



FIFTH ITEM ON THE AGENDA

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

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Introduction

1. The Working Party met on 19 March 2001 under the chairmanship of Mr. J.-L. Cartier (Government, France). The Employer Vice-Chairperson and the Worker Vice-Chairperson were Mr. D. Funes de Rioja (Argentina) and Mr. U. Edström (Sweden).
2. The Chairperson indicated that the agenda of the meeting of the Working Party included, on the one hand, the follow-up to the recommendations of the Working Party, this question being the subject of three Office documents, and, on the other hand, an examination of two Conventions and their related Recommendations, the examination of which had been deferred during the previous meetings of the Working Party. Thus, unlike during its previous sessions, the Working Party was this time therefore not called upon to determine the status of a large number of instruments.

A. Follow-up on the recommendations of the Working Party – General document ¹

3. The Chairperson recalled that the Working Party examined each year at its meeting in March the follow-up action to its recommendations. This discussion provided its members with the opportunity to make comments on the follow-up and, if necessary, to provide additional information on the measures taken by member States.
4. The Employer members supported the general observations made by the Chairperson on this document, which contained useful information on the work pursued in this Working Party and within the Organization. This document should therefore be disseminated in the Organization, especially in the framework of the integrated approach to ILO standards-related activities which had been unanimously approved by the Governing Body in November 2000. In the framework of general follow-up measures, the Employer members noted that the seminars on the international labour standards for magistrates mentioned in paragraph 6 were useful but that they should be aimed first and foremost at government representatives and social partners that were called upon to implement international labour standards, since these did not always receive training or information on standards or the supervisory mechanism. They also underlined the usefulness of the country profiles prepared by the Office. Regarding the follow-up action by category of decision, the Employer members insisted on the importance of the ratification of fundamental Conventions. It would be appropriate to follow the hierarchy of Conventions and treat the fundamental Conventions as a priority in the context of the work pursued by the Office. A high level of priority should also be accorded to the ratification of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). Regarding the Conventions related to employment, although the Employers had already expressed in the past their concern regarding the provisions of the Employment Policy Convention, 1964 (No. 122), the issue of employment policy was nevertheless fundamentally important and deserved to be the centre of attention of the activities of the Organization. Regarding the social security Conventions, the Employer members hoped that the general discussion, which would take place in the Conference next June, would lead to positive results, considering that these Conventions had given rise to certain reservations. A new approach to these Conventions was necessary. Regarding the issue of indigenous and tribal peoples,

¹ GB.280/LILS/WP/PRS/1/1.

the Employer members wished that the Office would provide assistance to countries facing difficulties in the implementation of the Indigenous and Tribal Peoples Convention, 1989 (No. 169). They also noted that the decisions of the Governing Body regarding the revision of certain Conventions should be taken into consideration and implemented within a reasonable time limit. Regarding shelved Conventions, the Employer members suggested that the Office come up with a mechanism allowing a clear identification of these instruments as Conventions that should not be ratified any more. The small number of member States having accepted or ratified the constitutional amendment were a source of concern to the Employer members, who believed that this number could be attributed to a lack of information. The Office should therefore send periodic reminders to member States on this issue.

5. The Worker members highlighted the information in paragraph 3 indicating that since the inception of the Working Party, there had been 118 ratifications of revised Conventions and 151 denunciations of the corresponding older Conventions. Unfortunately, there had also been 12 cases of “pure” denunciations, i.e. cases where a Convention had been denounced without a ratification of the corresponding revised Convention. With reference to paragraph 9, the Worker members stated that the country profiles appeared to be a very useful tool for the follow-up on the recommendations of the Working Party, and they therefore formally requested the Office to prepare such country profiles for all member States. These country profiles should also include information on status of ratification of the 1997 amendment to the ILO Constitution. In relation to paragraph 71, the Worker members wondered why the Office had delayed action to follow up on requests for information on the obstacles and difficulties encountered that could prevent or delay ratification of 12 up-to-date Conventions. Furthermore, with reference to paragraph 76, they did not agree that the requests for information with regard to the Recommendations on seafarers should be followed up in the context of development of the proposed single framework Convention on maritime labour standards. Such follow-up measures should be pursued in accordance with the decision of the Governing Body and could yield important information for the elaboration of this framework Convention. As regards paragraph 82, the Worker members did not agree with the notion that the follow-up to the recommendations of the Working Party be carried out in the context of the integrated approach. It was essential to obtain information on the obstacles to ratification of Conventions. This information would also be important in the context of the integrated approach. The number of ratifications of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) (24 new ratifications had been registered since the beginning of the work of the Working Party), was disappointingly low and efforts should be stepped up to promote this Convention. The same was true with respect to the Workers’ Representatives Convention, 1971 (No. 135), and the Collective Bargaining Convention, 1981 (No. 154), which were important for collective bargaining and consultation in the context of standards-related activities. The Office should also take actions to promote the Labour Inspection Convention, 1947 (No. 81), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), as well as Convention No. 122.
6. The representative of the Government of the Dominican Republic congratulated the Office on this important document. He emphasized the importance of disseminating information on the policy regarding revision of standards through seminars, meetings and conferences, which were of vital interest for the member States. In this respect, he thanked the Area Office in San José for the organization of seminars on international labour standards. Similarly, the annual seminar organized jointly by the International Labour Standards Department and the International Training Centre of the ILO in Turin were an important element in the training of civil servants entrusted with drafting member State reports pursuant to article 22 of the ILO Constitution. The speaker stated that the Office should pursue its ratification campaign concerning fundamental and priority Conventions. In this respect, the instrument of ratification of the Employment Policy Convention, 1964

(No. 122), by the Dominican Republic would be soon deposited with the Director-General. Lastly, he recalled the importance of accepting or ratifying the constitutional amendment in order to allow the Conference to proceed with the abrogation of every Convention which had lost its purpose or no longer made a useful contribution to attaining the objectives of the Organization.

