<sup>8</sup> With respect to Conventions, it could lead to a decision as to their ratification.<sup>9</sup>
- (d) In the absence of a parliamentary body, informing a consultative body makes it possible to carry out a full examination of the issues addressed by the Conference. This process ensures that the instruments are widely disseminated among the public, which is one of the purposes of the obligation of submission.<sup>10</sup>

<sup>3</sup> See ILC, 87th Session (1999), Report III (Part 1A), General Report, para. 221.

<sup>4</sup> See ILC, 89th Session (2001), Report III (Part 1A), General Report, para. 221.

<sup>5</sup> See ILC, 92nd Session (2004), Report III (Part 1A), General Report, para. 85.

<sup>6</sup> See ILC, 46th Session (1962), *Record of Proceedings*, Third Part, Appendix VI (*Report of the Committee on the Application of Conventions and Recommendations*), para. 39.

<sup>7</sup> See ILC, 64th Session (1978), Report III (Part IVA), para. 122; ILC, 29th Session (1946), Report II(1): *Constitutional questions*, Part 1 (Reports of the Conference delegation on constitutional questions), para. 43; ILC, 87th Session (1999), Report III (Part 1A), General Report, para. 219.

<sup>8</sup> See ILC, 88th Session (2000), Report III (Part 1A), General Report, para. 114.

<sup>9</sup> See ILC, 64th Session (1978), Report III (Part IV), General Report, para. 124.

<sup>10</sup> See ILC, 92nd Session (2004), Report III (Part 1A), General Report, para. 87.

### III. EXTENT OF THE OBLIGATION TO SUBMIT

- (a) Article 19 of the Constitution lays down the obligation to place before the competent authorities *all* instruments adopted by the Conference without exception and without distinction between Conventions and Recommendations.<sup>11</sup>
- (b) Governments have complete freedom as to the nature of the proposals to be made when submitting the instruments and on the effect that they consider it appropriate to give to the instruments adopted by the Conference. The obligation to submit the instruments does not imply any obligation to propose the ratification of Conventions or to accept the Recommendations.<sup>12</sup>

### IV. FORM OF SUBMISSION

- (a) Since article 19 of the Constitution is clearly aimed at obtaining a decision from the competent authorities, the submission of Conventions and Recommendations to these authorities should always be accompanied or followed by a statement or proposals setting out the Government's views as to the action to be taken on the instruments.<sup>13</sup>
- (b) The essential points to bear in mind are: (a) that, at the time of or subsequent to the submission of Conventions and Recommendations to the legislative authorities, Governments should either indicate what measures might be taken to give effect to these instruments or propose that no action should be taken or that a decision should be postponed; and (b) that there should be an opportunity to take up the matter for debate within the legislature.<sup>14</sup>

### V. TIME LIMITS

- (a) In order that the competent national authorities may be kept up to date on the standards adopted at the international level which may require action by each State to give effect to them at the national level, submission should be made as early as possible and in any case within the time limits set by article 19 of the Constitution.<sup>15</sup>
- (b) In virtue of the formal provisions of article 19 of the Constitution, the submission of texts adopted by the Conference to the competent authorities must be effected within one year or, in exceptional circumstances, not longer than 18 months from the close of the session of the Conference.<sup>16</sup> This provision applies not only to non-federal but also to federal States; in the case of the latter, the period of 18 months is applicable only in respect of Conventions and Recommendations which the federal Government considers to be appropriate for action by the constituent states, provinces or cantons. In order that it may be possible to ascertain that States Members have respected the prescribed time limits, the Committee considers that it would be advisable for the date on which the decisions of the Conference have been

<sup>11</sup> See ILC, 64th Session (1978), Report III (Part 1A), para. 129.

<sup>12</sup> See ILC, 88th Session (2000), Report III (Part 1A), General Report, para. 120.

<sup>13</sup> See ILC, 40th Session (1957), *Record of Proceedings*, Appendix VI, para. 45.

<sup>14</sup> See ILC, 42nd Session (1958), Report III (Part IV), para. 43.

<sup>15</sup> See ILC, 87th Session (1999), Report III (Part 1A), General Report, para. 221.

<sup>16</sup> The time limits provided for in article 19, paragraphs 5(b) and 6(b), of the Constitution do not apply to the provision of information under paragraphs 5(c) and 6(c), or to decisions of the competent authorities.

submitted to the competent authorities to be indicated in the communication to the Director-General.<sup>17</sup>

## VI. OBLIGATIONS OF FEDERAL STATES

As regards federal States, the Committee wishes to point out that under article 19 of the Constitution, paragraph 7(b)(i), whenever action by the constituent states, provinces or cantons is considered “appropriate”, the Government must make effective arrangements for the reference of Conventions and Recommendations adopted by the Conference to the “appropriate authorities” of the constituent states, provinces or cantons for the enactment of legislation or other action.<sup>18</sup>

## VII. TRIPARTITE CONSULTATIONS

- (a) For those States which have already ratified the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), effective consultations have to be held on the proposals made to the competent authorities when submitting the instruments adopted by the Conference (Article 5, paragraph 1(b), of Convention No. 144).<sup>19</sup>
- (b) The representative organizations of employers and workers must be consulted beforehand.<sup>20</sup> The effectiveness of consultations presupposes that the representatives of employers and of workers have at their disposal sufficiently in advance all the elements necessary for them to reach their opinions before the Government finalizes its definitive decision.<sup>21</sup>
- (c) Members which have not ratified Convention No. 144 may refer to the relevant provisions of that Convention and to those of the Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152).<sup>22</sup>
- (d) The representative organizations of employers and workers will be requested to make known their point of view on the action to be taken with regard to new instruments independently.<sup>23</sup> Fulfilment of the submission procedure is an important moment of dialogue among government authorities, the social partners and parliamentarians.<sup>24</sup>

## VIII. COMMUNICATION TO THE REPRESENTATIVE ORGANIZATIONS OF EMPLOYERS AND WORKERS

- (a) Under article 23, paragraph 2, of the Constitution, the information communicated to the Director-General on submission to the competent authorities must be sent also to the representative organizations of employers and workers.<sup>25</sup>

<sup>17</sup> See ILC, 36th Session (1953), Report III (Part IV), para. 46(d).

<sup>18</sup> See ILC, 36th Session (1953), Report III (Part IV), para. 46(e).

<sup>19</sup> See ILC, 92nd Session (2004), Report III (Part 1A), General Report, para. 89.

<sup>20</sup> See ILC, 88th Session (2000), Report III (Part 1B: *Tripartite consultation*), para. 85.

<sup>21</sup> See ILC, 88th Session (2000), Report III (Part 1A), General Report, para. 115.

<sup>22</sup> See ILC, 88th Session (2000), Report III (Part 1A), General Report, para. 115.

<sup>23</sup> See ILC, 88th Session (2000), Report III (Part 1B: *Tripartite consultation*), para. 86.

<sup>24</sup> See ILC, 92nd Session (2004), Report III (Part 1A), General Report, para. 89.

<sup>25</sup> See ILC, 36th Session (1953), Report III (Part IV), General Report, para. 46(f).

- (b) This provision is designed to enable the representative organizations of employers and workers to formulate their own observations on the action that has been taken or is to be taken with regard to the instruments in question.<sup>26</sup>

<sup>26</sup> See ILC, 89th Session (2001), Report III (Part 1A), General Report, para. 223.

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*QUESTIONNAIRE*

**Unitary States**

- I.** (a) Please indicate what authority or authorities are competent in the matter as regards each Convention or Recommendation on which information is requested.
- (b) Please indicate what is the legislative body according to the Constitution or basic law of your country.
- II.** (a) Please indicate the date on which the Conventions and Recommendations concerned were submitted to the competent authorities for the enactment of legislation or other action.
- (b) Please indicate whether, at the time of submitting the Conventions and Recommendations to the legislative body, the Government tabled any proposals in the said body, on the measures which might be taken for the enactment of legislation or other action.
- (c) Please attach duplicate copies, if possible, or supply information on the substance of the document or documents by means of which the Conventions and Recommendations were submitted, and of any proposals which may have been made.
- III.** If it has not been possible to submit the Conventions and Recommendations, please indicate the exceptional circumstances which prevented the Government from submitting the said Conventions and Recommendations to the competent authorities within the prescribed date limits.
- IV.** Please indicate the contents of the decision taken by the competent authority or authorities on the instruments which were submitted to them.
- V.** Please indicate whether prior tripartite consultations took place and, if applicable, the nature of those consultations.
- VI.** Please indicate the representative organizations of employers and workers to which the information submitted to the Director-General has been communicated.
- Please state whether you have received from the organizations of employers or workers concerned any observations concerning the effect given or to be given, to the instrument (or instruments) to which this information relates.

**Federal States**

- VII.** Please indicate – with regard to each one of the Conventions and Recommendations on which information is requested – whether the federal Government regards them as appropriate under its constitutional system for federal action or whether, on the other hand, it regards them as appropriate in whole or in part for action by the constituent states, provinces or cantons.
- VIII.** In the former case (federal action) please supply the information requested under “Unitary States” in paragraphs I to IV.
- IX.** In the latter case (action in whole or in part by the constituent states, provinces or cantons) please indicate what measures have been adopted with a view to submitting each one of the Conventions and Recommendations on which information is requested to the appropriate federal, state, provincial or cantonal authorities for the enactment of legislation or other action, and supply the relevant information on the authorities considered as appropriate and the measures taken by them.
- X.** Please indicate in all cases whether prior tripartite consultations took place and, if applicable, the nature of those consultations.

