

## Governing Body

337th Session, Geneva, 24 October–7 November 2019

GB.337/LILS/1

**Legal Issues and International Labour Standards Section**  
*International Labour Standards and Human Rights Segment*

**LILS**

Date: 25 October 2019

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### FIRST ITEM ON THE AGENDA

## The Standards Initiative: Report of the fifth meeting of the Standards Review Mechanism Tripartite Working Group (Geneva, 23–27 September 2019)

### Report of the Officers, in accordance with paragraph 17 of the terms of reference of the Standards Review Mechanism Tripartite Working Group

#### Purpose of the document

In accordance with the terms of reference of the Standards Review Mechanism Tripartite Working Group (SRM TWG), the Governing Body is invited to note the report of the fifth meeting of the SRM TWG and to take decisions on recommendations concerning eight instruments on employment policy, including their classification and practical and time-bound follow-up, and on arrangements for its sixth meeting in 2020 (see the draft decision in paragraph 5).

**Relevant strategic objective:** All.

**Main relevant outcome/cross-cutting policy driver:** Outcome 2: Ratification and application of international labour standards.

**Policy implications:** Implications arising from the decisions taken by the Governing Body on the recommendations submitted by the SRM TWG.

**Legal implications:** Possible abrogation or withdrawal, as relevant, of one Convention and withdrawal of one Convention.

**Financial implications:** The estimated cost of the SRM TWG meetings and their follow-up for 2020–21 amounts to some US\$1,060,000. No specific provision has been made for 2020–21 and any approved activities would have to be prioritized and funded from within the Programme and Budget for 2020–21.

**Follow-up action required:** Implementation of Governing Body decisions.

**Author unit:** Implementation of Governing Body decisions.

**Related documents:** GB.334/LILS/PV, paras 39–58; GB.334/LILS/3; GB.331/PV, paras 706–723; GB.331/LILS/2; GB.328/PV, paras 568–581; GB.328/LILS/2/1(Rev.); GB.326/PV, paras 503–514; GB.326/LILS/3/2; GB.325/PV, paras 597–612; GB.325/LILS/3; GB.323/PV, paras 51–84; GB.323/INS/5.



1. In accordance with the decision taken by the Governing Body at its 334th Session (October–November 2018),<sup>1</sup> the fifth meeting of the Standards Review Mechanism Tripartite Working Group (SRM TWG) took place from 23 to 27 September 2019 at the ILO headquarters in Geneva. Under paragraph 17 of the terms of reference “(t)he SRM Tripartite Working Group, through its Chairperson and two Vice-Chairpersons, shall report to the Governing Body”.
2. The fifth meeting was chaired by Mr Jan Farzan (Germany) and attended by 31 of the 32 members of the SRM TWG, as well as a limited number of advisers to support the Government members<sup>2</sup> as set out in the report of the discussion included in the appendix. Ms Sonia Regenbogen and Ms Catelene Passchier were appointed Vice-Chairpersons respectively by the Employers’ and Workers’ groups. In accordance with paragraph 19 of the terms of reference of the SRM TWG, its preparatory documents and other related materials were made public on a dedicated [web page](#).
3. As decided by the Governing Body in October–November 2018, the SRM TWG reviewed, during its fifth meeting, seven instruments concerning employment policy and considered the follow-up to be taken on one further instrument falling within that topic and previously determined to be outdated. Its corresponding recommendations are set out in the appendix and encapsulated in the following table.

#### Recommendations of the SRM TWG at its fifth meeting (September 2019)

##### (1) Classifications

<i>Standards classified as up to date</i>	C.88 and R.83 on employment services
	C.181 and R.188 on private employment agencies
	R.189 on job creation in small and medium-sized enterprises
<i>Standards classified as requiring further action to ensure continued and future relevance</i>	None
<i>Standards classified as outdated*</i>	C.2 on unemployment
	C.96 on fee-charging employment agencies

##### (2) Practical and time-bound follow-up action

<i>Follow-up involving promotional or technical assistance action</i>	Promotional campaigns on C.88 and C.181, including technical assistance where requested.
	Office follow-up with member States currently bound by C.2 to encourage ratification of C.88, C.102 (Part IV), C.118, C.160 and C.168, as relevant, including technical assistance where requested.
	Office follow-up with member States currently bound by C.96 to support ratification of C.181, including technical assistance where requested.

<sup>1</sup> [GB.334/LILS/PV](#), para. 58(i).

<sup>2</sup> Para. 18 of the [terms of reference of the SRM TWG](#); [GB.334/LILS/3](#), appendix, para. 39.