7. The representative of the Government of Denmark thanked the Office for a useful document and inquired whether the work of the Working Party would be published. In such a case, he suggested that a user-friendly publication should be developed to increase its usefulness to a large audience. He also informed the Working Party that the Danish Parliament had decided to authorize the Government to ratify the 1997 amendment to the ILO Constitution and that the Director-General would soon receive the instrument of ratification.
8. The representative of the Government of El Salvador underlined the importance of disseminating information on the policy regarding the revision of standards through seminars and therefore commended the work carried out by the standards specialist of the Area Office in San José. Cooperation with the regional multidisciplinary teams had enabled El Salvador to ratify new Conventions and especially the Labour Administration Convention, 1978 (No. 150). In addition, the Government of El Salvador would, in the near future, present to the Office a report on the difficulties and obstacles which prevented or delayed ratification of certain up-to-date Conventions.
9. The representative of the Government of Nigeria indicated that his Government had set in motion the process for ratification of the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182). With regard to paragraph 8, he expressed his Government's appreciation that training on international labour standards not only concerned the preparation of article 22 reports but also the question of submission to competent authorities. His Government also appreciated the publication by the Office of the book *Les nouvelles administrations du travail: Des acteurs du développement*, as noted in paragraph 35, and inquired whether it could be made available in other languages.
10. The representative of the Government of the Netherlands thanked the Office for the information presented in the document and for the work accomplished over the past year. She underlined the importance of the work of the Working Party and the implementation of its recommendations and supported the request of the representative of the Government of Denmark regarding the publication of the results of the work of the Working Party.
11. The representative of the Government of Slovakia thanked the Office for the excellent document it had prepared and emphasized the need to ratify the constitutional amendment on the abrogation of obsolete Conventions. Slovakia had ratified the Maternity Protection Convention, 2000 (No. 183), and attached a great deal of importance to the questions covered by this Convention. He suggested that it would be appropriate to include this Convention among the fundamental ILO Conventions in the future.
12. The representative of the Government of the United States expressed his Government's appreciation regarding a recent mission by the Office to the United States Department of Labor to provide an overview of the international labour standards system and to demonstrate the ILOLEX and NATLEX databases. Referring to paragraph 11, he stated that both these databases were extremely useful and frequently consulted by officials at the Department of Labor.

13. The Employer members underlined the need to use the Internet and electronic databases for the promotion of international labour standards. The Office should present in a database the decisions taken in matters of policy regarding the revision of standards.
14. The representative of the Government of Switzerland suggested that some country profiles be distributed to allow a discussion in the Working Party.
15. The Chairperson declared that he found the idea of country profiles excellent. These were convenient and functional dissemination tools, since they were adapted to each national situation. These documents were therefore very useful for the civil servants of labour ministries and the social partners. It would be useful to generalize this practice, keeping in mind the constraints of the Office in terms of human resources. In addition, taking into account the need to keep these profiles up to date, it might be appropriate to consider the format – either electronic or hard copy – that should be adopted for them.
16. A representative of the Director-General pointed out that the Office had established about 30 of these profiles. The drafting of these documents represented a considerable amount of work and the preparing of such country profiles for all the 175 member States of the ILO would require a substantial investment in terms of financial resources. Nevertheless, the Office would take on this task to the extent of its means. Concerning the follow-up to the recommendations of the Working Party, the speaker emphasized that the Office was fully aware of the importance of these measures and did not have the intention of abandoning them. It was simply the case that if an integrated approach was decided for a given family of standards, it would be possible to pursue follow-up activities in this context, including requests for information on obstacles to the ratification of certain Conventions.
17. In response to the request made by the representative of the Government of Switzerland, the Office distributed examples of country profiles to the members of the Working Party.
18. The Worker members recalled that they had formally requested that country profiles be drawn up for all member States. Country profiles were simply a listing of Conventions ratified by a given country and the relevant decisions of the Working Party for follow-up. If the Working Party considered that the country profiles were a useful tool for the implementation of its recommendations, then a decision could be taken to ask the Office to further elaborate such country profiles for all member States.
19. The Employer members stated that in general it would be useful to know the methodology used by the Office in drawing up country profiles and to examine the feasibility of creating and updating these profiles for all member States. The Employer members had not had the opportunity to discuss the content of these country profiles. Therefore, while they expressed their satisfaction at having received samples of these documents and approved of them in principle, they were not in a position to evaluate the methodology used by the Office.
20. With the support of the representatives of the Governments of Denmark, the Netherlands, Nigeria and the United States, the representative of the Government of Canada expressed the view that the country profiles contained very useful information. She agreed that the Office could prepare such country profiles for other countries, subject to its resource and time constraints. The Working Party could therefore leave it up to the Office to decide to what extent it was able to prepare additional country profiles.
21. In response to a question by the representative of the Government of Trinidad and Tobago, a representative of the Director-General confirmed that such a profile had been prepared for Trinidad and Tobago.

