



NINTH ITEM ON THE AGENDA

**Reports of the Committee on Legal Issues
and International Labour Standards**

**Second report: International labour
standards and human rights**

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IV. Improvements in the standards-related activities of the ILO – Implications of the Social Justice Declaration on the standards strategy and update on the implementation of the interim plan of action (Fourth item on the agenda)

1. The Committee had before it a document¹ concerning improvements in the standards-related activities of the ILO, which dealt with the implications of the Social Justice Declaration on the Standards Strategy and contained an update on the implementation of the interim plan of action.
2. The Worker Vice-Chairperson highlighted that the Social Justice Declaration served to strengthen the standards system, the supervisory mechanisms and the four components of the standards strategy. The Declaration also reaffirmed the importance of the ILO's standards policy as a cornerstone of ILO activities. Standards policy should be an integral part of the Office's and the constituents' work. Concerning the governance instruments, she welcomed the launch of a promotional campaign for the ratification and implementation of these standards. However, as the decision was taken in November 2008 to launch this campaign, she wondered why the campaign would only begin a year later. The Office strategy focused on the interdependence and interaction between the objectives of these Conventions and was in line with the integrated approach advocated by the Social Justice Declaration. She looked forward to examining the plan of action that would be submitted in November 2009 and seeing how it made best use of the experience gained from the promotion of the Maritime Labour Convention (MLC), 2006. She asked the Office to clarify how it intended to use the ideas embodied in the MLC in relation to enforcement and compliance to promote the governance issues. She stressed that beyond the fundamental and governance Conventions, the Office also had a mandate to promote all up to date Conventions and Recommendations based on the conclusions of the Cartier Working Party.
3. Concerning the linkage between General Surveys and recurrent discussions, the speaker urged governments to provide as much information as possible in responses to the article 19 questionnaire on employment both in the mandatory and optional parts. She expected that this new approach would enhance the value of General Surveys and hoped that the CEACR would continue to develop and enhance its jurisprudence by providing valuable references for the judiciary, governments and the social partners. There was a need to maintain the quality and character of the General Surveys and she welcomed any steps taken to highlight the value of these documents, for example by making them available in a more user-friendly manner through databases and other means. The Workers' group supported the creation of a working group within the CEACR to assist the Office in the preparation of the next article 19 questionnaires. The transparent and cooperative approach implemented by the Office for the questionnaires on employment and social security was greatly appreciated as were the efforts made to use information technologies, as well as information already available, to alleviate the reporting burden of member States. The Workers' group took note that the new modalities of article 19 may require some adaptation to the work of the Conference Committee on the Application of Standards next year and recommended that these issues be the subject of the Working

¹ GB.304/LILS/4.

Group on the Working Methods of the Conference Committee on the Application of Standards.

4. As regards the sending and processing of information under articles 19 and 22 of the Constitution, the speaker thanked the Office for the brief summary provided in the document on changes in reporting procedures since 1959. This issue was to be examined in detail in November 2009 in order to look at the options for a global approach to the streamlining of the sending of reports. Concerning criteria to be used for the grouping of Conventions, she agreed with the Office's proposal with some additions. On the qualitative criteria, the group proposed to add three more questions to paragraph 26(a): *Have there been any improvements in the quality of participation of the social partners? Has it ensured greater compliance and more effective implementation? Has it assisted member States in identifying gaps in their legislation and practice?* The speaker agreed with the proposal to present a simulation and to analyse the implications of the alignment of the reports. She asked the Office to clarify what was meant by the reference in paragraph 26(d) to the need to discuss ways to improve the follow-up of progress made at the national level between reporting cycles.
5. With respect to the alignment of the technical cooperation strategy with the follow-up to the Social Justice Declaration, the speaker fully endorsed the mainstreaming of standards into Decent Work Country Programmes and in the framework of the UN system. Significant efforts were needed in Geneva and in the field in order to ensure that Decent Work Country Programmes systematically included a standards component. Taking into account the Social Justice Declaration and the interrelated nature of the four strategic objectives, efforts should also be made to include references to the relevant standards under the different subjects covered by the Decent Work Country Programmes, with a focus on freedom of association and collective bargaining. The recognition of the role of the supervisory bodies in identifying needs for technical cooperation was critical, as in a majority of cases, the problems in the application of Conventions raised by the supervisory bodies were not reflected in the Decent Work Country Programmes. She supported the elaboration of country profiles to guide country-specific interventions. These profiles should be regularly updated and communicated to the different sectors in Geneva, the field offices and the Turin Centre. She urged the Office to develop specific technical cooperation projects to promote and implement international labour standards and the mobilization of resources to that end. The technical cooperation projects should cover all up to date standards related to the specific needs of member States. NORMES should work in close collaboration with the Office both at headquarters and in the field, with the tripartite constituents, United Nations Country Teams and bilateral and multilateral agencies at all levels. To assess the efforts made in this respect, a regular update should be provided in the LILS Committee on measures taken to achieve this. She supported the point for decision in paragraph 31.
6. With respect to Part II of the document on the implementation of the interim plan of action, she welcomed the progress report. Concerning the promotion of up to date standards and information contained in paragraph 33, she recalled that, during consultations on the Strategic Policy Framework (SPF), the Workers' group had requested that each outcome include an explicit reference to the promotion of the ratification of key international labour standards. She urged the Office to follow up on this. Concerning the invitation to member States to review their situation with respect to the ratification or implementation of ILO instruments in order to progressively increase coverage of each of the strategic objectives, she strongly encouraged governments to implement this very important element of the Social Justice Declaration. Governments could base themselves on Article 5 of Convention No. 144 (tripartite consultations) as the framework for this review. The promotion of up to date standards should not only rely on the General Surveys. She expected the review of some instruments would take place when governments were preparing for the General

Surveys but it would be counterproductive and contrary to the intent of the Social Justice Declaration if there was no parallel effort to review and promote all of the up to date instruments.

7. Concerning the priority instruments, she regretted that no new ratifications of Convention No. 81 (labour inspection) or Convention No. 129 (labour inspection in agriculture) had been registered since November 2008. These Conventions were crucial for the protection of workers' rights and the Office should provide more technical assistance in order to help member States overcome obstacles to their ratification. She hoped that the promotional campaign along with the mainstreaming of standards into the Decent Work Country Programmes would address this problem. She welcomed the inspection audits which would improve the functioning of the labour inspection systems of the countries concerned. She asked the Office to explain why these audits, which used to be tripartite, were now conducted by the Office. The speaker supported calls by the CEACR to ensure effective cooperation between labour inspection services and judicial bodies as this was an important aspect of enforcement and implementation. With respect to Convention No. 122 (employment policy) and Convention No. 144, given their importance she requested that the Office present separate reports for each of these Conventions in the next report. She welcomed the ratification of Convention No. 122 by Albania and noted that there were ongoing processes in a number of countries for the ratification of these two instruments. She welcomed the numerous activities carried out to promote the most recent Conventions and congratulated the governments who were actively moving forward with the ratification of these instruments. Progress made on the MLC, 2006, had been very encouraging and it was good to note that the targets set out in the Action Plan concerning ratification were likely to be met and perhaps exceeded. She welcomed the observations of the CEACR in the frame of the General Survey emphasizing that Convention No. 155, Recommendation No. 164 and the Protocol of 2002 (occupational safety and health) had laid the foundation for the preventative safety and health culture advocated in Convention No. 187. It was therefore important for the Office to also promote the ratification and implementation of these instruments.
8. As regards technical cooperation, the Worker Vice-Chairperson noted the good progress made in promoting standards through the CCA/UNDAF Guidelines and the Office of the High Commissioner for Human Rights. In addition, efforts had been made by NORMES to integrate international labour standards in the work of the different departments of the ILO. She welcomed the mention of standards in the three outcomes stipulated under the SPF, in particular the one on the right to freedom of association and collective bargaining. She also appreciated the requirements that all technical cooperation proposals contain a specific international labour standards component and hoped that this would lead to a substantial change in the way technical cooperation was delivered. One area that still needed to be worked on, however, was the integration of standards into Governing Body documents and she hoped that more efforts would be made to ensure this. The Workers' group supported the various actions being undertaken to enhance access to, and ensure broader visibility of, the standards system.
9. With respect to the status of Convention No. 158 and Recommendation No. 166 (termination of employment), the Worker Vice-Chairperson hoped that a new way forward had been reached following the tripartite consultations held in November 2008. The Employers' and Workers' groups had both proposed that these instruments be included in the General Survey on employment to be examined in 2010; however, for technical reasons this was not supported by the governments. The Workers' group considered that this instrument was particularly relevant given the current financial crisis. She noted the useful observations by the CEACR on Convention No. 158 in its last report which captured the essence of the Conventions when it stated "the principles underlying the Convention constitute a carefully constructed balance between the interests of the employer and the