**XI. Please indicate in all cases the representative organizations of employers and workers to which the information submitted to the Director-General has been communicated.**

**Please state whether you have received from the organizations of employers or workers concerned any observations concerning the effect given, or to be given, to the instrument (or instruments) to which this information relates.**

## Appendix II

### Draft resolution concerning the flag of the International Labour Organization

The General Conference of the International Labour Organization,

Mindful of the necessity to allow the Organization to be given the visibility it might need,

Noting that other international organizations of the United Nations system have adopted, through their competent organs, flags carrying their respective emblems,

Considering that the emblem, approved by the Director-General in Instruction No. 325 of 1 September 1967, is universally recognized as the International Labour Organization's logo,

Noting that the Governing Body of the International Labour Office has adopted the Code and the regulations for the use of the flag of the International Labour Conference under the reservation that they come into force after the adoption of this resolution,

1. decides that a flag of the International Labour Organization is adopted which bears the emblem symbolizing tripartism and approved by the Director-General in Instruction No. 325 of 1 September 1967;
2. takes note of the Code and regulations for the use of the flag of the International Labour Organization adopted by the Governing Body.

## Annex

### (a) Draft flag code of the International Labour Organization

#### 1. *Design of flag*

The flag of the International Labour Organization shall be the official emblem of the International Labour Organization centred on a United Nations blue background, as approved by the Director-General on 1 September 1967. Such emblem shall appear in white on both sides of the flag except where otherwise prescribed by the regulations. The flag shall be made in such sizes as may, from time to time, be prescribed by the regulations.

#### 2. *Dignity of flag*

The flag shall not be subjected to any indignity.

#### 3. *Flag protocol*

1. The flag of the International Labour Organization shall not be subordinated to any other flag.
2. The manner in which the flag of the International Labour Organization may be flown, in relation to any other flag, shall be prescribed in the regulations.

#### 4. *Use of flag by the International Labour Organization*

1. The flag shall be flown:
  - (a) from all buildings, offices and other property occupied by the International Labour Organization;
  - (b) from any official residence when such residence has been so designated by regulation;

- (c) the flag shall be used by any unit acting on behalf of the International Labour Organization such as any committee or commission or other entity established by the International Labour Organization, in such circumstances not covered in this code as may become necessary in the interests of the International Labour Organization.

## **5. Use of flag generally**

The flag may be used in accordance with this flag code by Governments, organizations and individuals to demonstrate support of the International Labour Organization and to further its principles and purposes. The manner and circumstances of display shall conform, in so far as appropriate, to the laws and customs applicable to the display of the national flag of the country in which the display is made.

## **6. Prohibition**

The flag shall not be used in any manner inconsistent with this code or its regulations. On no account shall the flag or a replica thereof be used for commercial purposes or in direct association with an article of merchandise. The Director-General, subject to the approval of the Officers of the Governing Body, may deviate from this principle in special circumstances, such as the celebration of an anniversary of the Organization.

## **7. Mourning**

The Director-General shall prescribe by regulation or otherwise the cases in which the flag shall be flown at half mast as sign of mourning.

## **8. Manufacture and sale of flag**

1. The flag may be manufactured for commercial purposes only upon written consent of the Director-General.
2. Such consent shall be subject to the following condition:

The manufacturer shall ensure that every purchaser of the flag receives a copy of this code and the regulations for implementing it and is informed of the conditions, set out in this code and its regulations, on which the flag may be used.

## **9. Violation**

Any violation of this flag code and its regulations shall be punished in accordance with the laws of the country in which it takes place.

## **10. Regulations and amendments**

The Governing Body, upon the Director-General's proposal, is empowered to make or revise the regulations for implementing this code and to amend the code, as appropriate.

### **(b) Draft regulations for the use of the flag of the International Labour Organization**

These regulations are issued in pursuance of article 10 of the International Labour Organization flag code.

#### **I. DIMENSIONS OF FLAG**

1. In pursuance to Article 1 of the flag code the proportions of the International Labour Organization flag shall be:
  - (a) hoist (width) of the International Labour Organization flag – 2;  
flag (length) of the International Labour Organization flag – 3;

or

- (b) hoist (width) of the International Labour Organization flag – 3;  
flag (length) of the International Labour Organization flag – 5:

or

- (c) the same proportions as those of the national flag of any country in which the International Labour Organization flag is flown.
2. The emblem shall in all cases be one-half of the hoist of the International Labour Organization flag and entirely centred.

## II. FLAG PROTOCOL

The International Labour Organization flag may be displayed as follows:

### 1. General provisions

- (a) The International Labour Organization flag may be displayed alone or with one or more other flags.
- (b) When the International Labour Organization flag is displayed with one or more other flags, all the flags must be displayed on the same level and be of approximately equal size.
- (c) On no account may any flag displayed with the International Labour Organization flag be displayed on a higher level than the International Labour Organization flag or be larger than it.
- (d) The International Labour Organization flag may be displayed on either side of any other flag without being deemed to be subordinated to any such flag within the meaning of Article 3, paragraph 1, of the International Labour Organization flag code.
- (e) The International Labour Organization flag should normally only be displayed on a building or flagstaff from sunrise to sunset. The International Labour Organization flag may also be displayed at night in exceptional cases.
- (f) The International Labour Organization flag should never be used as drapery of any sort, never festooned, drawn back, nor up, in folds, but always allowed to fall free.

### 2. Closed circle of flags

Other than in a circle of the flags of the United Nations and other specialized agencies, the International Labour Organization flag should not, in principle, be made part of a circle of flags. When flags are placed in a circle, the flags, other than the International Labour Organization flag, should be displayed in the French alphabetical order of the countries represented reading clockwise. The International Labour Organization flag should always be displayed on the flagpole in the centre of the circle of flags or in an appropriate adjoining area.

### 3. Line, cluster or semicircle of flags

In line, cluster or semicircle groupings all flags other than the International Labour Organization flag shall be displayed in the French alphabetical order of the countries represented starting from the left. In such cases, the International Labour Organization flag should either be displayed separately in an appropriate area or in the centre of the line, cluster or semicircle or, in cases where two International Labour Organization flags are available, at both ends of the line, cluster or semicircle.

### 4. National flag of the country in which the International Labour Organization flag is displayed

- (a) The national flag of the country should appear in its normal position according to the French alphabetical order of the countries.
- (b) When the country concerned wishes to make a special display of its national flag, the flags should be arranged in a line, cluster or semicircle and the national flag placed at each end of the line, cluster or semicircle separated from the grouping by an interval of not less than one-fifth of the total length of the line.

## III. USE OF FLAG GENERALLY

1. Under article 5 of the International Labour Organization flag code, the International Labour Organization flag may be used to demonstrate the support of the International Labour Organization and to further its principles and purposes.
2. It is considered especially appropriate that the International Labour Organization flag should be displayed on the following occasions:
  - (a) on the national day of the country in which the flag is displayed;
  - (b) on the occasion of any official event, particularly in honour of the International Labour Organization; and
  - (c) on the occasion of any official event which might or is desired to be related in some way to the International Labour Organization.

#### IV. PROHIBITIONS

1. In accordance with article 6 of the International Labour Organization flag code, on no account shall the International Labour Organization flag or replica thereof be used for commercial purposes or in direct association with an article of merchandise.
2. Furthermore, neither the International Labour Organization flag nor any replica thereof shall be stamped, engraved or otherwise affixed on any stationery, books, magazines, periodicals or other publications of any nature whatsoever in a manner such as could imply that any such stationery, books, magazines, periodicals or other publications were published by or on behalf of the International Labour Organization unless such is in fact the case or in a manner such as has the effect of advertising a commercial product.
3. Subject to the provisions of paragraph 2 of this section, and with the exception of articles manufactured for presentation or sale to participants in the various meetings of the International Labour Organization, neither the International Labour Organization flag nor any replica thereof should be affixed in any manner on any article of any kind. Subject to the same exceptions, the International Labour Organization flag should not be reproduced on articles made of cloth, leather, material, synthetic material, etc. The International Labour Organization flag may be manufactured in the form of a lapel button.
4. Subject to the special cases mentioned in paragraphs 2 and 3, no mark, insignia, letter, word, figure, design, picture or drawing of any nature shall ever be placed upon or attached to the International Labour Organization flag or placed upon any replica thereof.

#### V. MOURNING

1. In accordance with article 7 of the International Labour Organization flag code, whenever the Director-General of the International Labour Organization proclaims that the International Labour Organization is in official mourning, the International Labour Organization flag, wherever displayed, shall mark such an event by being flown at half mast during the period of official mourning.
2. Heads of offices and heads of International Labour Organization missions away from headquarters are authorized by the Director-General to lower the International Labour Organization flag to half mast in cases where they wish to follow official mourning in the country in which such offices or missions have their headquarters.
3. The International Labour Organization flag when displayed at half mast should first be hoisted to the peak for an instant and then lowered to the half mast position. The flag should again be raised to the peak before it is lowered for the day. By "half-mast" is meant lowering the flag to one-half the distance between the top and bottom of the mast.
4. Crepe streamers may be affixed to flagstaves flying the International Labour Organization flag in a funeral procession only by order of the Director-General of the International Labour Organization.
5. When the International Labour Organization flag is used to cover a casket, it should not be lowered into the grave or allowed to touch the ground.