22. The Chairperson asked the members of the Working Party to determine the degree of priority that should be assigned to this task.
23. The Worker members stated that the Working Party had already completed the huge task of going through the majority of ILO Conventions and Recommendations. But unless action was taken at the national level, the work of the Working Party would have been in vain. For this reason the Working Party should facilitate the task of governments and workers' and employers' organizations by helping them understand what was requested of them in concrete terms. They expressed the view that failure to implement the recommendations of the Working Party was often not due to a lack of interest or political will but to difficulties in understanding the implications of the recommendations made.
24. The Employer members believed that it was up to the Office to determine a schedule for drafting country profiles. This work was not a priority, but was important nonetheless.
25. A representative of the Director-General drew attention to the fact that it was essential to keep the information contained in these profiles up to date. This issue was closely linked to the discussion on promotion of standards which would be undertaken in the framework of possible improvements in ILO standards-related activities. The whole issue should be addressed in the light of the development of the ILO's information systems and databases related to standards. Thus, the pace at which these country profiles would be developed should be considered in the context of a more general discussion on the improvement of the Office databases.
26. The Chairperson stated that the publication of the results of the work of the Working Party, including on the Internet, could be the subject of a discussion during the next meeting of the Working Party. An exchange of views could thus take place, keeping in mind the publications which already exist. He also indicated that 67 ratifications had been registered to date for the Worst Forms of Child Labour Convention, 1999 (No. 182), mentioned in paragraph 13 of the document. Lastly, he announced that the Office would send a reminder to the member States which had not yet ratified the constitutional amendment on the abrogation of obsolete Conventions. The ratifications of this amendment were increasing at a steady but slow pace. Its importance was certainly more symbolic than practical, but was nonetheless considerable.
27. *The Working Party, having noted the information contained in the document "Follow-up on the recommendations of the Working Party, (a) General document", proposes to recommend to the Governing Body that it request the Office to continue reporting in detail on the follow-up to the recommendations of the Working Party, including on the ratification of the 1997 Instrument of Amendment of the Constitution.*

B. Information note on the progress of work and decisions taken concerning the revision of standards²

28. The Chairperson recalled that the information note was distributed not only to the various units of the Office but also to the constituents and in particular to the members of the

² GB.280/LILS/WP/PRS/1/2.

Conference Committee on the Application of Standards. This complex document raised once more the issue of the need to simplify the presentation of the results of the work of the Working Party.

29. The Worker members welcomed the updated information note and expressed appreciation for the way in which the Office had managed to keep track of the recommendations made by the Working Party. They also noted with satisfaction that since the discussion at the last meeting of the Working Party, efforts had been made to render the presentation of the information note more accessible to the general public. The Worker members also suggested that it should be made generally available to governments and the social partners, as well as to the Conference Committee on the Application of Standards, as during previous years. It should also be published on the Internet. The Worker members drew attention to the information regarding the 70 up-to-date Conventions and the promotion of 26 revised Conventions to replace 54 older Conventions which should be denounced. They underscored that if all ILO member States followed the recommendations of the Working Party, this would have a positive effect on the reporting workload of the Governments. They noted that the Employer and Worker members shared the same objective, namely to change the focus from the obsolete and outdated Conventions to the really useful and valuable ones and to concentrate efforts on those Conventions. They also stressed that the implementation of the Working Party's recommendations depended on appropriate action at the national level. Finally, with reference to paragraph 51, they proposed that the first part of the sentence be deleted as the present formulation could give rise to misunderstandings.
30. The Employer members expressed satisfaction over the information contained in the document in general. They thought, however, that in order to avoid any ambiguity paragraph 6 should refer to the eight fundamental Conventions and not to the 12 fundamental or priority Conventions referred to in paragraph 4. Regarding the requests for ad hoc information, the Employer members underscored the usefulness that information on the Social Security (Minimum Standards) Convention, 1952 (No. 102), could have for the general discussion on social security which would take place at the next session of the Conference in June 2001. In addition, it would be necessary to re-examine the decisions of the Governing Body to defer the shelving of certain Conventions, considering that this could not be envisaged unless the number of ratifications of these Conventions had diminished. No objective criterion had been adopted with regard to the minimum number of ratifications needed for the abrogation of obsolete Conventions. Moreover, these decisions had been adopted at a moment when there was no consensus regarding the standard-setting policy. The situation was different now – especially since the unanimous adoption of the integrated approach to ILO standards-related activities. These decisions could therefore be re-examined at a later stage. The Employer members also noted that five Conventions had been withdrawn at the June 2000 session of the International Labour Conference and that the withdrawal of six others was still to be placed on the agenda of the Conference. They drew attention to the penultimate sentence of paragraph 40 of the document because the English version did not seem to correspond to the Spanish version. The information on the Recommendations and in particular on the decision to revise ten Recommendations was very interesting. The Governing Body had also decided to withdraw a certain number of obsolete Recommendations and the withdrawal of 20 of them had already been placed on the agenda of the 90th Session (2002) of the Conference. Lastly, the status quo had been maintained with regard to another 24 Recommendations. Even if it was inevitable that the Working Party had not always been able to reach full agreement, the Working Party had made an important contribution to the activities of the ILO and the Office document summarized its work in a useful way.
31. The representative of the Government of Trinidad and Tobago thanked the Office for an excellent presentation of the recommendations of the Working Party. She suggested that

this document be distributed to the ILO tripartite committees at the national level. She also requested the inclusion of a further developed summary that would depict at a glance the precise status of the 183 Conventions and 191 Recommendations of the ILO and the decisions of the Working Party in their regard. Such a summary should seek to avoid overlaps between the different categories of decision to enable an easy account of what had been recommended by the Working Party with respect to each ILO instrument. She also recalled an earlier request to the Office to include a glossary to explain the different decisions and terminology used.