interests of the worker as evidenced by the provisions relating to termination on grounds of operational requirements of the enterprise". The Convention contained some flexibility and allowed for termination in certain circumstances. However, it also recognized the need for rules and due process so that workers were not treated arbitrarily. The CEACR further observed that most countries had provisions in force at the national level that were consistent with all or some of the basic principles in the Convention. This was good news as views had been expressed that the low rate of ratification of this Convention was due to its inconsistency with national laws and this statement seemed to disprove this theory. When this issue was discussed in November, some governments also expressed the view that their national laws were largely compatible with the provisions in the Convention as highlighted in paragraph 77 of the document. However, in the spirit of moving forward, the Workers' group was prepared to find a mutually acceptable solution and the Office proposal could be acceptable with certain modifications. In paragraph 92(i), instead of just promoting the core principles as suggested by the Office, the Workers' group proposed that the Office should also launch a campaign to promote Convention No. 158 and its Recommendation. These instruments were up to date, as concluded by the Ventejol Working Party in 1987. The speaker also requested that the Office organize a working party to explore a possible way forward on these two instruments. The terms of reference of this working party should be developed in consultation with the social partners. Alternatively, this could be deferred to November this year in order to give the constituents more time to consult on and discuss this issue. Highlighting the importance of having a solid safety net in this time of economic crisis, she quoted Joseph Stiglitz, a Nobel prize-winning economist, who stated that growth was not just a matter of increasing GDP. It must be sustainable and inclusive. In conclusion, she felt that, as many important issues were set out in the document, more consultations were needed.

- 10.** The Employer Vice-Chairperson said that it was important that the contribution of the constituents, including the Employers' group, was reflected in the documents for decision. With regard to footnote 5 concerning the study on the interpretation of international labour Conventions, he stressed the importance of this subject being discussed at the November 2009 session. This study had to deal in particular with the subject of the methods of interpretation of the Conventions which had to be applied by the ILO supervisory machinery, including the CEACR. He hoped that the study would have a practical, dynamic and user-friendly approach, i.e. it had to be useful, help to enhance the clarity and reliability of ILO Conventions and improve understanding thereof, and make a significant contribution to a better application and supervision of standards. The Employers' group was conscious of the major implications of the Social Justice Declaration for the ILO's standards policy and was aware that the latter might require some adjustments, e.g. ensuring that the standards policy contributed to achieving all the ILO's objectives and to responding better to constituents' needs. It was therefore necessary to have a balanced and transparent standards policy which catered for modern needs. The fact that the implications of the Declaration were still unclear should not delay the progress of the standards policy.
- 11.** With regard to the consultations held on the standards policy, the Employers' group noted strong support with respect to the following points: the Social Justice Declaration had to be the framework for consultations; it was necessary and desirable to have an up to date and relevant corpus of standards; the LILS Committee or a LILS working party was the most appropriate body for conducting an examination of the relevance of standards; and procedures for keeping the corpus of standards up to date had to be defined.
- 12.** The Employers' group made a specific proposal to establish a regular standards review mechanism. It recalled that three working groups had been mandated to review standards. In 1987 the Ventejol Working Party had stated that the proposed classification had been undertaken at a given point in time and would need to be revised from time to time in the light of progress made. This statement was more valid than ever at the present time. The

ILO needed to have a mechanism which would enable the relevance of the body of standards to be evaluated at any time. This would not only provide a sound basis for promoting standards classified as up to date but would also be in line with the Social Justice Declaration inasmuch as the latter called on the ILO to respond more effectively to the diverse realities and needs of its Members. In 1995 the Cartier Working Party had stated that fundamental Conventions and Conventions adopted after 1985 would be considered, de facto and without review, as up to date Conventions. Some 15 Conventions and 15 Recommendations adopted between 1985 and 1998 (not counting the maritime standards) would now be due for review given that ten years had passed since their adoption, and therefore proposing that they be reviewed seemed appropriate. In addition, there were some 50 instruments with interim status and standards the first examination of which had not concluded with a definitive classification, as was the case with Convention No. 94. The work of reviewing the instruments had to be undertaken regularly. The Employers' group thought that this exercise could only be beneficial. It would facilitate the possibility of identifying outdated standards and the need to have new standards through creation, revision or consolidation. It would also give greater visibility to up to date Conventions, and ILO standards would enjoy greater recognition and influence in the world of work. The Employers' group had proposed methods for designing a regular review mechanism consisting of two parts: review and classification of standards; and follow-up to the review and classification of standards. With regard to the possible status to be ascribed to standards (up to date, outdated, to be revised, interim), it would be necessary to define more clearly the scope of that status, not only in legal terms but also regarding the action to be taken by the Office and constituents and the manner in which the standards would be cited in various publications. He emphasized that the intervals at which a new review of individual standards would be due should be defined. The follow-up to the review and classification could be undertaken by the competent bodies, i.e. the Conference, the Governing Body, the Office and the constituents, each in its own sphere of competence.

13. The Employer Vice-Chairperson considered that it would be necessary to have a body responsible for monitoring follow-up in order to ensure that there were no delays with regard to the questions that had been raised. A constructive process was needed which would in good faith improve and maintain the relevance of the body of standards without adversely affecting the protection of workers.
14. The speaker supported the plan of action to promote the ratification and effective implementation of the four priority Conventions. However, he considered that, in contrast to the campaign for the ratification of the core Conventions, the campaign for the priority Conventions, which were clearly more difficult to implement, must emphasize the importance of ensuring their implementation. Member States should be encouraged to initiate the process by conducting analyses of law and practice. Furthermore, assessments should be made of the ability to make the necessary changes at the national level in order to implement those instruments. Ratification should be considered only when effective implementation could be guaranteed. Designing a plan of action for progressive implementation could be an appropriate measure when considering ratification of an instrument. Whenever necessary, the ILO should provide States with assistance to strengthen their implementation and reporting capacities.
15. With regard to the linkage between General Surveys and recurrent discussions, the speaker considered that the changes made to questionnaires to date must be viewed as "experiments", that conclusions could be drawn from that experimental phase, and that further changes might be required. As regards the references concerning the CEACR in paragraphs 11 and 12, although the proactive role of the CEACR was most welcome, he considered that the Committee should avoid making political statements such as the one referring to the Social Justice Declaration, given that such statements did not come within

its remit. In addition, he considered that the Governing Body, and not the Office, should be responsible for determining whether or not CEACR proposals were useful. As regards the possible assistance for preparing questionnaires and establishing a working group, he considered it more appropriate to establish a joint working group comprising CEACR members and members of the Governing Body or the Committee on the Application of Standards, in order to make it tripartite and to ensure that the opinions of General Survey users were taken into account at the initial stages of questionnaire preparation.

16. With regard to paragraph 17, the Employers' group considered that the Office should write a progress report on the evaluation of the grouping of Conventions by subject for reporting purposes and on new options for a global approach to streamlining taking into account the evaluation of the grouping of Conventions. Concerning paragraphs 17 to 24, although they referred to the need to change the reporting system, in his opinion it was not clear what changes the Office wished to propose in November. As for the information provided on aligning the technical cooperation strategy with the follow-up to the Social Justice Declaration, he referred to the comments made on that matter on other occasions. With regard to Part II of the document concerning the update on the implementation of the interim plan of action, the speaker opposed the idea that the strategy's first component be entitled "Promotion of up to date standards" instead of "Standards policy" as had been agreed within that Committee. Standards policy covered a wider variety of issues than the promotion of up to date standards. In that regard, he asked the Office to rectify that matter and to draft future documents accordingly. Apart from the information on the MLC, 2006, and Convention No. 187, that section of the document did not contain new information. He urged the Office to restrict its progress reports to genuinely new information.
17. The speaker noted that paragraph 56 referred to the establishment of an Office-wide procedure for the appraisal of technical cooperation projects so as to ensure that international labour standards were addressed in a coherent manner in all technical cooperation activities. He asked the Office to provide further details on that procedure, including on its justification and implications. He also asked for information on the proposals for projects on ILO standards that constituents did not consider as a priority, and requested information on what happened to proposals for projects that did not relate to ILO standards but to Conference conclusions and other ILO documents, such as guidelines.
18. As for enhanced access to and broader visibility of the standards system, the speaker again asked the Office to provide new information only. He also requested that ACT/EMP and ACTRAV be involved when specific measures were implemented so that the views of employers and workers would be reflected above all in measures targeting the general public, as well as in courses on ILO standards organized for judges, lawyers and legal educators by the International Training Centre of the ILO in Turin.
19. As to paragraph 67, which referred to the publication of *A practical guide to Convention No. 94 and Recommendation No. 84 on labour clauses in public contracts*, the Employers' group repeated the request it had made in November 2008 that LILS examine the status of Convention No. 94. The grounds for that request could be found in the conclusions of the Cartier Working Party, which, following in-depth discussions during its November 1998 meeting, agreed that the Working Group or the LILS Committee would examine the status of Convention No. 94 in due course. There were significant obstacles to the application of the Convention, as well as doubts regarding its relevance, in particular concerning its compatibility with European Union legislation, as emerged from the discussions of the Committee on the Application of Standards in relation to the General Survey on Convention No. 94, which took place in June 2008, as well as from other meetings at the ILO in June 2008 and February 2009. The Employers' group requested the Office to include that issue on the LILS agenda for November 2009, in conformity with the proposal made by the Cartier Working Party, the LILS Committee and the Governing Body.