## Appendix III

Appl. 19  
C. 29, C. 105

INTERNATIONAL LABOUR OFFICE  
REPORTS ON  
UNRATIFIED CONVENTIONS AND RECOMMENDATIONS

*(Article 19 of the Constitution of the  
International Labour Organization)*

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REPORT FORM FOR THE FOLLOWING INSTRUMENTS:  
FORCED LABOUR CONVENTION,  
1930 (No. 29)  
ABOLITION OF FORCED LABOUR CONVENTION,  
1957 (No. 105)

Geneva

2005

INTERNATIONAL LABOUR OFFICE

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

5. In the case of a Convention:

...

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

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

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

...

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

...

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

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

Forced Labour Convention, 1930 (No. 29), and Abolition of Forced Labour Convention, 1957 (No. 105)

## Forced Labour Convention, 1930 (No. 29)

- I. Please indicate the manner in which effect is given to the Convention in your country in law and in practice.
  - (a) Please indicate in particular the provisions of the national Constitution, penal or labour law, or specific laws, that prohibit the exaction of forced or compulsory labour, and any provisions that provide for penal or other sanctions.
  - (b) Please indicate whether in your country practices have been identified that constitute or could constitute cases of forced labour within the meaning of the Convention.
  - (c) Please provide copies of any national legislation concerning compulsory military service, civic obligations, compulsory work in cases of emergency, and communal work.
  - (d) Please indicate any restrictions placed on the freedom of workers to leave their employment, subject to a reasonable period of notice, in particular in the public service and in essential services.
  - (e) Please provide information on law and practice with regard to prison labour:
    - please indicate whether legislation provides for compulsory prison labour and whether such labour is required of persons convicted by a court or in accordance with an administrative decision;
    - please indicate the organization of and arrangements for prison labour employed by private individuals or enterprises, including:
      - (i) work done by prisoners for private individuals or enterprises established within prison premises;
      - (ii) work done by prisoners for private enterprises outside prison premises;
      - (iii) work done by prisoners in prisons administered by private enterprises, or outside prisons under the authority of the enterprises in question or of other enterprises;
      - (iv) the conditions of employment in any of the forms indicated above, with regard to the consent of the prisoner, remuneration, safety and health and social security.
  - (f) Please indicate whether laws or regulations provide for sentences involving work in the general interest, communal work, etc., in particular with regard to the alternative nature of the work in question, the consent of the person concerned, and the bodies for whose benefit such work is performed.
  - (g) Please indicate whether national legislation includes provisions concerning any obligation to perform work as a condition for the payment of unemployment benefit.
  - (h) Please indicate whether national legislation expressly prohibits trafficking in human beings and indicate the provisions defining this crime, as well as any measures intended to encourage victims to report such cases (protection from reprisals, authorization to remain in the country, etc.).
- II. (a) Please indicate any difficulties presented by the Convention, in national law or practice, or any other reasons which prevent or delay ratification of the Convention, and any measures taken or envisaged to overcome these obstacles.
  - (b) Please indicate whether ratification is envisaged and, if so, how soon.
- III. Please indicate the representative organizations of employers and workers to which copies of the present report have been communicated in accordance with article 23, paragraph 2, of the Constitution of the International Labour Organization.

IV. Please indicate whether you have received from organizations of employers or workers any observation on the effect given or to be given to the Convention.

### **Abolition of Forced Labour Convention, 1957 (No. 105)**

- I. Please give a general indication on the extent to which the Convention is given effect in your country in law and practice, and include copies of the national legislation governing the following matters:
- (a) the rights and freedoms of expression, assembly and association, including any provisions of law limiting these rights and freedoms that are enforceable with penal sanctions involving penal labour, deprivation of liberty, and re-education through labour, as well as the legislation governing the performance of penal or prison labour and any provisions exempting specific categories of convicted prisoners from the obligation to perform prison labour;
  - (b) national service obligations (civil and military);
  - (c) labour discipline, including specific provisions governing public servants, essential services and seafarers;
  - (d) the right to participate in a strike action without the threat of forced labour as a penalty for so doing;
  - (e) any provisions of administrative or penal law involving an obligation to perform work or service, or enforceable with sanctions involving such an obligation, that establish a distinction on the basis of racial, social, national or religious criteria.
- II. (a) Please indicate any difficulties presented by the Convention, in legislation or national practice, or any other reasons which prevent or delay the ratification of the Convention and any measures taken or envisaged to overcome these obstacles.
- (b) Please indicate whether ratification of the Convention is envisaged and, if so, how soon.
- III. Please indicate the representative organizations of employers and workers to which copies of the present report have been communicated in accordance with article 23, paragraph 2, of the Constitution of the International Labour Organization.
- IV. Please indicate whether you have received from organizations of employers or workers any observations on the effect given or to be given to the Convention.

## Appendix IV

### Report form for the Human Resources Development Convention, 1975 (No. 142)

The present report form is for the use of countries which have ratified the Convention. It has been approved by the Governing Body of the International Labour Office, in accordance with article 22 of the ILO Constitution, which reads as follows: "Each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of the Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request."

The Government may deem it useful to consult the appended text of the Human Resources Development Recommendation, 2004 (No. 175), which revises and replaces the Human Resources Development Recommendation, 1975 (No. 150), and whose provisions may facilitate the application of the Convention.

The subject-matter of the Convention may go beyond the immediate competence of the ministry responsible for labour matters, so that the preparation of a full report on the Convention may require consultation with the other ministries or government agencies concerned, such as those responsible for agriculture.

#### ***Practical guidance for drawing up reports***

##### First reports

If this is your Government's first report following the entry into force of the Convention in your country, full information should be given on each of the provisions of the Convention and on each of the questions set out in the report form.

##### Subsequent reports

In subsequent reports, information need normally be given only:

- (a) on any new legislative or other measures affecting the application of the Convention;
- (b) in reply to the questions in the report form on the practical application of the Convention (for example, statistics, results of inspections, judicial or administrative decisions) and on the communication of copies of the report to the representative organizations of employers and workers and on any observations received from these organizations;
- (c) **in reply to comments by the supervisory bodies:** the report must contain replies to any comments regarding the application of the Convention in your country which have been made by the Committee of Experts on the Application of Conventions and Recommendations or by the Conference Committee on the Application of Standards.

## Article 22 of the Constitution of the ILO

Report for the period ..... to .....  
made by the Government of .....

on the

### Human Resources Development Convention, 1975 (No. 142)

(ratification registered on .....

- I. Please give a list of the principal policy statements, legislative texts, administrative regulations, etc., which contain specific provisions aiming at comprehensive and co-ordinated policies and programmes of vocational guidance and vocational training as defined in the Convention. Where this has not already been done, please forward copies of the various provisions, policy statements, etc., to the International Labour Office with this report.

In so far as there exist measures other than policy statements, legislation, administrative regulations, etc., which are relevant to the implementation of the Convention, please indicate their nature.

Please give any available information concerning the extent to which any laws and regulations have been enacted or modified or any other measures taken to permit, or as a result of, ratification.

- II. Please indicate in detail *for each of the following Articles of the Convention* the provisions of the abovementioned laws or regulations, etc., or other measures under which the Article is applied.

If in your country ratification of the Convention gives the force of national law to its terms, please indicate by virtue of what constitutional provisions the ratification has this effect. Please also specify what action has been taken to make effective those provisions of the Convention which require a national authority to take certain specific steps for its implementation.

If the Committee of Experts or the Conference Committee on the Application of Standards has requested additional information or has made an observation on the measures adopted to apply the Convention, please supply the information asked for or indicate the action taken by your Government to settle the points in question.

### Article 1

1. Each Member shall adopt and develop comprehensive and co-ordinated policies and programmes of vocational guidance and vocational training, closely linked with employment, in particular through public employment services.

2. These policies and programmes shall take due account of:

- (a) employment needs, opportunities and problems, both regional and national;
- (b) the stage and level of economic, social and cultural development; and
- (c) the mutual relationships between human resources development and other economic, social and cultural objectives.

3. The policies and programmes shall be pursued by methods that are appropriate to national conditions.

4. The policies and programmes shall be designed to improve the ability of the individual to understand and, individually or collectively, to influence the working and social environment.

5. The policies and programmes shall encourage and enable all persons, on an equal basis and without any discrimination whatsoever, to develop and use their capabilities for work in their

own best interests and in accordance with their own aspirations, account being taken of the needs of society.

*Paragraphs 1-4. Please describe the existing machinery for the development of comprehensive and coordinated policies and programmes of vocational guidance and vocational training, indicating, in particular, the way in which effective coordination is assured and the manner in which the policies and programmes are linked with employment and the public employment services.*

*Please list any relevant coordinating bodies or authorities, indicating their composition, status, terms of reference and functions.*

*Please describe the policies and programmes currently being implemented and indicate in what manner account is taken of the factors mentioned in paragraphs 2-4.*

*Paragraph 5. Please indicate the measures taken with a view to encouraging and enabling all persons, on an equal basis and without any discrimination whatsoever, to develop and use their capabilities for work in their own best interests and in accordance with their own aspirations (account being taken of the needs of society).*

## **Article 2**

With the above ends in view, each Member shall establish and develop open, flexible and complementary systems of general, technical and vocational education, educational and vocational guidance and vocational training, whether these activities take place within the system of formal education or outside it.