32. The representative of the Government of the Dominican Republic underscored the importance of the ratification of fundamental and priority Conventions. The Office should lead a campaign to achieve universal ratification of the four priority Conventions. He expressed his concern at the fact that the revised Conventions had not received the expected number of ratifications and that only a small number of countries, including the Dominican Republic, had ratified the constitutional amendment.
33. The Worker members thanked the representative of the Government of Trinidad and Tobago for the reminder of the proposal made previously concerning a glossary and expressed support for the proposals made. Contrary to the views expressed by the Employer members, the Worker members considered the manner of presenting the fundamental and priority Conventions appropriate and clear.
34. In response to a request for clarification from the Worker members, the Employer members explained that their intervention concerned the deferral of the decision to shelve ten Conventions until the number of ratifications of these Conventions had decreased. In their view, since there were no absolute and objective criteria concerning the number of ratifications, these instruments should be reviewed. Furthermore, when these decisions had been taken by the Working Party a consensus on the future of ILO standards-related activities had been lacking. But after the adoption of the integrated approach, which had given the ILO a new vision on standard-setting policy, it seemed possible to review these decisions in the light of developments in the denunciation of these Conventions. Consideration should also be given to the question of the remaining requests for information.
35. The Chairperson underscored that the fact that a certain number of decisions had been deferred by the Working Party did not mean that they would be forgotten in the future. These issues would be re-examined in due time. In reply to the comments of the representative of the Government of Trinidad and Tobago, he mentioned that the three tables presented in Appendix II of the Office document contained a summary of the decisions taken by the Governing Body. This summary could be further developed at a later stage as part of an effort to present the results of the work of the Working Party in a more user-friendly manner. A glossary of terms used (for instance, withdrawal, abrogation, ratification, entry into force, denunciation, etc.) could also prove to be useful.

C. Results of the work of the Joint Maritime Commission³

36. The Chairperson noted that this document had been submitted to the Working Party for information. The Joint Maritime Commission had examined five Conventions and three

³ GB.280/LILS/WP/PRS/1/3.

Recommendations on social security for seafarers and formulated recommendations to the Governing Body on the basis of an examination made by an informal joint working group representing the shipowners' and seafarers' organizations. In addition, the Joint Maritime Commission had considered that the elaboration of a framework Convention on labour standards in the maritime industry should represent a priority for this industry. A maritime session of the International Labour Conference could be held in 2005 with a view to adopting such a framework Convention.

37. The Employer members supported the statement of the Chairperson. They welcomed the idea of a framework Convention on labour standards in the maritime industry even though the experience gained in this industry could not necessarily be transposed to other areas. They hoped that the work in progress would be crowned with success and would benefit from the full support of the Office. In this respect, the Employer members expressed the hope that the Office would take into account the experience gained in this field within the Working Party.
38. The Worker members shared the views expressed by the Employer members. They wished to draw attention to the fact that, according to paragraph 6 of the document, the relevant social security instruments for seafarers had been examined by the Joint Maritime Commission. They noted that, in the points for decision, the report of the Joint Maritime Commission⁴ contained no reference to any recommendation concerning these instruments.
39. In reply to the comments of the Worker members, a representative of the Director-General stated that the Office would publish a corrigendum to the report of the Joint Maritime Commission in order to add a point for decision which would refer to the recommendations of the Commission found in the relevant paragraphs of the report.
40. The representative of the Government of the Netherlands expressed satisfaction at the proposal of the Joint Maritime Commission to adopt a framework Convention on labour standards in the maritime industry.
41. The representative of the Government of Denmark noted the positive development in the Joint Maritime Commission last January and supported the comments made by the representative of the Government of the Netherlands. He added that the proposals made by the Joint Maritime Commission could develop into a new method for ILO standard setting through the adoption of framework Conventions.
42. The representative of the Government of New Zealand welcomed the proposals of the Joint Maritime Commission, which corresponded to the call of the Report of the Director-General, *Decent work*, to reinforce standards and increase their relevance. The report from the meeting of the Joint Maritime Commission contained interesting elements which could be taken up and considered in the context of the new integrated approach. Such elements included the need to identify shared objectives, to review the relevant instruments, to examine different optional approaches for further action, including the value added and possible disadvantages of each approach, as well as to formulate points for discussion to help streamline the discussion.
43. The representative of the Government of Canada supported the adoption of a framework Convention in order to streamline the maritime instruments and improve their relevance. Lessons could be drawn from this approach, and coordination should be ensured in the context of the preparation of the integrated approach on occupational safety and health.

⁴ GB.280/5.

Another interesting approach was that of the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), which integrated a number of ILO Conventions in its appendix and provided for the possibility of updating this appendix through the adoption of a Protocol. These mechanisms should be considered in the context of the integrated approach.

44. The Worker members noted that the efforts of this industry were undeniably interesting, but specific circumstances seemed to prevail in the maritime industry and the approach adopted might therefore not be fully applicable in other contexts. In any case this was not an issue that could be further developed in the context of this Working Party.