20. As to the status of Convention No. 158 and Recommendation No. 166, the speaker referred to the CEACR's general observation regarding Convention No. 158, mentioned in paragraphs 86–88. The Employers' group believed that that general observation was a clear example of an instance in which the CEACR had expressed biased, unsolicited opinions, and thus gone beyond its mandate. Under that mandate, the CEACR was required to limit itself to examining reports under articles 19 and 22 of the ILO Constitution, indicating in particular how far member States had complied with their obligations with regard to the standards. He emphasized that, under its mandate, the CEACR was not expected to make statements of a political nature concerning the usefulness of ILO Conventions. Moreover, such statements infringed upon the competences and mandates of other ILO bodies, especially the Governing Body. Furthermore, the CEACR was not sufficiently aware of the economic realities to be able to claim that Convention No. 158 was of "particular relevance given the current financial crisis".
21. The Employers' group did not agree with the proposals presented by the Office in paragraphs 89 and 91 with the aim of moving the discussion forward. As to the promotion of the core principles of the instruments, the group believed that it would be difficult to promote a number of principles which had not been defined and the content of which was not the object of a consensus among the groups. Should an agreement be reached as to which principles were "core principles", the group wondered on what basis those principles would be promoted and what would be done regarding the Convention itself. With regard to exploring the possibility of reviewing the flexibility clauses in the Convention, those clauses might not be satisfactory but the group felt that reviewing them was a fall-back option. However, the solution to the real problem did not lie in making it easier for governments to exclude a greater number of workers or enterprises from the scope of application of the Convention in order to facilitate its application to an ever diminishing number of privileged workers. In order to move forward constructively, it was necessary to define a more inclusive form of protection of employment, especially at a time of crisis. Employers needed to be allowed greater flexibility, so that their enterprises could continue to function as sources of jobs, given that it was not possible to create jobs without enterprises. Higher levels of protection could always be set out through collective agreements or the human resources policies of enterprises. The Employers' group was proposing specifically that a solution be sought within the context of a comprehensive examination of employment protection and flexicurity (a concept clearly distinct from job protection). In particular, the group proposed that meetings of experts be held with the aim of drawing up a practical guide to those issues. That could prepare the way for a possible review of the two instruments in question.
22. The speaker said that, whatever measures might in the end be adopted, it was necessary to determine the status of Convention No. 158, and that was the main reason for the present discussion. Taking into account the fact that status should be determined in the light of the outcome of the discussion, it was clear that no agreement had been reached as to whether the Convention as it stood could be considered to be "up to date". He proposed that the instrument be granted "interim status" and emphasized that the Office could not promote the Convention while it had "interim" or indeterminate status. The Employers' group therefore opposed any attempt by the Office to promote the Convention by, for example, providing biased information on it. The NORMES web page on "Employment security" listed Convention No. 158 under "Selected relevant ILO instruments", without clarifying the situation regarding the lack of status, or the tensions currently surrounding that status. The same page contained a link to the CEACR 1995 General Survey, but not to the discussion which took place within the Conference Committee. Another link on the page referred to a note that was the basis for the November 2008 consultations. That note sought to defend the two instruments with regard to their relevance. It should really also describe and specify the concrete problems facing countries regarding the ratification of the

Convention, which had a very low number of ratifications. The link to that note did not include any links to the report on the consultations, which would reveal the difficulties and problems relating to the instruments and the criticisms expressed, not only by the Employers' group, but also by a large number of governments. He insisted that that state of affairs needed to be rectified and that the Office's sources of information should provide objective and full information, in particular, the points of view of the constituents, however much they might be opposed to those of others.

23. The representative of the Government of Germany, speaking on behalf of IMEC, stated that since the new design of the article 19 questionnaires was being discussed under agenda item LILS/5, IMEC would like to refer to its statement made under this item as the discussions of both of these had to be closely interlinked. Concerning the four priority Conventions, IMEC appreciated the launch of a campaign for the ratification and effective implementation of these standards in 2009 and supported a promotional strategy emphasizing the interdependence and interaction between the objectives of the Conventions.
24. The speaker recalled that, in light of the Social Justice Declaration, the Governing Body had agreed on the need to review institutional practices in order to enhance the impact of the standards system, including through the synchronization of reporting both under articles 19 and 22 of the Constitution in the same thematic areas. IMEC welcomed the approach of increasing coherence in the concept of recurrent discussions but recalled that recurrent discussions were not intended to be supervisory in nature nor duplicate the work of any supervisory body. While the review of trends and developments in the recurrent discussions should use the information on law and practice contained in a new type of General Survey, General Surveys should not be the only source of information as recurrent discussions would have a much broader scope. General Surveys were an invaluable tool to make a comprehensive assessment of the impact and usefulness of international labour standards, and the quality and character of General Surveys had to be retained. At the same time, the adoption of the integrated approach could enhance the value of General Surveys by optimizing the use of information contained in them and developing an institutional follow-up throughout the ILO standards-related activities.
25. IMEC welcomed cooperation between the Office and the CEACR concerning the implications of the Social Justice Declaration on its work, in particular the consultations held in preparing the new article 19 questionnaire on social security instruments. This close cooperation in the ongoing process of evaluation and future preparation of article 19 questionnaires should be continued. The group also welcomed cooperation between the Conference Committee on the Application of Standards and the CEACR with a view to optimizing the work and working methods of both Committees in relation to future General Surveys. IMEC appreciated the impact the new article 19 questionnaire on employment instruments had on enhancing cooperation within the Office and the mobilization of the regional and field offices and saw this as a step forward in implementing the integrated approach of the Social Justice Declaration. The efforts of the Office to develop an online reporting system for article 19 reports allowing for the updating of information would alleviate the reporting burden of governments and also facilitate the work of the Office in the long run.
26. Concerning the streamlining of reporting cycles under articles 19 and 22 of the Constitution, IMEC reaffirmed that the primary purpose of reporting both under articles 19 and 22 had to be fully maintained. With this in mind, in light of the alignment of General Surveys to recurrent reviews, it might be useful to synchronize article 22 reporting cycles accordingly. A more intensified thematic grouping of reporting under article 22 could provide a more comprehensive view of the application of Conventions in a subject area and could also contribute to greater consistency and coherence in the analysis of reports by

the CEACR. As the streamlining of reporting was still at an experimental stage, it would have to be evaluated whether the thematic approach to non-fundamental and non-priority Conventions would have these anticipated positive effects. The Office should also examine if the grouping led to synergies which facilitated reporting obligations of member States and whether or not this created greater efficiency for the Office and the CEACR. IMEC believed that the Office's proposal to present a simulation and to analyse the implications of realigning the article 22 cycle would be very helpful in the Committee's further deliberations on this issue. With respect to the increased workload of reporting observed from 2003 to 2008, IMEC would support exploring options for a lengthened cycle.

27. As regards the alignment of the technical cooperation strategy with the follow-up of the Social Justice Declaration, IMEC attached great importance to further strengthening the link between the Decent Work Agenda and the broader development agenda on a UN level, as well as to further mainstreaming of standards in the Decent Work Country Programmes. IMEC supported the operational steps outlined in paragraph 29 in this regard. In particular, the identification of priorities based on the guidance provided by the supervisory bodies, General Surveys and recurrent discussions would help to implement an integrated approach into the technical cooperation strategy. In light of the comments made, IMEC supported the point for decision in paragraph 31 of the document.
28. With respect to Part II of the document, IMEC welcomed the progress that had been achieved in many areas and was particularly pleased to note that further progress was being made in mainstreaming international labour standards into the activities of all technical departments and technical cooperation programmes. Progress of the five-year Action Plan to achieve widespread and rapid ratification and implementation of the MLC, 2006, was also noted and the numerous regional and national tripartite conferences and meetings that had been convened were appreciated.
29. With respect to mainstreaming international labour standards in the UN system, IMEC particularly appreciated the inclusion of labour standards in the normative basis for the UN Human Rights-Based Approach (HRBA). Regarding the development of the online reporting system, efforts made by the Office to identify additional financial resources through external funding were appreciated.
30. Concerning the discussion on the status of Convention No. 158 and Recommendation No. 166, IMEC noted with interest the report on the tripartite consultations held in November 2008. As the CEACR observed, most countries, be they ratifying or not, had provisions in force at the national level that were consistent with all or some of the basic principles of the Convention. The group agreed that, in the current context of declining economic growth and rising unemployment, the issue of dismissal was of particular relevance. IMEC therefore supported the Office's proposal to promote the core principles of the instruments and at the same time explore possibilities of reviewing the flexibility clauses of the Convention, which might allow more member States to ratify it. To this end, the Office should convene tripartite consultations on the question of a partial revision of Convention No. 158.
31. The representative of the Government of France, supporting the statement made on behalf of IMEC, emphasized the importance, as part of the streamlining of the sending and processing of information and reports, of re-evaluating the grouping of Conventions, while ensuring that the supervisory system was strengthened. In order to provide an overview of the Conventions' application in terms of the four strategic objectives, in line with the 2008 Social Justice Declaration, a new thematic grouping of Conventions could be considered. It could be useful to incorporate the relevant Conventions into each strategic objective, something which had not previously been done. The reports on the application of the Conventions corresponding to a strategic objective could be submitted the year before the

recurring discussion on that objective was held. She congratulated the Office on its proposal of presenting a simulation of the alignment of the article 22 reporting cycle with the cycle of recurrent discussions, as well as of its implications.