*Please describe the systems of general, technical and vocational education, educational and vocational guidance and vocational training.*

## **Article 3**

1. Each Member shall gradually extend its systems of vocational guidance, including continuing employment information, with a view to ensuring that comprehensive information and the broadest possible guidance are available to all children, young persons and adults, including appropriate programmes for all handicapped and disabled persons.

2. Such information and guidance shall cover the choice of an occupation, vocational training and related educational opportunities, the employment situation and employment prospects, promotion prospects, conditions of work, safety and hygiene at work, and other aspects of working life in the various sectors of economic, social and cultural activity and at all levels of responsibility.

3. The information and guidance shall be supplemented by information on general aspects of collective agreements and of the rights and obligations of all concerned under labour law; this information shall be provided in accordance with national law and practice, taking into account the respective functions and tasks of the workers' and employers' organisations concerned.

*Paragraph 1. To the extent that this information has not already been given, please indicate the measures which ensure that comprehensive information and the broadest possible guidance are made available to the persons concerned. Please also indicate any measures which relate specifically to handicapped and disabled persons.*

*Please give particulars of any extensions of the vocational guidance system which have taken place in the period covered by the report.*

*Paragraphs 2 and 3. Please describe the type of information made available for vocational guidance purposes and supply specimens of the documentation made available. Please indicate the procedures and/or machinery for ensuring that the educational, occupational, employment market and other information referred to in these paragraphs is kept suitably up to date for effective vocational guidance purposes.*

## Article 4

Each Member shall gradually extend, adapt and harmonise its vocational training systems to meet the needs for vocational training throughout life of both young persons and adults in all sectors of the economy and branches of economic activity and at all levels of skill and responsibility.

*Please indicate the measures being taken with a view to extending the systems of vocational training to cover fields of economic activity not previously within their scope and to ensure that they are adapted to the changing requirements of individuals throughout their life, as well as to those of the economy and of the different branches of economic activity.*

## Article 5

Policies and programmes of vocational guidance and vocational training shall be formulated and implemented in co-operation with employers' and workers' organisations and, as appropriate and in accordance with national law and practice, with other interested bodies.

*Please indicate the manner in which the cooperation of employers' and workers' organizations and, where applicable, other interested bodies is assured in the formulation and implementation of vocational guidance and vocational training policies and programmes. Please describe any formal procedures or consultative machinery which have been instituted for this purpose.*

- III. **Please state to what authority or authorities the application of the abovementioned policies and programmes, legislation and administrative regulations, etc., is entrusted, and by what methods application is supervised and enforced.**
- IV. **Please state whether courts of law or other tribunals have given decisions involving questions of principle relating to the application of the Convention. If so, please supply the text of these decisions.**
- V. **If your country has received any assistance or advice through technical cooperation for which the ILO was the executing agency please indicate the action taken as a result. Please also indicate any factors which may have prevented or delayed such action.**
- VI. **In so far as such information has not been supplied in reply to the above questions, please forward extracts of reports, studies and inquiries, statistical data, etc. (for example with respect to training policies and programmes relating to particular areas or branches of economic activity or to particular groups of the population).**
- VII. **Please indicate the representative organizations of employers and workers to which copies of the present report have been communicated in accordance with article 23, paragraph 2, of the Constitution of the International Labour Organization.<sup>1</sup> If copies of the report have not been communicated to representative organizations of employers and/or workers, or if they have been communicated to bodies other than such organizations, please supply information on any particular circumstances existing in your country which explain the procedure followed.**

**Please indicate whether you have received from the organizations of employers or workers concerned any observations, either of a general kind or in connection with the present or the previous report, regarding the practical application of the provisions of the Convention or the application of the legislation or other measures implementing the Convention. If so, please communicate a summary of the observations received, together with any comments that you consider useful.**

<sup>1</sup> Article 23, paragraph 2, of the Constitution reads as follows: "Each Member shall communicate to the representative organisations recognised for the purpose of article 3 copies of the information and reports communicated to the Director-General in pursuance of articles 19 and 22."

## Human Resources Development Recommendation, 2004 (No. 195)

The General Conference of the International Labour Organization, Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its 92nd Session on 1 June 2004, and

Recognizing that education, training and lifelong learning contribute significantly to promoting the interests of individuals, enterprises, the economy and society as a whole, especially considering the critical challenge of attaining full employment, poverty eradication, social inclusion and sustained economic growth in the global economy, and

Calling on governments, employers and workers to renew their commitment to lifelong learning: governments by investing and creating the conditions to enhance education and training at all levels; enterprises by training their employees; and individuals by making use of the education, training and lifelong learning opportunities, and

Recognizing that education, training and lifelong learning are fundamental and should form an integral part of, and be consistent with, comprehensive economic, fiscal, social and labour market policies and programmes that are important for sustainable economic growth and employment creation and social development, and

Recognizing that many developing countries need support in the design, funding and implementation of appropriate education and training policies to attain human development, economic and employment growth, and poverty eradication, and

Recognizing that education, training and lifelong learning are contributing factors to personal development, access to culture and active citizenship, and Recalling that the realization of decent work for workers everywhere is a primary objective of the International Labour Organization, and Noting the rights and principles embodied in the relevant instruments of the International Labour Organization, and in particular:

- (a) the Human Resources Development Convention, 1975; the Employment Policy Convention and Recommendation, 1964; the Employment Policy (Supplementary Provisions) Recommendation, 1984; and the Paid Educational Leave Convention and Recommendation, 1974;
- (b) the ILO Declaration on Fundamental Principles and Rights at Work;
- (c) the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy;
- (d) the conclusions concerning human resources training and development, adopted at the 88th Session (2000) of the International Labour Conference, and Having decided upon the adoption of certain proposals with regard to human resources development and training, which is the fourth item on the agenda of the session;

Having determined that these proposals shall take the form of a Recommendation;

adopts this seventeenth day of June of the year two thousand and four the following Recommendation, which may be cited as the Human Resources Development Recommendation, 2004.

### I. Objective, scope and definitions

1. Members should, based on social dialogue, formulate, apply and review national human resources development, education, training and lifelong learning policies which are consistent with economic, fiscal and social policies.

2. For the purpose of this Recommendation:

- (a) the term *lifelong learning* encompasses all learning activities undertaken throughout life for the development of competencies and qualifications;

- (b) the term *competencies* covers the knowledge, skills and know-how applied and mastered in a specific context;
- (c) the term *qualifications* means a formal expression of the vocational or professional abilities of a worker which is recognized at international, national or sectoral levels;
- (d) the term *employability* relates to portable competencies and qualifications that enhance an individual's capacity to make use of the education and training opportunities available in order to secure and retain decent work, to progress within the enterprise and between jobs, and to cope with changing technology and labour market conditions.

3. Members should identify human resources development, education, training and lifelong learning policies which:

- (a) facilitate lifelong learning and employability as part of a range of policy measures designed to create decent jobs, as well as to achieve sustainable economic and social development;
- (b) give equal consideration to economic and social objectives, emphasize sustainable economic development in the context of the globalizing economy and the knowledge- and skills-based society, as well as the development of competencies, promotion of decent work, job retention, social development, social inclusion and poverty reduction;
- (c) stress the importance of innovation, competitiveness, productivity, growth of the economy, the creation of decent jobs and the employability of people, considering that innovation creates new employment opportunities and also requires new approaches to education and training to meet the demand for new skills;
- (d) address the challenge of transforming activities in the informal economy into decent work fully integrated into mainstream economic life; policies and programmes should be developed with the aim of creating decent jobs and opportunities for education and training, as well as validating prior learning and skills gained to assist workers and employers to move into the formal economy;
- (e) promote and sustain public and private investment in the infrastructure needed for the use of information and communication technology in education and training, as well as in the training of teachers and trainers, using local, national and international collaborative networks;
- (f) reduce inequality in the participation in education and training.

4. Members should:

- (a) recognize that education and training are a right for all and, in cooperation with the social partners, work towards ensuring access for all to lifelong learning;
- (b) recognize that the realization of lifelong learning should be based on the explicit commitment: by governments by investing and creating the conditions to enhance education and training at all levels; by enterprises in training their employees; and by individuals in developing their competencies and careers.

## II. Development and implementation of education and training policies

5. Members should:

- (a) define, with the involvement of the social partners, a national strategy for education and training, as well as establish a guiding framework for training policies at national, regional, local, and sectoral and enterprise levels;
- (b) develop supportive social and other policies, and create an economic environment and incentives, to encourage enterprises to invest in education and training, individuals to develop their competencies and careers, and to enable and motivate all to participate in education and training programmes;
- (c) facilitate the development of an education and training delivery system consistent with national conditions and practices;

- (d) assume the primary responsibility for investing in quality education and pre-employment training, recognizing that qualified teachers and trainers working under decent conditions, are of fundamental importance;
- (e) develop a national qualifications framework to facilitate lifelong learning, assist enterprises and employment agencies to match skill demand with supply, guide individuals in their choice of training and career and facilitate the recognition of prior learning and previously acquired skills, competencies and experience; this framework should be responsive to changing technology and trends in the labour market and recognize regional and local differences, without losing transparency at the national level;
- (f) strengthen social dialogue and collective bargaining on training at international, national, regional, local, and sectoral and enterprise levels as a basic principle for systems development, programme relevance, quality and cost-effectiveness;
- (g) promote equal opportunities for women and men in education, training and lifelong learning;
- (h) promote access to education, training and lifelong learning for people with nationally identified special needs, such as youth, low-skilled people, people with disabilities, migrants, older workers, indigenous people, ethnic minority groups and the socially excluded; and for workers in small and medium-sized enterprises, in the informal economy, in the rural sector and in self-employment;
- (i) provide support to the social partners to enable them to participate in social dialogue on training;
- (j) support and assist individuals through education, training and lifelong learning, and other policies and programmes, to develop and apply entrepreneurial skills to create decent work for themselves and others.