D. Deferred examination of the Paid Educational Leave Convention, 1974 (No. 140) – Short survey⁵

45. The Chairperson recalled that Convention No. 140 had already been examined twice by the Working Party. In March 1997, following an examination by the Working Party, the Governing Body had decided to invite member States to contemplate ratifying this Convention and to inform the Office of the obstacles and difficulties encountered, if any, that might impede or delay the ratification of Convention No. 140 or that might point to the need for a full or partial revision of this Convention. In March 1998, following a new examination of Convention No. 140, the Governing Body had reiterated its decision to promote its ratification and requested the Office to undertake a short survey on the obstacles and difficulties encountered that might prevent or delay the ratification of the Convention or that might point to the need for its full or partial revision. This short survey was now submitted to the Working Party for examination. It took account, among other things, of the General Survey made in 1991 by the Committee of Experts, the 1999 Report of the Director-General, *Decent work*, the conclusions of the general discussion during the 88th Session of the Conference in 2000 on human resources training and development and the proposal submitted to the current session of the Governing Body to revise the Human Resources Development Recommendation, 1975 (No. 150). In addition to this, the Office had supplemented the factual information available by an analysis of the legislation in the field of paid educational leave adopted in 29 ILO member States since the General Survey of 1991. Moreover, the short survey took account of the legislation in another 19 countries on issues which were related to the general framework underlying paid educational leave. The Chairperson added that Convention No. 140 had received three new ratifications since its last examination by the Working Party in March 1998. The short survey contained information on the situation in 83 member States. In 31 States, there were no or few obstacles to ratification of this Convention, while 36 other countries were facing such obstacles. Among the 12 States parties to Convention No. 140 which had replied to the consultations, 11 did not have any problem in the application of this Convention and were not in favour of its revision. The conclusions of the short survey were qualified and confirmed the proposal of the Working Party to promote Convention No. 140 to the extent that the objectives of the Convention seemed to remain up to date and be likely to make a useful contribution to the attainment of the strategic objectives of the ILO. The short survey also highlighted lifelong learning policies, a new and very interesting concept. Lastly, it referred to the provision of assistance to countries facing obstacles to the ratification of the Convention.

⁵ GB.280/LILS/WP/PRS/2/1.

46. The Employer members stated that they did not support the proposals made by the Office in paragraphs 9 and 10 of the document. Recalling their commitment to the subject of training and skills development, they emphasized that the text of the Convention had significant financial implications, was very wide-ranging and referred to training at all levels, general, social or civic education and trade union education. Already in 1974 they had considered that this subject should be the subject of a Recommendation and not a Convention. Thirty years later, the scope of this issue had become broader and the obligations stemming from paid educational leave were more far-reaching. It was therefore time to reassess this instrument. The short survey identified 36 countries which had difficulties in applying the Convention but nevertheless concluded that the Convention should be promoted. The Employer members considered that this Convention did not attain the universal scope required by instruments in this field and for this reason they could in no case agree with the conclusion of the short survey. The status quo should therefore be maintained with regard to this Convention and the possibility of re-examining this instrument in the context of the item on human resources training and development, which could be included in the agenda of the Conference, maybe should perhaps be envisaged.
47. The Worker members noted that, as indicated in paragraph 1, the Working Party had examined Convention No. 140 on two previous occasions and on both occasions it had recommended that the Governing Body invite member States to contemplate ratifying this Convention. At the time of the decision to carry out a short survey on this Convention, it had been recalled that the Committee of Experts had recently undertaken a General Survey on this subject. The General Survey had concluded that, owing to the flexible nature of its provisions, this Convention constituted a suitable framework for the necessary debate between the social partners and the public authorities on their respective responsibilities in this area and underlined the importance of this instrument for the whole of the Organization's standards-related activities and its pursuit of the objectives of social justice. At that time, and even though the Worker members had felt that there was no need for another survey, they had agreed thereto in a spirit of compromise. The short survey now before the Working Party confirmed the views expressed in the General Survey of the Committee of Experts. Paragraph 15 of the short survey underlined that the Convention contained an obligation of best efforts and was promotional. Paragraph 5 of the report highlighted the objectives of the Convention, which included the expansion of the individual's opportunities for education in order to help workers keep up with scientific and technological progress, promote economic competitiveness and safeguard equity and social justice. Paragraph 7 of the document mentioned that these goals were relevant and up to date by virtue of its flexible provisions and balanced objectives. The Convention had received 32 ratifications, including three recent ratifications from developing countries. While normal practice would suggest that this Convention was up to date, there seemed to be a political divergence regarding this Convention. Paragraph 46 of the short survey mentioned that five countries were considering a revision of this Convention. The obstacles were of a general nature and were mainly due to economic and financial difficulties. The Committee of Experts had said that while fully aware of the difficulties that should be overcome, the Organization and its Members should see this as an encouragement to pursue their efforts with even greater resolve. One government, which, at the time of the consultations, had been in favour of abrogating the Convention, had recently reintroduced provisions on paid educational leave which had been repealed in 1992. The Worker members expressed their support for the proposal in paragraph 8 of the document and asked the Office to provide technical assistance to countries which had referred to such assistance in their replies. Moreover, as the object of the discussion concerned the question of human resources, the Worker members recalled that the Working Party had considered the Human Resources Development Convention, 1975 (No. 142), to be up to date.

48. A Worker member from Australia added that it would be most disappointing if a decision were not taken to promote the ratification of Convention No. 140. The general discussion on human resources training and development at the 88th Session of the International Labour Conference (2000) had emphasized the importance of education for all ILO member States. Future national competitiveness and enterprise productivity were going to be heavily influenced by a nation's skills base. It had become widely accepted that higher skills served individual interests in terms of job security and occupational safety and health. There was an acceptance of the need for workers to accept the prospect of lifelong learning to achieve not just high performance in workplaces, but also individual employability in the context of more rapid structural changes of the workforces. It was not sufficient to consider compulsory schooling for young people as an adequate basis for skills development. Ninety per cent of all workers in the year 2010 had already entered the workforce. This fact underlined the need to address the mechanisms for improving individual skills at the enterprise, industry and national levels. The promotional nature of this Convention should be stressed. The Convention was not prescriptive and offered a range of mechanisms for improving a nation's skills base, taking account of changing circumstances. For these reasons the Worker members were in favour of a promotion of this Convention rather than the status quo.
49. The Employer members stated that they had listened carefully to the intervention of the Worker members. Even though common objectives existed, at present the obligations stemming from paid educational leave should be foreseen in a more specific way. The governments and the social partners should also take on their responsibilities in this field. The Employer members considered that there were a number of concrete elements that constituted real obstacles to the ratification and application of this Convention.
50. A Worker member from Rwanda emphasized the importance of promoting Convention No. 140. Rwanda was a very poor country and had not yet ratified the Convention. Nevertheless, the new Labour Code contained provisions on the granting of paid educational leave. This corresponded to a real need in order to allow enterprises to become more competitive. Thus, this question was not purely theoretical, but rather had considerable practical importance and also arose in other developing countries.
51. The Employer members welcomed the intervention of the Worker member from Rwanda, which showed that the adoption of a Recommendation would have been more useful for guiding national policy in the different member States. This had been the viewpoint of the Employers in 1974 at the time when Convention No. 140 was adopted.
52. The representative of the Government of India thanked the Office for the extensive and well-analysed document on Convention No. 140. He noted that although there was no specific law in India guaranteeing the right to paid educational leave, the Constitution guaranteed, among other things, the right to education. In pursuance of the relevant provisions of the Constitution, massive efforts had been and were being undertaken in that country to provide primary education. Facilities for workers' education and adult education were also provided. As envisaged by the Convention, wages were paid to trainees under some of the existing schemes. Educational leave involved not merely a question of releasing workers for training and paying them wages for the period of the training, but also that of creating a huge infrastructure for the continuing education of a workforce of about 370 million, 28 million of whom were in the organized sector and the remaining in the informal sector. This represented a formidable task, which was further compounded by the steady increase in population. Developing countries were already faced with the problems of structural adjustment and problems emanating out of increased integration within the global economy. Smaller units of economic activity were facing obstacles caused by these factors. Larger units were facing problems of redundant labour due to