- 32.** The representative of the Government of Pakistan noted with satisfaction the promotional campaign for the ratification and effective implementation of the four governance instruments. His Government had ratified Conventions Nos 81 and 144 and action was being undertaken to implement these instruments. A tripartite labour conference had been held in Pakistan last month, for the first time in eight years, in which the laws relating to industrial relations, occupational safety and health, and employment and service conditions were discussed. As concerned Convention No. 122, although his Government had not ratified this instrument, it had prepared a national employment policy and work had begun on its implementation. He supported the view that the recurrent reviews should take into account the reports of all ILO supervisory bodies including from the CEACR under articles 19 and 22 of the Constitution and even the CFA. The plan to present the CEACR reports in a more user-friendly and accessible manner to the constituents was welcomed. Concerning the article 19 questionnaire form and the planned online reporting system, he inquired into the costs associated with the creation of such a system. He also underlined the importance of providing training to the government officials responsible for reporting. With respect to the reporting cycle, the objectives of the Social Justice Declaration could be achieved through the regrouping of Conventions for article 19 and 22 reports and their synchronization with the recurrent reviews. Noting that a recent United Nations General Assembly resolution had specifically adopted full employment and decent work for all as the central theme of the Second United Nations Decade for the Eradication of Poverty (2008–17), he hoped that this resolution would reinforce the link between the ILO's Decent Work Agenda and the broader development agenda. Through the Decent Work Country Programmes, the ILO should provide technical assistance to countries on the basis of guidance provided by the supervisory bodies' reports and the recurrent reviews. The ILO should also develop country profiles based on decent work indicators and make country-specific interventions to implement the objectives of the Decent Work Agenda. He concluded by expressing support for the points for decision contained in paragraph 31 of the document and reiterated the need for technical assistance for countries facing difficulties in the ratification of the governance instruments. He also supported the issues contained in paragraph 17 concerning the grouping of Conventions for reports under articles 19 and 22 of the Constitution, which might be done in the light of the Social Justice Declaration.
- 33.** The representative of the Government of India welcomed the proposal to launch a promotional campaign for the ratification and effective implementation of standards that were the most significant from the viewpoint of governance, in particular those covering tripartism, employment policy and labour inspection. His Government had already ratified three of the four Conventions, i.e. Conventions Nos 81, 122 and 144. Due to the nature of the agricultural sector in India, which was primarily small and marginal, and the absence of comprehensive legislation, the ratification of Convention No. 129 would be difficult. Member States should progressively opt for application and eventual ratification of ILO Conventions that were relevant and essential for the promotion of their social and economic development. The ILO should consolidate the existing standards and revise the instruments that were not relevant to modern times. He appreciated the initiatives taken by the Office to enable online reporting. He supported the encompassing review of reporting obligations under articles 19 and 22 of the ILO Constitution and recurrent reviews under the follow-up to the Declaration as this could lead to a reduction in the workload across the board. Such reviews should also take into consideration the strategic thinking and policies of national governments. He concluded by stating that advocacy, training and technical cooperation were acceptable forms and tools of action for promotion of international labour standards and that ratification of a standard was not an end in itself and had to be

accompanied by specific and clear-cut measures and means for implementation. He supported the point for decision in paragraph 31 and took note of the information in Part II of the document.

- 34.** The representative of the Government of Lebanon appreciated the attempt to group Conventions for reporting purposes. However, she was concerned at what would happen when there were many instruments which looked at the same subject but from different angles as this would entail a long list of instruments to be reported on. She requested that an appropriate method be developed to handle this. The thematic grouping of Conventions could provide deeper insight into the substance of those instruments, but she questioned whether this would lead to more ratifications as one Article might block the process. Introducing greater flexibility by providing for the optional ratification of some Articles of a Convention was one possible solution to this problem, as was spreading grouped Conventions across two consecutive years for reporting purposes. Noting that the Governing Body had asked the Office to prepare a study on the interpretation of Conventions, she queried whether the term “further clarification” might be a more appropriate one than the term “interpretation” and requested the Office to shed light on this matter. Concerning the review of the reporting cycle, in view of the short time period between the reporting cycles under articles 19 and 22 of the Constitution, she raised the possibility of lengthening the time period between the submission of the two reports to ease governments’ reporting burdens, and additionally permit the Office more time to evaluate the application of Conventions and the impact of technical assistance projects. With respect to the promotional campaign for the four governance instruments, she asked whether this category of Convention might be expanded and, if so, by using what criteria. As concerned the discussion of Convention No. 158 and Recommendation No. 166, she queried whether other means of promoting the principles enshrined in those standards existed, apart from the Convention’s ratification and this question merited further study.
- 35.** The representative of the Government of Mexico was in favour of the point for decision. However, he asked for clarification with regard to the scope of paragraph 31(c), in order to establish which elements would be integrated into the standards policy options and which would form part of the report in the context of the follow-up to the Social Justice Declaration. In terms of the creation of an online reporting system, he proposed that the information to be presented to the Committee during the 306th Session of the Governing Body should include information and descriptions concerning the technology and the financial resources that would be required for the introduction of that system. With regard to Convention No. 158, the speaker said that the economic and employment circumstances had changed throughout the world, and he suggested that a re-examination of it should be considered. A standard that was more in line with the current situation, in particular in terms of flexibility clauses, would facilitate access to the labour market and the creation of jobs in the member States that were subject to that Convention.
- 36.** The representative of the Government of Nigeria, speaking on behalf of the Africa group, stated that the Social Justice Declaration would finally provide the framework for implementing the standards strategy approved in 2005 and the interim plan of action of 2007. Concerning Part I of the Office paper, the group supported the promotional campaign for Conventions Nos 81, 122, 129 and 144, which would capture some of the ideas embodied in the MLC, 2006. The group appreciated the positive role played by the CEACR in the draft design of the questionnaire on article 19. The questionnaire would assist in identifying the needs of member States for technical cooperation purposes and standards-related activities. The Office paper explained the clear links established between the General Survey and the recurrent reports and how this would be further enhanced in the recurrent item discussions arising from the review of each strategic objective during the ILC. The speaker appreciated the insight shown in the promotional efforts including as regards Convention No. 122 on which a General Survey would be prepared in 2010 and

the social protection instruments on which a General Survey would be prepared in 2011. He supported the streamlining of all the promotional instruments and reduction of the reporting burden of member States through the new draft questionnaire form. It would also lead to improvements in knowledge sharing in view of the involvement of the International Social Security Association (ISSA) as confirmed in paragraph 15 of the document. In light of the questions raised in paragraph 26(a) and (b), improvements in grouping Conventions for reporting purposes had to be closely examined and this point required further discussion. The Africa group believed that article 22 reporting raised questions concerning its full cycle, and the implications of this needed to be discussed further for clarification and the achievement of effective supervision.