6. (1) Members should establish, maintain and improve a coordinated education and training system within the concept of lifelong learning, taking into account the primary responsibility of government for education and pre-employment training and for training the unemployed, as well as recognizing the role of the social partners in further training, in particular the vital role of employers in providing work experience opportunities.

(2) Education and pre-employment training include compulsory basic education incorporating basic knowledge, literacy and numeracy skills and the appropriate use of information and communication technology.

7. Members should consider benchmarks in relation to comparable countries, regions and sectors when making decisions about investment in education and training.

### III. Education and pre-employment training

8. Members should:

- (a) recognize their responsibility for education and pre-employment training and, in cooperation with the social partners, improve access for all to enhance employability and to facilitate social inclusion;
- (b) develop approaches for non-formal education and training, especially for adults who were denied education and training opportunities when young;
- (c) encourage the use of new information and communication technology in learning and training, to the extent possible;
- (d) ensure provision of vocational, labour market and career information and guidance and employment counselling, supplemented by information on the rights and obligations of all concerned under labour-related laws and other forms of labour regulation;
- (e) ensure that education and pre-employment training programmes are relevant and that their quality is maintained;
- (f) ensure that vocational education and training systems are developed and strengthened to provide appropriate opportunities for the development and certification of skills relevant to the labour market.

#### **IV. Development of competencies**

9. Members should:

- (a) promote, with the involvement of the social partners, the ongoing identification of trends in the competencies needed by individuals, enterprises, the economy and society as a whole;
- (b) recognize the role of the social partners, enterprises and workers in training;
- (c) support initiatives by the social partners in the field of training in bipartite dialogue, including collective bargaining;
- (d) provide positive measures to stimulate investment and participation in training;
- (e) recognize workplace learning, including formal and non-formal learning, and work experience;
- (f) promote the expansion of workplace learning and training through:
  - (i) the utilization of high-performance work practices that improve skills;
  - (ii) the organization of on- and off-the-job training with public and private training providers, and making greater use of information and communication technology; and
  - (iii) the use of new forms of learning together with appropriate social policies and measures to facilitate participation in training;
- (g) urge private and public employers to adopt best practices in human resources development;
- (h) develop equal opportunity strategies, measures and programmes to promote and implement training for women, as well as for specific groups and economic sectors, and for people with special needs, with the objective of reducing inequalities;
- (i) promote equal opportunities for, and access to, career guidance and skill upgrading for all workers, as well as support for retraining employees whose jobs are at risk;
- (j) call upon multinational enterprises to provide training for all levels of their employees in home and host countries, to meet the needs of the enterprises and contribute to the development of the country;
- (k) promote the development of equitable training policies and opportunities for all public sector employees, recognizing the role of the social partners in this sector;
- (l) promote supportive policies to enable individuals to balance their work, family and lifelong learning interests.

#### **V. Training for decent work and social inclusion**

10. Members should recognize:

- (a) the primary responsibility of government for the training of the unemployed, those seeking to enter or re-enter the labour market and people with special needs, to develop and enhance their employability to secure decent work, in the private and public sectors, through such measures as incentives and assistance;
- (b) the role of the social partners to support, through human resources development policies and other measures, the integration of the unemployed and people with special needs in jobs;
- (c) the role of local authorities and communities and other interested parties in implementing programmes for people with special needs.

#### **VI. Framework for recognition and certification of skills**

11. (1) Measures should be adopted, in consultation with the social partners and using a national qualifications framework, to promote the development, implementation and financing of a transparent mechanism for the assessment, certification and recognition of skills, including prior

learning and previous experience, irrespective of the countries where they were acquired and whether acquired formally or informally.

(2) Such an assessment methodology should be objective, non-discriminatory and linked to standards.

(3) The national framework should include a credible system of certification which will ensure that skills are portable and recognized across sectors, industries, enterprises and educational institutions.

12. Special provisions should be designed to ensure recognition and certification of skills and qualifications for migrant workers.

## **VII. Training providers**

13. Members should, in cooperation with the social partners, promote diversity of training provision to meet the different needs of individuals and enterprises and to ensure high- quality standards, recognition and portability of competencies and qualifications within a national quality assurance framework.

14. Members should:

- (a) develop a framework for the certification of qualifications of training providers;
- (b) identify the roles of government and the social partners in promoting the expansion and diversification of training;
- (c) include quality assurance in the public system and promote its development within the private training market and evaluate the outcomes of education and training;
- (d) develop quality standards for trainers and create the opportunities for trainers to meet such standards.

## **VIII. Career guidance and training support services**

15. Members should:

- (a) assure and facilitate, throughout an individual's life, participation in, and access to, vocational and career information and guidance, job placement services and job search techniques and training support services;
- (b) promote and facilitate the use of information and communication technology, as well as traditional best practices in career information and guidance and training support services;
- (c) identify, in consultation with the social partners, roles and responsibilities of employment services, training providers and other relevant service providers with respect to vocational and career information and guidance;
- (d) provide information and guidance on entrepreneurship, promote entrepreneurial skills, and raise awareness among educators and trainers of the important role of enterprises, among others, in creating growth and decent jobs.

## **IX. Research in human resources development, education, training and lifelong learning**

16. Members should evaluate the impact of their education, training and lifelong learning policies on the progress made towards achieving broader human development goals, such as the creation of decent jobs and poverty eradication.

17. Members should develop their national capacity, as well as facilitate and assist in developing that of the social partners, to analyse trends in labour markets and human resources development and training.

18. Members should:

- (a) collect information, disaggregated by gender, age, and other specific socio-economic characteristics, on educational levels, qualifications, training activities, and employment and incomes, especially when organizing regular surveys of the population, so that trends can be established and comparative analysis undertaken to guide policy development;
- (b) establish databases and quantitative and qualitative indicators, disaggregated by gender, age and other characteristics, on the national training system and gather data on training in the private sector, taking into account the impact of data collection on enterprises;
- (c) collect information on competencies and emerging trends in the labour market from a variety of sources, including longitudinal studies, and not confined to traditional occupational classifications.

19. Members should, in consultation with the social partners, and taking into account the impact of data collection on enterprises, support and facilitate research on human resources development and training, which could include:

- (a) learning and training methodologies, including the use of information and communication technology in training;
- (b) skills recognition and qualifications frameworks;
- (c) policies, strategies and frameworks for human resources development and training;
- (d) investment in training, as well as the effectiveness and impact of training;
- (e) identifying, measuring and forecasting the trends in supply and demand for competencies and qualifications in the labour market;
- (f) identifying and overcoming barriers to accessing training and education;
- (g) identifying and overcoming gender bias in the assessment of competencies;
- (h) preparing, publishing and disseminating reports and documentation on policies, surveys and available data.

20. Members should use the information obtained through research to guide planning, implementation and evaluation of programmes.

## **X. International and technical cooperation**

21. International and technical cooperation in human resources development, education, training and lifelong learning should:

- (a) develop mechanisms that mitigate the adverse impact on developing countries of the loss of skilled people through migration, including strategies to strengthen the human resources development systems in the countries of origin, recognizing that creating enabling conditions for economic growth, investment, creation of decent jobs and human development will have a positive effect on retaining skilled labour;
- (b) promote greater opportunities for women and men to obtain decent work;
- (c) promote national capacity building to reform and develop training policies and programmes, including developing the capacity for social dialogue and partnership building in training;
- (d) promote the development of entrepreneurship and decent employment and share experiences on international best practices;
- (e) strengthen the capacity of the social partners to contribute to dynamic lifelong learning policies, in particular in relation to the new dimensions of regional economic integration, migration and the emerging multicultural society;
- (f) promote recognition and portability of skills, competencies and qualifications nationally and internationally;
- (g) increase technical and financial assistance for developing countries and promote, at the level of the international financial institutions and funding agencies, coherent policies and programmes which place education, training and lifelong learning at the centre of development policies;

- (h) taking into account the specific problems of the indebted developing countries, explore and apply innovative approaches to provide additional resources for human resources development;
- (i) promote cooperation between and among governments, the social partners, the private sector and international organizations on all other issues and strategies encompassed in this instrument.