technological changes and changes in skills requirements. Under these circumstances, while the need for adequate space for individual learning should be respected, these should be left to the bipartite mechanisms only. Moreover, many of the developing countries were labour-surplus economies, not only because of the burgeoning population growth, but also owing to mismatches between supply and demand in the labour market. Given these constraints, it was apprehended that any further regulatory measures in this regard would either compress existing employment by the introduction of capital-intensive technologies or drive labour into areas where the employer-employee relationship became more nebulous. Some of the obstacles of a material and economic nature which India confront in the context of ratification of this Convention included a lack of fully developed primary- and secondary-education facilities and the need for a huge infrastructure for continuing education which did not appear predictable in the near future. Although the provision of paid educational leave was regarded as an objective to be achieved ultimately through a phased implementation in certain selected areas of employment, the representative of the Government of India concluded that his country could not favour promotion of the ratification of this Convention.

- 53.** The representative of the Government of the Netherlands recalled that her Government had ratified Convention No. 140 and pointed out that this Convention was a means of allowing the implementation of lifelong learning policies. The obstacles to the implementation of this Convention were primarily of a financial nature, as indicated by the previous speaker. Nevertheless, owing to the importance that the Netherlands attached to the promotion of such policies and the benefits that derived from them in the long run in terms of productivity and competitiveness, the Government of the Netherlands favoured an approach which relied on identifying the obstacles and finding ways to overcome them. In conclusion, the speaker supported the proposals of the Office aiming at promoting the ratification of the Convention and the granting of technical assistance to the countries facing difficulties in this regard.
- 54.** The Employer members stated that they were less concerned with the conclusions of the document than with the framework of the discussion. They reaffirmed their commitment to the basic principle of vocational training. However, the discussion was no longer focused on vocational training, but on general issues of primary and secondary education which were inherent in the obligations of States. These matters went beyond the scope of the Convention and had significant financial implications. It was not only the conclusion of the document which needed to be re-examined, but the entire context in which it was framed. Therefore, they could not support the proposed conclusion and sought to maintain the status quo.
- 55.** The Worker members noted that the issue should be examined from two points of view: first, whether the content of Convention No. 140 was relevant; and second, whether the factual objections to this Convention were of such magnitude that it merited revision or no action. The evidence presented in the short survey supported an affirmative answer to the first question and a negative answer to the second. Nowadays, it was common to talk about skills development and knowledge as the basis for individuals to fulfil their potential and improve their mobility, while industries and countries became more competitive. For this reason there was an ongoing discussion on training, lifelong learning, etc., in all countries. Regarding the objections to this Convention, five countries were in favour of revision, one of which was a party to the Convention. That country, however, envisaged a strengthening of protection through a revision of this Convention. The views of another country that was in favour of abrogation no longer seemed to be relevant as the political conditions in that country had changed. Another argument was that paid educational leave required financial resources. In that respect, the Worker members referred to the comments by the Committee of Experts and the provisions of the Convention, which illustrated its flexible nature and showed that it could be implemented in stages, taking into account a country's level of

development and in accordance with national practice. They noted that the objections recorded in the 1997 consultations were not aimed at the Convention, but were of a general nature. The Worker members retraced the successive steps taken in the course of the examination of this Convention over the last ten years. The General Survey of the Committee of Experts in 1991 had underlined the flexible nature of Convention No. 140. In 1995 the Experts had pointed at an apparent revival of interest in the Convention. In March 1996 the Governing Body had invited member States to ratify this Convention. One year later, the Governing Body had reiterated its decision. At the present examination the Office had reached a similar conclusion. The short survey underlined the flexible nature of the Convention and showed that many countries had adopted provisions on paid educational leave even though they had not ratified the Convention. All arguments pointed towards a decision that this Convention should be promoted.