- 37.** Concerning the United Nations resolution on the Social Justice Declaration, the Africa group considered that this provided a central focus upon which relevant national and international policies, as well as national development strategies, including poverty reduction strategies, could base themselves in order to achieve the Millennium Development Goals. The United Nations would depend on the Social Justice Declaration to promote the eradication of poverty in the African region. Since the means of action was intended to be integrated at the point of the implementation of the Social Justice Declaration, the group supported the implementation of international labour standards through technical cooperation activities. The Africa group supported the point for decision in paragraph 31 to establish a plan of action for the implementation of the standards strategy to promote the ratification and effective implementation of standards and added that the plan of action should include concrete programmes and express outcomes for each region.
- 38.** Concerning Part II of the document, the Africa group thanked the Office for the information on the implementation of the plan of action outlined in the document. The group supported the mainstreaming of international labour standards into all technical departments and the activities of all technical cooperation projects. As regards the SPF 2010–15, the credible and verifiable information on the outcomes was welcomed as was the greater emphasis on the achievement of the strategic objectives. The speaker stressed the positive progress made on the promotion of Convention No. 187. The Africa group noted the point for decision in paragraph 92 and looked forward to future work with respect to Convention No. 158 and Recommendation No. 166.
- 39.** The representative of the Government of Canada, supporting the statement made on behalf of IMEC, expressed support for holding further tripartite consultations on Convention No. 158 and Recommendation No. 166. She also stressed the need for an up to date and relevant body of standards as this was critical for the ILO and essential in the achievement of the objectives of the Social Justice Declaration. She suggested that a tripartite working group be formed to examine further the possibility of establishing a regular review mechanism. It would be useful to complete the work of the Cartier Working Party by reviewing the status of the instruments with interim status and those adopted between 1985 and 1998.
- 40.** The representative of the Government of the United Republic of Tanzania supported the statement made by the Africa group. He thanked the Office for the technical assistance provided over the years, most notably in the current ongoing reform of the labour law. His country continued to be faced by obstacles in discharging its labour inspection responsibilities and this had a negative impact on ensuring that labour laws were implemented at a national level. However, the wider UN system to deliver should also strive to implement international labour standards and he called upon the ILO to ensure that the service providers of all entities in the UN system complied with the Decent Work Agenda. This would complement the Tanzanian Government's efforts of obliging local

service providers to adhere to labour standards and eventually result in promoting and sustaining employment in the country.

41. The representative of the Government of Italy supported the statement made on behalf of IMEC. He said that his Government supported the promotional campaign for the ratification and effective application of the governance standards as part of the 2008 Declaration. He stressed the importance of Conventions Nos 122 and 144 in the context of the current economic and financial crisis and its repercussions on the world of work. Conventions Nos 81 and 129 highlighted the essential role of labour inspection for the promotion of decent work. In that regard, technical assistance had to be improved in order for those Conventions to be implemented more effectively. He supported the proposal of periodically informing the Committee of the progress made and the drafting of a plan of action for the promotion and application of the priority Conventions. As for synchronizing the General Surveys and the recurrent reviews, he was in favour of adopting the new approach for the article 19 questionnaires, in accordance with the 2008 Declaration. With regard to the streamlining of the sending of reports with the aim of strengthening and improving the impact of the supervisory system, he noted with interest the proposal of re-evaluating the current grouping of the Conventions and of aligning the article 19 and 22 reporting cycles with the recurrent discussions, as well as the proposal of lengthening the reporting cycle. However, the effects of a global approach on the constituents' workload had to be analysed. The Conventions should also be regrouped over the course of the reporting cycle.
42. In terms of technical cooperation, the speaker also supported the strategy of integrating international labour standards into the Decent Work Country Programmes and the steps described in paragraph 29. Coordination between headquarters and field offices, the tripartite constituents and the different UN agencies had to be strengthened. In terms of the interim plan of action, he emphasized the progress made in certain areas, especially the five-year Action Plan to achieve effective implementation of the MLC, 2006, whose ratification process had been initiated by his Government. As for the visibility of the standards system, he supported the measures adopted by the Office to create a complete online reporting system in order to streamline the workload and increase the number of reports received. The speaker also supported the measures aimed at upgrading the four databases on international labour standards and emphasized the importance of the Turin Centre. He stressed the importance of Convention No. 158 and Recommendation No. 166 in the context of the current crisis and considered it important to promote the fundamental principles contained in such instruments.
43. The Worker Vice-Chairperson expressed concern at the remarks made by the Employer Vice-Chairperson on the role and mandate of the CEACR. It was well within the role and mandate of the CEACR to assist in the formulation of article 19 questionnaires and to give opinions on relevant subjects when necessary. Attacks made on the CEACR undermined the spirit of the Social Justice Declaration. The views of the CEACR had an impact and value both in and outside of the ILO and the jurisprudence they produced was invaluable. Concerning Convention No. 158, the status of this instrument was not interim as suggested. It was to be considered as being up to date as this was the conclusion of the Ventejol Working Party. The conclusion that the implementation of Convention No. 158 would also mean the closure of enterprises was misleading as even in the most liberal countries, such as Singapore, rules were in place to protect against unfair dismissal. This Convention was concerned with due process, non-discrimination and taking care of the weak – some of the principles upon which this Organization was founded. In the current economic crisis, even financial institutions such as the IMF had realized what the lack of rules could lead to. She hoped that, in future, work would continue in the spirit of the Social Justice Declaration.

44. With regard to his statement on the CEACR, the Employer Vice-Chairperson explained that in their remarks the Workers had confused “work” with “mandate”. He indicated that the CEACR did not produce jurisprudence but rather compiled decisions. He reiterated that the mandate of the CEACR was to examine reports and that it was not supposed to issue political opinions or general considerations, as it had done when it referred to Convention No. 158. With regard to economic knowledge, he had not said that only the Employers had it; the economic theme should be addressed by governments, employers and workers, but not by the CEACR. He emphasized that, in view of the current crisis, the ILO could not adopt a “business as usual” approach.
45. A representative of the Worker members (Mr Edström) summarized the large amount of work already done in the Cartier Working Party the tremendous results achieved: 76 Conventions had been identified as being up to date (apart from Convention No. 158), some Conventions had been withdrawn, a constitutional amendment was adopted to enable the abrogation of outdated Conventions and other Conventions were identified as in need of revision or consolidation. The Cartier Working Party had also invited governments to ratify up to date Conventions and denounce old ones. However, this invitation had not had the intended impact and many countries needed technical assistance to accomplish this. Concerning the promotional campaign for priority Conventions, he recalled that this had in fact been called for two years ago with respect to Convention No. 144. This was an important Convention and the speaker stressed the importance of ratifying it. Ratification was very important as it showed a commitment to other member States and implied that the country was accepting to be supervised and advised. Concerning Convention No. 94, he reminded the Committee that reference to the need to re-examine the status of instruments in due course was a standard term used by the Cartier Working Party in many decisions. In addition, following the discussion of the Convention by the ILC in 2008, the European Union launched its renewed social agenda in which it recommended that States ratify Convention No. 94. The speaker reaffirmed that decisions coming out of the CEACR and the Conference Committee on the Application of Standards were in fact jurisprudence as what came out of these bodies had legal implications.
46. The Employer Vice-Chairperson emphasized that the Cartier Working Party had not concluded that Convention No. 158 was an up to date Convention. He added that there was reason to regard Convention No. 94 as also having an interim status and the low number of ratifications of both Conventions showed that these instruments were not accepted by countries.
47. The representative of the Director-General replied to a number of questions raised during the discussion. Concerning the timing of the promotional campaign for the priority Conventions, she recalled that this had already begun in fact last year when a letter was sent out to member States concerning these Conventions. The decision to promote these instruments was taken by the Governing Body well before the adoption of the Social Justice Declaration, which confirmed this strongly. The term “governance” had first been used in this very Committee. Concerning the question on the list of governance instruments raised by the representative of the Government of Lebanon, she recalled that section IIA(vi) of the Annex to the Declaration referred to “the identification, updating and promotion of the list of standards that are the most significant from the viewpoint of governance”. At present, four Conventions had been classified as being governance instruments, but this could change when deemed necessary by the Governing Body. As regards the promotion of up to date instruments, the Office was not able to promote all of these in a proactive manner and instead had to concentrate on those that were identified by the Governing Body as in need of a more aggressive promotional approach. The Office was, and remained, guided by decisions taken by the Governing Body and the ILC as provided for in article 10 of the Constitution. Concerning the question raised by the Worker Vice-Chairperson on the use of some of the ideas embodied in the MLC, 2006, this

was meant to indicate that the proactive approach reflected in the Action Plan for the promotion of the MLC, 2006, to enable member States to be in a position where they could ratify and implement the Convention, would also be used for the promotion of the priority instruments, either as a group or individually. Concerning the question raised on progress made at the national level between reporting cycles in paragraph 26(d), she recalled that the review of the reporting cycle would be examined in November 2009. This would need to be looked at in the light of the synchronization with the recurrent reporting cycle, which could mean that reporting cycles would be lengthened raising the need to increase technical cooperation and assistance to ensure that implementation of instruments continued in between reporting cycles. The Office was currently looking at ways to upscale its technical cooperation activities to assist countries not only to implement obligations arising out of ratified Conventions, but also to enable them to be in a position to ratify other Conventions. For this, additional resources would be needed and NORMES was working with the technical departments to develop specific projects to facilitate the search for donors and external resources, in consultation with ACTRAV and ACT/EMP. With respect to the labour inspection audits, she clarified that, while the Office had taken a more technical approach to them, audits were still tripartite and undertaken in consultation with workers and employers at the national level. As regards the input of the CEACR in assisting with the preparation of the article 19 questionnaire, she recalled that the Governing Body had requested the Office to undertake consultations with the CEACR on this matter. With respect to the questions raised on the term “interpretation” in footnote 5 of the document, this would be taken into account for the November document. Finally, with respect to the proposal made by the Employer Vice-Chairperson, she asked him to clarify his request for a meeting of experts for the re-examination of Convention No. 158.