## **XI. Final provision**

22. The present Recommendation revises and replaces the Human Resources Development Recommendation, 1975.

## Appendix V

### **Arrangements concerning the list of Members which fully meet the minimum requirements concerning processes and procedures for the issue of seafarers' identity documents**

#### ***I. Purpose of these Arrangements***

1. These Arrangements have been adopted by the Governing Body in accordance with paragraphs 6 to 8 of Article 5 of the Seafarers' Identity Documents Convention (Revised), 2003 (referred to below as "the Convention").
2. Under paragraph 6 of that Article, the Governing Body is to approve a list of Members (referred to below as "the List"), which have ratified the Convention and fully meet the minimum requirements concerning processes and procedures for the issue of seafarers' identity documents, including quality-control procedures (referred to below as the "Minimum Requirements"). These Arrangements (in section III below) set out the procedures to be followed for the initial inclusion and periodic maintenance of Members on the List.
3. These Arrangements also (in section IV below) indicate how a Member may, as envisaged in paragraph 8 of Article 5, make an ad hoc request either to have its name included on the List or restored to the List or to have the name of another Member removed from the List.
4. In these Arrangements, references to Members that have ratified the Convention also cover Members that have made a notification of provisional application in accordance with Article 9 of the Convention.
5. All decisions required under these Arrangements are to be taken by the Governing Body after duly considering the recommendation of the appropriate tripartite review body referred to below as to whether or not the Member concerned fully meets the Minimum Requirements. This recommendation shall itself be made upon the basis of the expert opinion provided to the review body and in full respect for the principles of due process.

#### ***II. Tripartite review bodies***

6. A tripartite Review Group and a tripartite Special Review Board shall be established to make the necessary recommendations to the Governing Body and to provide the International Labour Office with such advice as it may request with respect to action to be taken in connection with the List, including the action, envisaged in paragraph 7 of Article 5, in the case where inclusion on the list is contested on solid grounds.

#### **The Review Group**

7. The Review Group shall consist of four persons appointed (or reappointed) by the Governing Body for the period decided by it. Two members of the Review Group shall be Government representatives of countries that have ratified the Convention; one member shall be nominated by the international organization of shipowners and one by the international organization of seafarers. Each of the members of the Review Group shall be familiar with the requirements of the Convention and have some knowledge of quality-control procedures. They shall act in an individual capacity and impartially. They shall not participate in any case in which they have an interest or might be considered to have an interest. They should have a good working knowledge of the English language and preferably a good working knowledge of French or Spanish.
8. The Governing Body shall also appoint two representatives of ratifying governments and one Shipowner and one Seafarer representative, nominated in the manner set out above, to act as substitutes in any case where the corresponding Member is unable to act.
9. The members shall elect one of the Government representatives to act as chairperson. The chairperson shall be responsible for coordinating the action of the Review Group, requesting

information or material from interested parties or the Office on behalf of the Group and communicating its recommendations to the Governing Body and advice to the Office. Any necessary decisions of a procedural nature shall be taken by the chairperson, after consulting the other members of the Group.

10. The Review Group shall act solely through electronic correspondence and may only take decisions on the basis of consensus. Before any decision is taken to recommend that a ratifying Member does not fully meet the Minimum Requirements, the chairperson shall give the government concerned an opportunity to submit (electronically) a statement of its position to the members of the Group.
11. Where, in the opinion of the chairperson, consensus cannot be reached on any recommendation to be made to the Governing Body, the case shall be referred to the Special Review Board described below.

### The Special Review Board

12. The Special Review Board shall consist of four persons appointed (or reappointed) by the Governing Body for the period decided by it. Two members of the Special Review Board shall be Government representatives of countries that have ratified the Convention; one member shall be nominated by the international organization of shipowners and one by the international organization of seafarers. The members shall be chosen on account of their specialized technical or operational knowledge of the processes and procedures referred to in Article 5 of the Convention and Annex III, including quality-control procedures. They shall act in an individual, quasi-judicial capacity. They shall not participate in any case in which they have an interest or might be considered to have an interest.
13. The Governing Body shall also appoint two representatives of ratifying governments and one Shipowner and one Seafarer representative, nominated in the manner set out above, to act as substitutes in any case where the corresponding member is unable to act.
14. The members shall elect one of the Government representatives to act as chairperson. The chairperson shall be responsible for directing the discussions of the Special Review Board, requesting information or material from interested parties or the Office on behalf of the Board and communicating its recommendations to the Governing Body and advice to the Office. Any necessary decisions of a procedural nature shall be taken by the chairperson after consulting the other members of the Board.
15. The Special Review Board shall deal with cases referred to it in accordance with paragraph 11 above and with any other case specified in these Arrangements (see, in particular, Section IV below).
16. The members of the Board shall meet to consider the cases referred to it. All interested parties shall be given an opportunity to submit a statement of their position to the Board, and, if they so request, to be heard by the Board. They shall also have the right to receive or hear the statements made by other interested parties. The term "interested party" refers to the government whose inclusion on the List or removal from it is under consideration and any other government or organization, which has, in accordance with the procedures set out below, submitted comments to the Office on such inclusion or removal or requested the Member's removal from the List. The Board may request the Office to make arrangements for the submission of other evidence including the hearing of experts or other persons.
17. Before making any recommendation that the Member concerned does not fully meet the Minimum Requirements, the Special Review Board may, if invited to do so by the government whose case is under consideration, request the Office to make arrangements for further inquiries to clarify the situation in the country concerned, possibly accompanied by measures of assistance. Such arrangements and measures shall be at no cost to the Organization (unless funds have been allocated for that purpose under the Organization's technical cooperation programme).
18. Decisions of the Special Review Board shall, wherever possible, be taken by consensus. Where, in the opinion of the chairperson, consensus cannot be reached, the decision may be taken by a simple majority. In the event of an equally split vote, the Chairperson shall have an additional casting vote.
19. The Special Review Board may, if it considers necessary, draw up standing orders governing its procedures that are consistent with the preceding paragraphs as well as with the principles of due process.

## Language

20. The Review Group and the Special Review Board may request the author of statements or other submissions made to them to provide them with a translation into a specified language, which may be English, French or Spanish.

### **III. Regular procedure for initial inclusion and maintenance on the List**

#### A. Inclusion on the List

##### *Documentation required for inclusion*

21. In order to be included on the List, the Members that have ratified the Convention (see paragraph 4 above) shall provide the International Labour Office with the following three items (in English, French or Spanish or accompanied by any necessary translation into one of those languages):
- (a) a statement in electronic form outlining the processes and procedures that are in place to achieve the mandatory results referred to in Part A of Annex III of the Convention;
  - (b) a copy, also in electronic form, of the report on the first independent evaluation carried out by the Member in accordance with paragraph 4 of Article 5 of the Convention; and
  - (c) a specimen of the seafarers' identity document issued by the Member.

##### *Examination by the Office*

22. The documentation provided by Members shall be examined by the International Labour Office, which shall have recourse to the necessary technical and operational knowledge and expertise, with respect to the requirements of Annex III to the Convention, especially quality controls.

##### *Invitation for comments*

23. The Office shall also promptly invite the shipowners' and seafarers' organizations referred to in Article 5, paragraph 4, of the Convention and the other ratifying Members, receiving the reports in accordance with paragraph 5 of that Article, to provide comments to the Office on the evaluation report concerned. Such comments shall be submitted in an electronic form, in the language of the report or, where this is not English, French or Spanish, in the language of the translation accompanying the report, and within a reasonable deadline set by the Office. Any such comments shall be transmitted by the Office to the government of the Member concerned, which shall be given a reasonable opportunity to provide the Office with a statement of its position (in electronic form) on the comments in the language in which the comments were made.

##### *Tripartite review*

24. The Office shall then electronically forward to the members of the Review Group, with a copy to the ILO Member concerned:
- (a) the documentation received by it in accordance with paragraph 21 above;
  - (b) a copy of the expert opinion and other relevant material received in the context of paragraph 22;
  - (c) any comments and statements received in accordance with paragraph 23; and
  - (d) the Office's assessment of the adequacy of the independent evaluation report as well as the Office's conclusions as to whether or not the Member concerned fully meets the Minimum Requirements.
25. The Review Group (or the Special Review Board, if the case is referred to it) shall first verify that the documentation provided is sufficient for its deliberations and, in particular, that the evaluation report meets an appropriate standard of independence and reliability. If it finds that this is not the case, it shall so inform the Member concerned, with a clear statement of its reasons, and specify

what must be done by the Member to rectify the matter. If the necessary rectification is not made within a reasonable deadline, the recommendation to the Governing Body shall be based on the presumption that the Member concerned does not fully meet the Minimum Requirements.

26. If the Review Group is unable to reach consensus as to whether or not the Member concerned fully meets the Minimum Requirements, its chairperson shall, in accordance with paragraph 11 above, forward the documentation received to the chairperson of the Special Review Board, informing the Office accordingly.
27. The Review Group or the Special Review Board, as the case may be, shall, as soon as possible, electronically transmit to the Office its recommendation as to whether or not the Member concerned fully meets the Minimum Requirements. The recommendation shall be accompanied by copies of all relevant statements and other submissions made to the Review Group or to the Special Review Board. Dissenting opinions of members of the Board shall also be provided, especially where it was not possible to agree upon a recommendation.

### *Technical cooperation*

28. Where the Review Group or the Special Review Board concludes that a Member does not fully meet the Minimum Requirements, it may request the Office to inform the Governing Body of appropriate measures of technical cooperation that might be available to redress the defects in the Member's processes and procedures.