56. After an exchange of views the Working Party concluded that: *Pending a possible revision of the Paid Educational Leave Convention, 1974 (No. 140), in the light of further developments, which would aim at complementing it, the Working Party maintains its recommendation to the Governing Body to invite member States to examine the possibility of ratifying this Convention and to request technical assistance from the Office in case of obstacles and difficulties encountered.*

E. Deferred examination of the Termination of Employment Convention, 1982 (No. 158) – Short survey⁶

57. The Chairperson recalled that the Working Party had examined Convention No. 158 for the first time at its meeting in March 1997. Following this examination, the Governing Body had decided to request information from member States on the obstacles and difficulties encountered that might impede or delay the ratification of this Convention or that might point to a need for its revision. The Working Party had re-examined the Convention in March 1998 in the light of consultations which had been conducted by the Office in 1997. It had decided then that a short survey should be undertaken concerning the obstacles and difficulties encountered which could impede or delay the ratification of Convention No. 158 or point to a need for its revision. The short survey submitted to the Working Party was based on the result of the 1997 consultations and complementary information concerning termination of employment legislation in 59 countries, extracted from a recent ILO publication. The short survey also examined the question of labour market flexibility in the light of a study made by an independent expert, concerning the situation in four common-law countries and two civil-law countries. The short survey concluded that there was no fundamental contradiction between the goal of labour flexibility and the types of labour standard contained in Convention No. 158. It also concluded that the general norm of fairness in employment relations which underpinned the Convention seemed to be compatible with forms of employment protection which struck an appropriate balance between employment security and the need of employers to adapt to changing economic circumstances. Nevertheless, 28 member States had reported obstacles in the way of ratification of the Convention. The Office had therefore formulated alternative proposals, that is, either to promote the ratification of Convention No. 158 and

⁶ GB.280/LILS/WP/PRS/2/2.

invite the Office to undertake activities with a view to overcoming the existing obstacles, or to maintain the status quo with regard to this Convention.

- 58.** The Employer members recalled the arguments that they had put forward during previous discussions in the Working Party and noted that Convention No. 158 touched upon the issue of labour flexibility, which was necessary for modern business in a globalized world, and on the issue of employment creation. They stated that their points of view on the matter had not been fully reflected in the document. The question of termination of employment was very important for small and medium-sized enterprises in a highly competitive world, in which it was important to create jobs, and not only to protect those who already had jobs. It was clear that Convention No. 158 had already given rise to a number of problems, as indicated by the fact that a number of countries had denounced it. The Employer members were convinced that this instrument was not adapted to economic reality. Therefore, with regard to paragraph 14 of the document, the Employer members opted for maintaining the status quo of the Convention. Another possibility would be to recommend a revision of the Convention, but it appeared from the short survey that this option did not have much support from member States.
- 59.** The Worker members recalled that this matter had already been examined in March 1997 and in March 1998. The Worker members had always been in favour of promotion of the ratification of the Convention. The 1995 General Survey on protection against unjustified dismissal and the Ventejol Party had confirmed the relevance of the Convention. The present short survey revealed that there were no or only limited obstacles to ratification of the Convention in 68 countries. In the 28 countries which had indicated obstacles to ratification, 20 had cited specific technical problems, such as a lack of conformity between national legislation and the Convention or a lack of tripartite consensus. These were not objections to the principles of the Convention. Other obstacles mentioned, such as better protection offered by national legislation or limited protection accorded in one country to pregnant women workers, were not really substantial obstacles. The Worker members agreed with what was stated in paragraph 91, i.e. that there was no fundamental contradiction between the goal of labour flexibility and the provisions of the Convention. They agreed with the conclusion in this paragraph that the Convention struck the right balance between the interest of workers for employment security and the need of employers for flexibility. The Worker members therefore supported the proposals in paragraph 14(a) and 14(b) calling for promotion of the ratification of the Convention.
- 60.** The representative of the Government of Switzerland referred to the OECD report, *Employment outlook*,⁷ and specifically the chapter on employment protection legislation. The study and relevant experiences in Switzerland indicated that the employment-to-population ratio was lower in countries with restrictive employment protection legislation, and that such legislation especially affected employment levels of women, youth and older workers. Furthermore, States with strict employment protection legislation often had higher levels of self-employment. The Swiss experience had revealed that the use of short-term and fixed-term contracts also rose in relation to tighter employment protection legislation. Finally, strict employment protection legislation corresponded to lower turnover rates in the labour market and greater long-term unemployment. Switzerland benefited from an employment protection legislation system which provided for few restrictions on dismissal and no right for reinstatement. As a result, the Swiss Government had significant problems with Articles 4 and 10 of the Convention. The Swiss employment protection legislation system had allowed Switzerland to reduce its unemployment from 5 per cent in the late 1990s to 2 per cent today. New jobs were often in the high-salary and

⁷ OECD: *Employment outlook* (Paris, June 2000).

high value-added bracket, and there was no increase in the use of short-term or fixed-term contracts. For these reasons, the Swiss Government would support maintaining the status quo with regard to the Convention.

61. The representative of the Government of Panama wished to clarify the information regarding Panama which appeared in the document. The comparative table in the Annex indicated that there was no period of notice of termination in Panama. This was not the case; notice had to be given in cases where workers had more than two years of service, and for employees with less than two years of service the employer could opt to provide severance pay instead. While there was no requirement for consultations with workers' representatives in cases of mass redundancy, there existed a procedure for requesting authorization for lay-offs due to economic reasons.
62. The representative of the Government of India recalled the provisions of Convention No. 158, which included the right of workers to appeal to a higher body if they felt that they had been unfairly dismissed. The Industrial Disputes Act of India did not give workers a direct recourse to labour courts in cases of dismissal. The Convention applied to all branches of economic activity and to all employed persons, with certain exclusions possible for workers engaged on short-term or fixed-term contracts. Again, the Industrial Disputes Act included a restrictive definition of "industry" and "workman" which did not apply to all types of activity. Because of these difficulties in bringing national legislation into conformity with the Convention, India had not ratified the Convention and supported maintaining the status quo as proposed in paragraph 14(c).
63. The Worker members recalled that the Convention provided minimum protection in the event of termination. With reference to the OECD study cited by the representative of the Government of Switzerland, they asked whether the study examined employment in relation to the minimum requirements of Convention No. 158, or whether this was done with regard to extended employment protection legislation. If the latter were the case, then the study would have little relevance to the present discussion. They recalled that the Convention belonged to the framework of social protection, the third strategic objective, and that the General Survey had not revealed any serious obstacles to its ratification. Certain provisions of the Convention, such as protection from dismissal due to discrimination, were substantial elements of fundamental Conventions. They recalled the final remarks of the 1995 General Survey, which read:

The standards on termination of employment have a twofold objective: to protect workers in their professional life against any *unjustified* termination of employment, while preserving the right of employers to terminate the employment of workers for reasons which are recognized as being valid. Under the terms of Convention No. 158, to be valid the reason has to be connected with the capacity or conduct of the worker or based on the operational requirements of the undertaking, establishment or service. The Convention provides for procedural guarantees, namely the right of the worker to be heard prior to or at the time of termination, procedures of appeal against termination, the right to a period of notice and, in the case of terminations of employment for economic, technological or similar reasons, the consultation of workers' representatives and notification to the competent authority of the terminations of employment contemplated. It also deals with compensation in the event of *unjustified* termination of employment and income protection.

They noted that a recent mass lay-off in a company in Sweden had resulted in the loss of over 500 jobs. Under the Convention, the employer had been required to notify the relevant authorities. This requirement was not a heavy burden and was indeed necessary for the efficient management of such a mass redundancy. The relevance of the ILO in the context of the discussion on employment protection was at stake in this matter, and failure

to endorse the promotion of the Convention would send a negative signal to the outside world.

64. The Employer members stressed that matters relating to discrimination as a ground for dismissal were addressed by other Conventions. Before decent work could be attained, there had to be work in the first place. At times, models of employment were raised in the context of international labour standards which discouraged production. The creation of employment should be the primary subject of discussion. Convention No. 158 was an example of an instrument which did correspond to economic reality. Therefore, the Employer members reiterated their position that the status quo should be maintained, keeping in mind a possible revision of the Convention.

65. After an exchange of views, *the Working Party could not reach any conclusions with respect to Convention No. 158.*

F. Deferred examination of the Paid Educational Leave Recommendation, 1974 (No. 148), and of the Termination of Employment Recommendation, 1982 (No. 166)⁸

I. R. 148 – Paid Educational Leave Recommendation, 1974

66. The Working Party expressed its agreement with the proposals made by the Office. *It proposes to recommend to the Governing Body –*

(a) the maintenance of the status quo with regard to the Paid Educational Leave Recommendation, 1974 (No. 148);

(b) that the Working Party (or the LILS Committee) re-examine the status of Recommendation No. 148 in due course.

II. R.166 – Termination of Employment Recommendation, 1982

67. The Employer members proposed the maintenance of the status quo with respect to Recommendation No. 166 or to adopt the same decision as the one taken for Convention No. 158.

68. The Worker members agreed with the proposals of the Office. Recommendation No. 166 was a non-binding instrument which provided guidance for the member States. There should be no major obstacles for giving effect to it.

⁸ GB.280/LILS/WP/PRS/3.

69. After an exchange of views, *the Working Party could not reach any conclusions with respect to the Termination of Employment Recommendation, 1982 (No. 166)*.

G. Programme of work for forthcoming meetings of the Working Party

70. The Chairperson enumerated the items which could be placed on the agenda of the next meeting of the Working Party:

- the updated information note on the progress of work and decisions taken concerning the revision of standards;
- the follow-up to the General Survey on night work of women in industry, which would be submitted to the 89th Session (2001) of the Conference;
- the follow-up on consultations concerning instruments on social security;
- an exchange of views on the publication of the results of the work of the Working Party.

71. The proposed work programme was adopted without modification.

72. The Chairperson also indicated that the agenda of the March 2002 meeting of the Working Party could include:

- the updated information note;
- the follow-up to the recommendations of the Working Party, which was traditionally examined annually in March;
- another follow-up on the requests for information;
- the maternity protection instruments following the entry into force of Convention No. 183;
- possibly, a second discussion on the question of publications.

73. The representative of the Government of the United States noted that after its present 12th meeting, the Working Party had almost finished its case-by-case examination of Conventions and Recommendations. He also stated that the question of employment was essential in the context of a globalized economy. He further noted that the examination of other instruments had been important in the discussion of Conventions Nos. 140 and 158. He added that it would be important in the future to examine Conventions and Recommendations by families of standards and emphasized the usefulness of the integrated approach to the ILO's standards-related activities.

74. The Employer members supported the statement of the representative of the Government of the United States. The determination of families of standards was a positive innovation which might make it possible to overcome the difficulties encountered during the discussions in the Working Party. The integrated approach to the ILO's standards-related activities would give rise to an examination not only of instruments, but also of obstacles to their ratification. The Employer members expressed their appreciation for the work of

the Chairperson and other members of the Working Party, even though it was not desirable not to have reached a consensus on all of the instruments examined.

75. The Worker members noted that the statement of the representative of the Government of the United States was interesting in certain respects, but that this question was currently not part of the mandate of the Working Party.

76. The Chairperson emphasized that the grouping of instruments by families of standards would help to modernize the ILO's standards system and to make it easier to understand.

77. *The Committee on Legal Issues and International Labour Standards is invited –*

(a) to take note of the report of the Working Party on Policy regarding the Revision of Standards, based on the documents submitted by the Office;

(b) to adopt the proposals in the corresponding paragraphs of this report on which the Working Party has reached a consensus.

Geneva, 23 March 2001.

Point for decision: Paragraph 77.