48. The Employer Vice-Chairperson asked the Office for a reply concerning the point raised on Convention No. 94. He clarified, that concerning Convention No. 158, he asked that a meeting of experts be held to look at best practices in this area and give guidance on possible solutions for the status of the instruments.
49. The representative of the Director-General responded that, according to the Cartier Working Party and the Governing Body decisions, Convention No. 94 was up to date and therefore to be promoted. Concerning the inclusion of this item on the LILS agenda, she indicated that a consensus on this matter was needed.
50. Concerning the status of Convention No. 158 and Recommendation No. 166, following an exchange of views, the Committee agreed that the question would be submitted to a tripartite working group of experts. It should be composed of five representatives of the Employers’ group, five representatives of the Workers’ group and five representatives from the Governments.
51. ***The Committee on Legal Issues and International Labour Standards recommends to the Governing Body that it invite the Office:***
 - (i) ***to prepare a report in the context of the follow-up to the Social Justice Declaration setting out a final plan of action for the implementation of the standards strategy, including:***
 - (a) ***a specific plan of action for a promotional campaign for the ratification and effective implementation of the standards that are the most significant from the point of view of governance;***
 - (b) ***the various components of the standards strategy concerning the supervisory system set out in paragraph 17 of the document GB.304/LILS/4; and***

- (c) standards policy options, in the light of the tripartite consultations;*
- (ii) to prepare a document on the interpretation of international labour Conventions; and*
- (iii) to organize a meeting of a tripartite working group of experts to examine the Termination of Employment Convention, 1982 (No. 158), and the Termination of Employment Recommendation, 1982 (No. 166).*

V. Choice of Conventions and Recommendations on which reports should be requested under article 19 of the Constitution – Proposal for an article 19 questionnaire concerning social security instruments
(Fifth item on the agenda)

52. The Committee had before it a document ² on the choice of Conventions and Recommendations on which reports should be requested under article 19 of the Constitution, which contained a proposal for an article 19 questionnaire concerning social security instruments.
53. The Employer Vice-Chairperson considered that the questionnaire was very broad given that the four instruments selected contained a large number of provisions covering the entire field of social security. As a result, the burden on governments was a very heavy one, the CEACR was unable to conduct a thorough analysis of the instruments, and the discussion within the Conference Committee on the Application of Standards was not exhaustive. He recalled that the two General Surveys on social security had covered only one or a limited number of instruments on a particular theme. For that reason, he proposed limiting the questionnaire to the Social Security (Minimum Standards) Convention, 1952 (No. 102), and the Income Security Recommendation, 1944 (No. 67), and removing Convention No. 168 and Recommendation No. 69 from the questionnaire. He argued that Part IV of Convention No. 102 dealt with the subject of unemployment benefit and Part II dealt with medical care. That would reduce the workload of governments and would enable the CEACR to carry out a thorough analysis of the instruments selected.
54. The speaker also pointed out that footnote 10 recognized the interim status of Recommendation No. 69 and stated that “The selection of this Recommendation ... would offer a unique opportunity to examine its relevance for modern social security systems as well as its role within the family of ILO social security standards.” The Employers’ group was opposed to that prejudiced statement, which was an attempt to anticipate the outcome of the discussion and did not take into account the results of the Cartier Working Party which had classified the instrument in question as having an interim status since it was regarded as not being fully up to date.
55. Moreover, the speaker observed that some of the questions contained in the questionnaire were not based on the provisions of the instruments, as a result of which the obligation to respond to those questions was a voluntary one on the part of governments. He made it clear that it was necessary not to give the false impression that the recurrent discussion would depend mainly on the information obtained from the General Surveys. Other

² GB.304/LILS/5.

sources of information should be taken into account, such as the reports under articles 22 and 35, the legislative information published by governments, information on investigations conducted by the ILO, technical cooperation work, consultations held with constituents and the research and publications of other UN bodies and multilateral and regional organizations. With those reservations, he supported the point for decision.

- 56.** The Worker Vice-Chairperson thanked the Office for the document and agreed with the instruments selected for coverage under the General Survey. The Workers' group attached great importance to Convention No. 102 that laid down minimum standards and basic principles in social security. The instrument played a fundamental role in the context of the current economic crisis, not only as an element of social protection, but also as a key component for the recovery of the economy. Convention No. 168 added the principle of coordination between social security and employment policy, which was also of great importance in the current crisis. The speaker furthermore recognized the significance of Recommendations Nos 67 and 69, which established the principles of universal coverage of the population on medical care and income security.
- 57.** The speaker agreed with the proposed structure of the questionnaire and welcomed the Office proposal to attach a list with already available social security legislation for each country. The integrated approach adopted in the questionnaire towards the four strategic objectives in the light of the Social Justice Declaration was appreciated and considered to provide a useful contribution to the recurrent discussion. She did not object to the suggestion some governments seemed to have made to include detailed references to the provisions of instruments to which each question related. However, she did not agree to the proposal to exclude Convention No. 168 and Recommendation No. 69 from the scope of the instruments covered by the questionnaire. The exclusion of these instruments would risk not receiving sufficient information on law and practice in countries necessary for the General Survey. The instruments covered by the proposed questionnaire had been carefully selected with the involvement of the CEACR and had been subject to extensive consultations by the social partners, even to the extent that there was a consensus on their selection before the sitting of this Committee.
- 58.** The representative of the Government of the United States, speaking on behalf of IMEC, thanked the Office for the document and expressed appreciation for its efforts to build a consensus in the process of developing the questionnaire through the tripartite discussion in February and the fruitful exchange preceding this session of the LILS Committee. The speaker welcomed the Office's consultations with the CEACR in the process of developing this questionnaire and encouraged it to continue close cooperation in the ongoing process of evaluation and future preparation of article 19 questionnaires. The questionnaire was at an experimental stage of adjusting its design to the needs of recurrent discussions on each strategic objective and further improvements would need to be based on experience. Every questionnaire needed to be evaluated after article 19 reports were submitted and the General Survey was produced. The views and guidance of the CEACR would help to ensure that General Surveys maintained their traditional supervisory purpose while at the same time feeding into the recurrent discussions under the follow-up to the Social Justice Declaration.
- 59.** In this context, IMEC reaffirmed that the recurrent discussions were not intended to be supervisory in nature nor duplicate the work of the supervisory bodies. While it was anticipated that the review of trends and developments in the recurrent discussions should use the information on law and practice contained in the General Survey, General Surveys should not be the only source of information as recurrent discussions would have a much broader scope. General Surveys were and should continue to be the essential tool for the ILO to make a comprehensive assessment of the impact and usefulness of its standards. Article 19 questionnaires should, as had been proposed, be limited to the most relevant

instruments, in order to lead to high-quality information and no increase of the reporting burden as compared to the old process and as specified in the Social Justice Declaration. The scope of mandatory questions should specifically relate to the instruments in question.

- 60.** IMEC agreed with the Office's rationale for selecting the four social security instruments in the questionnaire: Convention No. 102 was the social security core Convention setting minimal standards for all branches of social security, on which subsequent instruments were built. The linkage to Convention No. 168, which established the principle of coordination between social security and employment policy, was of particular importance in the context of the current crisis. As regards Recommendations Nos 67 and 69, the principle of universal coverage through a combination of protection by social insurance, social assistance and public service responded to the need of adapting the scope and coverage of social security highlighted in the Social Justice Declaration.
- 61.** Concerning the structure of the questionnaire, IMEC reaffirmed its support for the integrated approach and increasing coherence in implementing the follow-up to the Social Justice Declaration. The flexible and strategically oriented questionnaire could provide a useful contribution to the recurrent discussion on the strategic objective of social protection (social security) in 2011. However, the new design of article 19 questionnaires should not broaden the scope of the reporting obligations as defined in article 19 of the Constitution. Therefore, IMEC appreciated that the Office had indicated for each question the relevant provisions of the related instruments. This would be especially helpful to governments that had ratified one or both of the Conventions in discerning whether and to what extent a particular question needed to be addressed. Also, questions which could not be linked to provisions of the relevant instruments should be subject to optional reporting. In order to prevent duplication of work, the speaker supported the idea that the Office provided with the questionnaire a list of all sources of legal and statistical information which were already available to the ILO (e.g. in NATLEX, and the country profiles of ISSA).
- 62.** The speaker proposed the following specific amendments to the proposed questionnaire. To clarify that all questions related to the general (main) scheme of social security, not to specific professional or supplementary schemes, it was suggested to amend the text in the heading above Part I as follows: "Please give, as appropriate, a general appreciation or a detailed reply with respect to the main social security or social assistance scheme in your country." It was understood that question 2 was merely an introduction to the following questions 2.1 to 2.4 which did not need to be answered separately. In order to avoid any misunderstanding in this respect, the speaker suggested the following wording: "Does the social security legislation in your country: 2.1 Define social risks ...; 2.2 Guarantee minimum income-support benefits ...". For the same reason, the following wording was proposed for question 4: "Are social security finances in your country sufficient to ensure that:". Question 4.1 should be reviewed to be brought in consistency with Convention No. 102, as it did not accurately reflect the provisions in the Convention. Question 10.2 confused non-discrimination regarding employment with non-discrimination regarding social security. It was put forward to redraft this question to make clear that it only related to Convention No. 168 and to add at the end: "... unless justified by the circumstances or the specific needs of categories of persons." Question 13 should include the case where countries have ratified only parts of Convention No. 102, by adding: "If your country has not accepted all parts of Convention No. 102, what are the obstacles that prevent the acceptance of the remaining parts?" Subject to these comments and amendments, IMEC supported the point for decision in paragraph 14.
- 63.** The representative of the Government of India considered that the draft questionnaire might significantly increase the reporting burden on member States and underlined that a cardinal principle of the 2008 Declaration was that the changes to article 19 reports would