### *Consideration by the Governing Body*

29. Upon receipt of the recommendation of the appropriate review body, the Office shall prepare a report for submission to the Governing Body at its next session, where feasible. In addition to transmitting the recommendation, the report shall indicate any significant differences between the recommendation and the expert opinion or the Office's assessment and conclusions referred to under (b) or (d) of paragraph 24 above. The report shall also clearly state the reasons for any recommendation that the Member concerned does not fully meet the Minimum Requirements. A copy of all relevant documentation, including a copy of the independent evaluation and expert opinions as well as of submissions made during the tripartite review of the evaluation reports or in the context of the ad hoc procedures referred to below shall be made available to the Governing Body at its request.
30. Governments that are not already represented on the Governing Body shall be invited to take part in any discussion in which they are interested parties within the meaning of paragraph 16 above. They shall have the same rights as governments represented in accordance with article 5bis of the Standing Orders of the Governing Body. The chairperson(s) concerned may be invited to assist the Governing Body. Representatives of governments or organizations that had opposed a Member's inclusion on the list shall be given an opportunity to submit further observations, orally or in writing.

### *Approved list*

31. Having duly considered the recommendation, the Governing Body shall decide whether or not the Member, which is the subject of the recommendation, fully meets the Minimum Requirements. Members fully meeting the Minimum Requirements shall thereupon be included on the List and Members that no longer fully meet them shall be removed from the List with immediate effect.

## **B. Maintenance on the List**

32. In order to have their names maintained on the List, Members shall, after each subsequent independent evaluation to be carried out at intervals of not more than five years in accordance with paragraph 4 of Article 5 of the Convention, provide the International Labour Office with the following three items (in English, French or Spanish or accompanied by any necessary translation into one of those languages):
  - (a) a statement in electronic form updating the outline of the processes and procedures that was previously submitted;

- (b) a copy, also in electronic form, of a report on the new independent evaluation supplementing the report submitted on the previous independent evaluation; and
  - (c) a specimen of the seafarers' identity document issued by the Member or a statement that the specimen submitted previously has not changed.
33. Upon receipt of the above documentation, the procedures set out in paragraphs 22 to 31 above shall apply.
34. If the above documentation is not received from any Member included on the List within five years from the submission of its report on the last independent evaluation, the Office shall refer the matter to the Governing Body. If a Member fails to heed a reminder by the Governing Body to provide the documentation, the Governing Body shall decide to remove the Member's name from the List, unless it considers that such action would not be appropriate.

#### **IV. *Ad hoc procedures***

##### **A. Requests to be included on the List**

###### *Preliminary requirements*

35. Any Member whose name has not be included on the List or has been removed from the List may request the inclusion or restoration of its name on the ground that the reasons for non-inclusion do not apply or no longer apply. The request in electronic form shall be transmitted to the Office, in the English language. It shall clearly state the reasons justifying inclusion or restoration and be accompanied by clear evidence in support.
36. The Office shall promptly forward the request, together with the accompanying documentation as well as the Office's comments on the request, to the members of the Review Group, with a copy to the ILO Member making the request.
37. The Review Group shall verify that the information and material provided is sufficient to enable a decision to be taken on the substance of the request. Where this is not the case, the Review Group may (subject to the necessary consensus) require the Member concerned to provide further information or material (such as an independent evaluation report) before the request can be proceeded with.

###### *Examination by the Office*

38. Once the request has, where applicable, been completed with the information or material required by the Review Group, the Member concerned may transmit it to the Office. The documentation provided shall be examined by the Office, which shall have recourse to the necessary technical and operational knowledge and expertise, with respect to the requirements of Annex III to the Convention, especially quality controls.

###### *Invitation for comments*

39. The Office shall also promptly invite the shipowners' and seafarers' organizations of the Member concerned, as well as the other ratifying Members to provide comments to the Office on the request. Such comments shall be submitted, in an electronic form, in English, French or Spanish, and within a reasonable deadline set by the Office. Any such comments shall be transmitted by the Office to the government of the Member making the request, which shall be given a reasonable opportunity to provide the Office with a statement of its position (in electronic form) on the comments.

###### *Tripartite review*

40. The Office shall electronically forward to the Special Review Board, with a copy to the Member making the request:

- (a) the request and accompanying documentation;
- (b) a copy of the expert opinion and other relevant material received in the context of paragraph 38;
- (c) any comments and statements received in accordance with paragraph 39, and the Office's conclusions as to whether or not the Member concerned fully meets the Minimum Requirements.

#### *Further processing*

41. The request shall then be dealt with in accordance with the procedures set out in paragraphs 27 to 31 above.

### **B. Requests to remove a Member from the List**

#### *Preliminary requirements*

42. Any ratifying Member, (see paragraph 4 above) and any organization referred to in Article 5, paragraph 4, of the Convention may request that the name of a Member be removed from the List on the ground that the Member does not fully meet the Minimum Requirements. The request in electronic form shall be transmitted to the Office, in the English language. It shall clearly state the reasons justifying the removal of the Member's name from the List and be accompanied by clear evidence in support.
43. After giving the Member whose removal from the List is requested a reasonable opportunity to state its position (electronically, in English), the Office shall promptly forward the request, together with the accompanying documentation as well as any statement made by the Member concerned and the Office's comments, to the members of the Review Group. Copies of this material shall be sent to the ILO Member or organization making the request and to the ILO Member whose removal is requested.
44. The Review Group shall ascertain whether or not the request shows a prima facie case justifying removal from the List. If it decides that such a case has not been made out or is unable to agree on its decision, it shall so inform the Office, the Member or organization making the request and the Member whose removal is requested. The Office shall then transmit a copy of the request to the Governing Body for information.

#### *Examination by the Office*

45. If the Review Group decides that the request shows a prima facie case justifying removal from the List, it shall inform the Office accordingly. The documentation provided shall be examined by the Office, which shall have recourse to the necessary technical and operational knowledge and expertise, with respect to the requirements of Annex III to the Convention, especially quality controls.

#### *Invitation for comments*

46. The Office shall also promptly invite the shipowners' and seafarers' organizations of the Member concerned, as well as the other ratifying Members to provide comments to the Office on the request in the light of any statement received from the Member concerned (see paragraph 43 above). Such comments shall be submitted in an electronic form, in English, French or Spanish, and within a reasonable deadline set by the Office. Any such comments shall be transmitted by the Office to the government of the Member concerned, which shall be given a reasonable opportunity to provide the Office with a further statement of its position (in electronic form, in English, French or Spanish).

#### *Tripartite review*

47. The Office shall electronically forward to the Special Review Board, with a copy to the Member or organization making the request and to the Member whose removal is requested:

- (a) the request and accompanying documentation;
- (b) a copy of the expert opinion and other relevant material received in the context of paragraph 45;
- (c) any comments and statements received in accordance with paragraph 46, and the Office's conclusions as to whether or not the Member concerned fully meets the Minimum Requirements.

*Further processing*

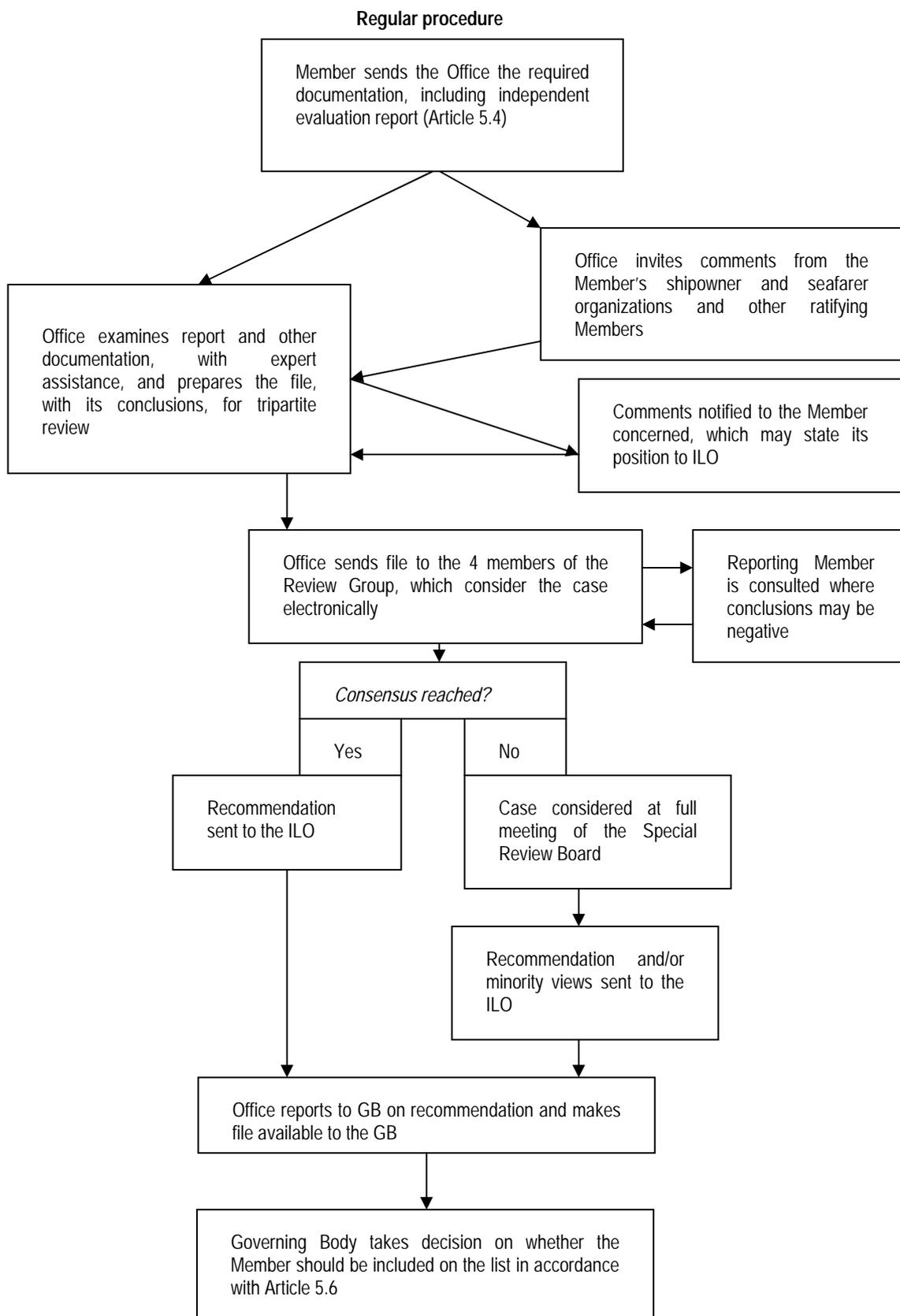
- 48. The request shall then be dealt with in accordance with the procedures set out in paragraphs 27 to 31 above.