not increase member States' reporting workload. A multi-pronged approach to the provision of social security, encompassing a wide array of laws and policies, was necessary for a country as large and diverse as his country. Reporting on all the matters raised in the report form would therefore be burdensome for countries such as India. While expressing support for reporting on an experimental basis, he reiterated that the present report form would require modification so that it would be brief, focused and covered at the outset only the major aspects of social security.

64. The representative of the Government of Cuba said that two questions should be added before question 9 in section C on the "Extension of social security coverage" in order to assess the progress that was being made in that area: "(a) Please state what percentage of the total population is protected by the social security system; (b) Please state what percentage of all workers are protected by the social security system."
65. The representative of the Government of Mexico said he supported the point for decision but had a number of comments to make regarding the text of the article 19 questionnaire concerning social security instruments, as proposed by the Office. He proposed changing the text of question 2 to: "According to the social security legislation in your country, how ...?" Similarly, he suggested removing the reference to other risks or contingencies, such as poverty, dependency, paternity, and long-term care, because none of the instruments that had been considered relevant for the drafting of the questionnaire covered that type of risk. He suggested adding the following to the end of question 4.1: "in the case of unskilled workers". Finally, he said that the format of the questionnaire was difficult to use, since some answers required the use of tables, annexes and illustrations, and he suggested the adoption of a simpler format to facilitate the inclusion of that type of information.
66. The representative of the Government of Lebanon stressed the need for a concise and compact questionnaire at least in the first cycle to which further topics could be added in the following cycles. Not all societies had reached the same level of development and certain subjects could therefore be seen as too sensitive to be touched upon. Rather, changes to the content of the questionnaire should be applied gradually.
67. The representative of the Government of Nigeria, speaking on behalf of the Africa group, welcomed the attempt of the report to reduce the reporting burden placed on member States whose obligation was to comply with article 19 of the Constitution. The Africa group supported the consideration given in paragraphs 6–9 for selecting the instruments, which would adequately reflect the need for social protection for all societies, irrespective of whether they were advanced or developing, rich, emerging or poor nations. The Africa group approved the inclusion of Conventions Nos 102 and 168, as well as the reporting format as it would realistically capture which basic safety nets each member State offered its people. The speaker therefore supported the point for decision in paragraph 14(i) and expressed the opinion that support for paragraph 14(ii) could be secured through consensus achieved after a joint consideration of the draft questionnaire.
68. The representative of the Government of Brazil noted that, while in some countries unemployment insurance was part of the social protection system, in others, including his own, it came under employment policy. He highlighted the fact that it was a crucial issue in the current context of the global crisis, and expressed the hope that the questionnaire would take a broad view to allow for different national systems. He supported the point for decision.
69. The representative of the Director-General considered that most corrections of the IMEC group could be accommodated, since they concerned mostly questions of clarity. She listed the modifications proposed by the Office. First, in order to clarify that the questionnaire

related to the main social security scheme, it was proposed to modify the text in the second column of the heading to read: "Please give, as appropriate, a general appreciation or a detailed reply with respect to the main social security or social assistance scheme in your country." As regards question 2, the following slight reformulation was suggested, which also took care of the comment made by the Government representative of Mexico: "How does the social security legislation in your country: 2.1 Define social risks ...; 2.2 Guarantee ...". The Office, however, suggested to retain the language in brackets in the second column of question 2, because it was intended to give guidance as to the content of the answer sought. Like for question 2, it was also put forward to clarify the wording of question 4 to: "Are social security finances in your country sufficient to ensure that?". The formulation of question 4.1 could be broadened and merged with question 4.2 as follows: "Benefits paid by the main scheme are high enough to ensure sufficient replacement of previous wages and/or to provide income above the poverty line?" As a result of this reformulation, it was proposed to delete question 4.2. Similarly, question 10.2 could be combined with question 10.3 to read: "Applying to social security the basic principles of equality of treatment and non-discrimination?" By providing for every question the specific provisions of the instrument to which the question relates, it would be clarified that question 10.2 relates to Article 68 of Convention No. 102 and Article 6 of Convention No. 168. Lastly, for reasons of increased precision, it was suggested to add to question 13 the following wording: "If your country has not accepted all parts of Convention No. 102, what are the obstacles that prevent the acceptance of the remaining parts?"

70. In response to the question raised by the representative of the Government of Cuba relating to the percentage of population and workers covered by social security, the speaker explained that, to help governments to fill in the questionnaire, each country would receive from the Office, together with the questionnaire, a fact sheet containing the following elements: (i) country profile from the ISSA database on Social Security Worldwide; (ii) a list of national social security legislation from the NATLEX database; and (iii) a prefilled table with the latest statistics available in the ILO on personal coverage of the main scheme in the country.
71. The Employer Vice-Chairperson noted that his proposal to limit the questionnaire to Convention No. 102 and Recommendation No. 67 had not been accepted, but requested nevertheless that the impact of using such a broad questionnaire on the workload of the CEACR and the Committee on the Application of Standards should be examined in 2011 with a view to revising it, if necessary.
72. The Worker Vice-Chairperson supported the amendments proposed by the Office.
73. *The Committee on Legal Issues and International Labour Standards, subject to the decision of the Governing Body to place on the agenda of the 2011 Conference a recurrent discussion on the strategic objective of social protection (social security), recommends to the Governing Body that it:*
- (i) *request governments to submit for 2010 under article 19 of the Constitution reports on the application of the Social Security (Minimum Standards) Convention, 1952 (No. 102), the Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), the Income Security Recommendation, 1944 (No. 67), and the Medical Care Recommendation, 1944 (No. 69); and*
 - (ii) *approve the report form concerning social security instruments referred to in the appendix.*

**VI. Other question: Tripartite consultations
on standards policy
(Wednesday, 18 March 2009)
(Sixth item on the agenda)**

74. The representative of the Director-General gave brief information on the tripartite consultations on standards policy in light of the follow-up to the Social Justice Declaration held on Wednesday, 18 March. The debate had been rich and interesting and a consensus had been reached on two points: the Social Justice Declaration should be the framework for examining the ILO standards policy; and keeping ILO standards up to date was important. Some comments had already been made on this subject during discussion of the fourth item on the LILS Committee's agenda.

Geneva, 24 March 2009.

Points for decision: Paragraph 51;
Paragraph 73.

Appendix

INTERNATIONAL LABOUR OFFICE

REPORTS ON

UNRATIFIED CONVENTIONS AND RECOMMENDATIONS

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

REPORT FORM CONCERNING EMPLOYMENT INSTRUMENTS
(ARTICLE 19 QUESTIONNAIRE)

Geneva

2009

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.

...

6. In the case of a Recommendation:

...

- (d) apart from bringing the Recommendation before the said competent authority or authorities, no further obligation shall rest upon the Members, except that they shall 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 in their country in regard to the matters dealt with in the Recommendation, showing the extent to which effect has been given, or is proposed to be given, to the provisions of the Recommendation and such modifications of these provisions as it has been found or may be found necessary to make in adopting or applying 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;
- (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;

- (v) in respect of each such Recommendation, 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 Recommendation, showing the extent to which effect has been given, or is proposed to be given, to the provisions of the Recommendation and such modifications of these provisions as have been found or may be found necessary in adopting or applying them.

...

In accordance with the above provisions, the Governing Body of the International Labour Office examined and approved the present report form. 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 28 February 2010, 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 matters dealt with in the instruments referred to in the following questionnaire.