V. **Review of these Arrangements**

- 49. The present Arrangements shall be reviewed by the Governing Body after an interval of not more than five years from the date of their adoption.

## Appendix VI

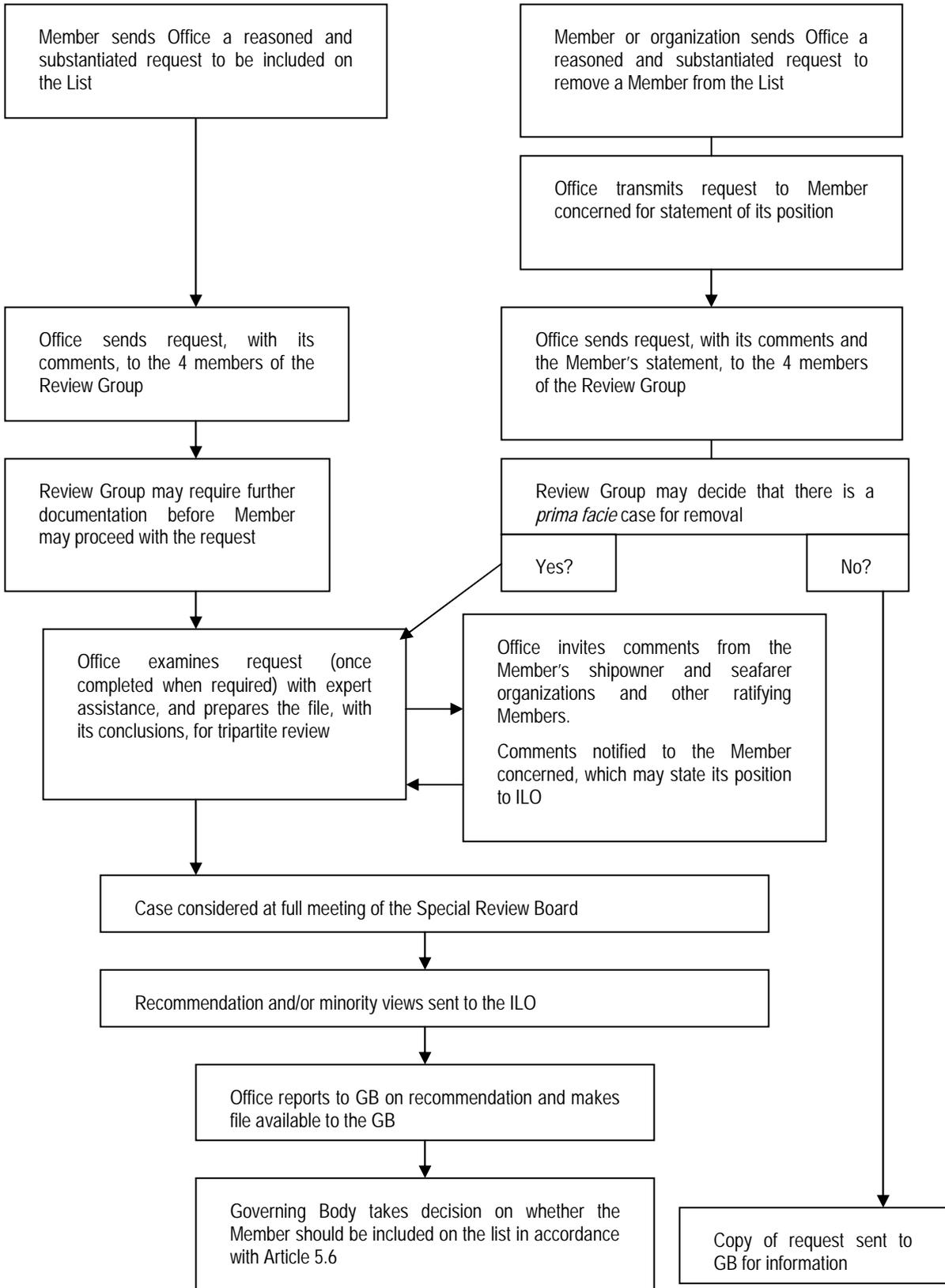
### Proposed procedure for establishing the list referred to in Article 5.6 of Convention No. 185



Ad hoc procedures

Request for inclusion on List

Request for removal from List



## Appendix VII

### Checklist concerning the required processes and procedures for the issue of seafarers' identity documents, including quality-control procedures

#### 1. *Production and delivery of blank SIDs*

Processes and procedures are in place to ensure the necessary security for the production and delivery of blank SIDs, including the following:

- (a) all blank SIDs are of uniform quality and meet the specifications in content and form as contained in Annex I of the Convention
- (b) the materials used for production are protected and controlled
- (c) blank SIDs are protected, controlled, identified and tracked during the production and delivery processes
- (d) producers have the means of properly meeting their obligations in relation to the production and delivery of blank SIDs
- (e) the transport of the blank SIDs from the producer to the issuing authority is secure

#### 2. *Custody, handling and accountability for blank and completed SIDs*

Processes and procedures are in place to ensure the necessary security for the custody, handling and accountability for blank and completed SIDs, including the following:

- (a) the custody and handling of blank and completed SIDs is controlled by the issuing authority
- (b) blank, completed and voided SIDs, including those used as specimens, are protected, controlled, identified and tracked
- (c) personnel involved with the process meet standards of reliability, trustworthiness and loyalty required by their positions and have appropriate training
- (d) the division of responsibilities among authorized officials is designed to prevent the issuance of unauthorized SIDs

#### 3. *Processing of applications; suspension or withdrawal of SIDs; appeal procedures*

Processes and procedures are in place to ensure the necessary security for the processing of applications, the completion of the blank SIDs into personalized SIDs by the authority and unit responsible for issuing them, and the delivery of the SIDs, including:

- (a) processes for verification and approval ensuring that SIDs, when first applied for and when renewed, are issued only on the basis of:

- (i) applications completed with all information required by Annex I of the Convention
- (ii) proof of identity of the applicant in accordance with the law and practice of the issuing State
- (iii) proof of nationality or permanent residence
- (iv) proof that the applicant is a seafarer within the meaning of Article 1 of the Convention
- (v) assurance that applicants, especially those with more than one nationality or having the status of permanent residents, are not issued with more than one SID
- (vi) verification that the applicant does not constitute a risk to security, with proper respect for the fundamental rights and freedoms set out in international instruments
- (b) The processes ensure that:
  - (i) the particulars of each item contained in Annex II of the Convention are entered in the database simultaneously with issuance of the SID
  - (ii) the data, photograph, signature and biometric gathered from the applicant correspond to the applicant
  - (iii) the data, photograph, signature and biometric gathered from the applicant are linked to the application throughout the processing, issuance and delivery of the SID
- (c) prompt action is taken to update the database when an issued SID is suspended or withdrawn
- (d) an extension and/or renewal system has been established to provide for circumstances where a seafarer is in need of extension or renewal of his or her SID and in circumstances where the SID is lost
- (e) the circumstances in which SIDs may be suspended or withdrawn are established in consultation with shipowners' and seafarers' organizations
- (f) Effective and transparent appeal procedures are in place

**4. *Operation, security and maintenance of the database***

Processes and procedures are in place to ensure the necessary security for the operation and maintenance of the database, including the following:

- (a) The database is secure from tampering and from unauthorized access
- (b) data are current, protected against loss of information and available for query at all times through the focal point
- (c) databases are not appended, copied, linked or written to other databases; information from the database is not used for purposes other than authenticating the seafarers' identity

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- (d) the individual's rights are respected, including:
- (i) the right to privacy in the collection, storage, handling and communication of personal data
  - (ii) the right of access to data concerning him or her and to have any inaccuracies corrected in a timely manner

**5. *Quality control of procedures and periodic evaluations***

- (a) Processes and procedures are in place to ensure the necessary security through the quality control of procedures and periodic evaluations, including the monitoring of processes, to ensure that required performance standards are met, for:
- (i) production and delivery of blank SIDs
  - (ii) custody, handling and accountability for blank, voided and personalized SIDs
  - (iii) processing of applications, completion of blank SIDs into personalized SIDs by the authority and unit responsible for issuance and delivery
  - (iv) operation, security and maintenance of the database
- (b) Periodic reviews will be carried out to ensure the reliability of the issuance system and of the procedures and their conformity with the requirements of the Convention
- (c) Procedures are in place to protect the confidentiality of information contained in reports on periodic evaluations provided by other ratifying Members