Article 19 questionnaire on social security

Social Security (Minimum Standards) Convention, 1952 (No. 102); Employment Promotion and the Protection against Unemployment Convention, 1988 (No. 168); Income Security Recommendation, 1944 (No. 67); Medical Care Recommendation, 1944 (No. 69)

The following questions cover the nine social risks/contingencies listed in Convention No. 102: medical care, sickness, unemployment, old age, accidents at work and occupational diseases, family benefits, maternity, invalidity and survivors' benefits.	Please give, as appropriate, a general appreciation or a <i>detailed reply</i> with respect to the main social security or social assistance scheme in your country.	Please give a precise reference (web links) to provisions of the <i>relevant legislation</i> .
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Part I. Strengthening the legal framework, finances and coverage of social security

A. Constitutional and legal guarantees		
1. Does the Constitution of your country define a right to social security/protection and, if so, how?	(Including social assistance, access to health care, support of families and children, etc.)	(Including judicial decisions involving questions of principle.)
2. How does the social security legislation in your country:		C102 Arts 7, 13, 19, 25, 31, 39, 46, 53, 59
2.1. Define social risks/contingencies listed in Convention No. 102, including preventive, curative and maternity medical care?	(Or any other risk/contingency such as poverty, dependency, paternity, long-term care, etc.)	C102 Arts 14, 20, 26, 32, 40, 47, 54, 60 and Arts 7, 8, 10, 34, 49; C168 Art. 10; R67 §§ 2, 5–16, 19, Annex §§ 1–16; R69 §§ 1–4, 19–23
2.2. Guarantee minimum income-support benefits, if any, and basic medical care?		C102 Arts 7, 13, 19, 25, 31, 39, 46, 53, 59 and Arts 66 or 67; C168 Art. 15(1b); R67 §§ 1–4, 28–30, Annex §§ 28–30; R69 §§ 5–10, 19–23

2.3.	Determine how medical care service is organized and financed?	(For example, public service, health insurance, social assistance, out-of-pocket payments, etc.)	C102 Part II and Part XIII, Arts 71, 72; R69 Parts I, III, V
2.4.	Establish the right of complaint and appeal in social security and make the procedures simple and rapid?		C102 Art. 70; C168 Art. 27; R67, Annex §27(3, 4, 7–10); R69 §§ 112–114
3.	What measures are taken to ensure enforcement of social security legislation and full collection of social insurance contributions?	(For example, sanctions, labour inspection, anti-fraud measures, etc.)	C102 Art. 69; C168 Arts 20, 21, 30; R67 §§ 17–21, 25, Annex §§ 17–19; R69 §§ 80–83
B. Financial sustainability and governance of social security			
4.	Are social security finances in your country sufficient to ensure that:	(Please include appropriate statistics and extracts from performance reports of the benefit schemes.)	
4.1.	Benefits paid by the main scheme are high enough to ensure sufficient replacement of previous wages and/or to provide income above the poverty line?		C102 Arts 16, 22, 28, 36, 50, 56, 62 and Art. 65; C168 Art. 15(1); R67 §§ 1–4, 22–24, Annex §§ 22–24, 28–30
4.2.	Benefits are adjusted to inflation to maintain purchasing power and/or to growth in wages to improve the standard of living?		C102 Arts 65(10), 66(8); R67 § 24(11)
4.3.	Measures are taken to avoid hardship and ensure coverage of persons of small means?	(For example, state subsidies, contribution or tax reductions, etc.)	C102 Art. 71(1); C168 Art. 16; R67 §§ 3, 4, 26, Annex § 26(1–3, 9); R69 §§ 5, 6, 11–14, 75–79, 89
5.	Please explain the role of the State and indicate whether it assumes the <i>general</i> responsibility and takes all measures necessary to ensure:		C102 Arts 71, 72; R67 § 27, Annex § 27(1–4)
5.1.	The financial viability of the system, protection of social security funds, regular actuarial and financial studies and due provision of benefits.	(For example, establishment of the central reserve fund, yearly budgets/performance reports, etc.)	C102 Art. 71; R69 Part V

5.2. The proper administration and supervision of the social security institutions and services, including voluntary and private schemes.		C102 Art. 72; C168 Art. 28; R67 § 27, Annex § 27(1, 2, 5); R69 §§ 92–111
6. In the light of the global financial and economic crisis, what are the main challenges for the future financial sustainability of the social security system and how does it contribute to cope with the consequences of the crisis?		
C. Extension of social security coverage		
7. Please provide the latest available statistics on the total number of persons protected under the main scheme.	(Including the number of active contributors and benefit recipients.)	C102 Arts 5, 9, 15, 21, 27, 33, 41, 48, 55, 61; C168 Art. 11; R67 §§ 17, 20, 21, Annex 1B; R69 §§ 8–10
8. What measures have been taken or planned to extend social security coverage to unprotected categories of workers and their families in different sectors of the economy, including in the informal economy, agriculture, fishing or other sectors?	(For example, self-employed, temporary workers, workers lacking an employment relationship.)	C102 Arts 5, 9, 15, 21, 27, 33, 41, 48, 55, 61; C168 Art. 23, 24; R67 §§ 17, 20, 21, Annex IB; R69 §§ 8–18
9. Does your country consider the establishment of a set of basic guarantees for income security and access to medical care for all and, if so, for what risks/contingencies?	(For example, essential health care, income security during childhood, old-age, invalidity, survivors' benefits, social assistance to unemployed.) R67 Preamble, §§ 5–7, 28–30; R68 Preamble, §§ 8–10	

Part II. Integrating social security into comprehensive strategy for decent work

D. Social security and fundamental principles and rights at work		
10. How are, or should, fundamental principles and rights at work be promoted in social security, in particular by way of:		

10.1. Enabling workers and employers to set up provident, unemployment, supplementary, etc. schemes (funds) and regulate benefits by means of collective agreements?	(Please specify management arrangements for such schemes.)	
10.2. Applying to social security the basic principles of equality of treatment and non-discrimination?	(Including promotion of gender equality.)	C102 Art. 68; C168 Art. 6
10.3. Providing universal or targeted (means-tested) benefits to families with children under school-leaving age with a view, inter alia, to preventing child labour?	(Including benefits in kind listed in Article 42 of Convention No. 102.)	C102 Part VII; R67 § 28, Annex § 28
E. Social security and employment policy		
11. To what extent social security benefits are, or should be, coordinated with employment policy and used as a means to increase employability and promote employment, in particular by way of:		C168 Arts 2, 3, 7, 8, 9, 14
11.1. Professional rehabilitation and cash benefits for vocational training, retraining, and occupational and geographic mobility.		C102, Art. 35; C168 Arts 7, 8, 9
11.2. Public works/employment guarantees schemes or additional assistance for long-term unemployed.		C168 Arts 16, 18(3), 19(2, 6)
11.3. Social benefits (in cash or in kind) and services for prescribed categories of new applicants for employment.	(For example, young persons after studies, military service, released prisoners, previously self-employed persons, etc. listed in Article 26 of Convention No. 168.)	C168 Art. 26
11.4. Adjusting social security schemes to occupational and family circumstances of specific categories of workers.	(For example, self-employed, seasonal workers, part-time workers, homeworkers, workers with family responsibilities, etc.)	C102 Art. 24(4); C168 Arts 10(3), 17(2), 19(6), 25
F. Social security and social dialogue		
12. Please describe the role of workers' and employers' organizations, social dialogue and tripartism in the management of social security, indicating in particular:		C168, Art. 3; R67 § 27, Annex § 27(5, 6)

12.1. What organizations represent persons protected by social security schemes and how do they participate (together with representatives of the employers and public authorities) in the administration of these schemes?	(For example, trade unions, associations of retired persons, disabled persons, etc.)	C102 Art. 72(1); C168 Arts 27(2), 29; R67 § 27, Annex § 27(5, 6)
12.2. Whether tripartite consultations at the national level concerning reform and future development of social security have been held or should be held in your country?		

Part III. Impact of ILO instruments

13. What are the obstacles that impede or delay ratification and what are ratification prospects for Conventions Nos 102 and 168? If your country has not accepted all parts of Convention No. 102, what are the obstacles that prevent the acceptance of the remaining parts?	(Including obstacles to the acceptance of the obligations in respect of any of the nine social security benefits covered by Convention No. 102.)
14. To what extent has effect been given, or is proposed to be given, to the non-ratified Convention No. 102 (or non-accepted Parts of Convention No. 102), and Convention No. 168, and to Recommendations Nos 67 and 69?	
15. What suggestions would your country wish to make concerning possible standard-related action to be taken by the ILO?	(For example, new standards, revision, consolidation, review of the status of the instruments, etc.)
16. Has there been any request for policy support or technical cooperation support provided by the ILO to give effect to the instruments in question? If this is the case, what has been the effect of this support?	

17. What are the future policy advisory support and technical cooperation needs of your country to give effect to the objectives of the instruments in question?	(For example, promotion of social dialogue in social security, gender audit of social security legislation, a feasibility study for the introduction of a basic social security package, etc.)
18. 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 ILO.	
19. Please state whether you have received from the organizations of employers and workers concerned any observations concerning the effect given, or to be given, to the instruments to which the present report relates. If so, please communicate a copy of the observations received together with any comments that you may consider useful.	