<p><i>Follow-up involving non-normative action</i></p>	<p>Technical assistance to support public employment services, including development of tools and compilation of good practices, in the context of C.88 and R.83 on public employment services.</p> <p>Technical assistance on R.189, including guidance on promotion of job creation and decent work in SMEs in the future of the world of work and the establishment of an enabling environment for sustainable SMEs.</p>
<p><i>Follow-up involving the ILC's consideration of the abrogation or the withdrawal of an instrument</i></p>	<p>Item concerning the withdrawal of C.34 on fee-charging employment agencies on the Conference agenda in 2021.</p> <p>Item concerning the abrogation or withdrawal, as relevant, of C.96 on fee-charging employment agencies on the Conference agenda in 2030.</p>
<p>Follow-up involving monitoring of implementation of recommendations to promote ratification</p>	<p>Evaluation of implementation of tailored plans of action by the SRM TWG in 2026, to decide on appropriate date to consider abrogation or withdrawal of C.2.</p>
<p><i>Follow-up involving institutional arrangements</i></p>	<p>Office to prepare proposals for possible standard-setting items on the topics of biological hazards, ergonomics and manual handling, chemical hazards and guarding of machinery, for consideration by the Governing Body at its 338th Session.</p>
<p>* Additionally, the SRM TWG confirmed the classification of the Fee-Charging Employment Agencies Convention, 1933 (No. 34), as an outdated instrument, as previously determined.</p>	

4. The SRM TWG decided that its sixth meeting would take place from 14 to 18 September 2020 and recommended to the Governing Body that at that meeting it could review the five instruments in the initial programme of work that concern social security (unemployment benefit, comprehensive standards and medical care and sickness), and examine the follow-up taken to five outdated instruments falling within those topics. The full list of these instruments is set out in its report included in the appendix.

## Draft decision

5. ***The Governing Body took note of the report of the Officers concerning the fifth meeting of the Standards Review Mechanism Tripartite Working Group (SRM TWG) and, in approving its recommendations:***

***(a) further to its earlier decisions, requested the Office to:***

- (i) initiate the preparation of proposals for possible standard-setting items on the topics of biological hazards, ergonomics and manual handling, chemical hazards and guarding of machinery, for consideration at its 338th Session (March 2020) for inclusion in future agendas of the International Labour Conference;***
  - (ii) be guided by the recommendations of the SRM TWG regarding the thematic integration approach and the process of standard setting in preparing those standard-setting proposals for inclusion in the agenda of the Conference at the earliest dates possible and as a matter of institutional priority;***
- (b) decided that the eight instruments concerning employment policy reviewed by the SRM TWG should be considered to have the classifications it had recommended, and requested the Office to take the necessary follow-up action in that regard;***

- (c) called upon the Organization and its tripartite constituents to take concerted steps to follow up on all its recommendations as organized by the SRM TWG into practical and time-bound packages of follow-up action, noting in particular tailored plans of action encouraging States party to the Unemployment Convention, 1919 (No. 2), and the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), to ratify related up-to-date Conventions;*
- (d) requested the Office to commence work on developing tools and a compilation of good practices in relation to public employment services, and guidance on job creation and decent work in SMEs and the establishment of an enabling environment for sustainable SMEs, including consultation with the Bureau for Employers' Activities and the Bureau for Workers' Activities;*
- (e) noted the SRM TWG's intention to evaluate the Office follow-up involving tailored plans of action concerning Convention No. 2 at its meeting in 2026;*
- (f) noted the SRM TWG's recommendations concerning the abrogation and withdrawal of certain instruments, in relation to which it will consider (see GB.337/INS/2(Add.1)):*
  - (i) placing on the agenda of the 110th Session (2021) of the International Labour Conference an item concerning the withdrawal of the Fee-Charging Employment Agencies Convention, 1933 (No. 34); and*
  - (ii) placing on the agenda of the 119th Session (2030) of the International Labour Conference an item concerning the abrogation or withdrawal, as relevant, of the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96);*
- (g) noted the work undertaken by the Office in follow-up to the recommendations of the SRM TWG at its earlier meetings and requested the Office to continue as a matter of institutional priority that follow-up as planned;*
- (h) decided that the SRM TWG would examine ten instruments concerning unemployment benefit, comprehensive standards and medical care and sickness (five instruments and five outdated instruments), within sets of instruments 5 and 11 of the revised initial programme of work, at its sixth meeting; and*
- (i) decided to convene the sixth meeting of the SRM TWG from 14 to 18 September 2020.*



## Appendix

### Report of the fifth meeting of the SRM Tripartite Working Group established by the Governing Body (Geneva, 23–27 September 2019)

1. The fifth meeting of the Standards Review Mechanism Tripartite Working Group (SRM TWG) took place in Geneva from 23 to 27 September 2019. It was chaired by Mr Jan Farzan (Germany) and attended by 31 of its 32 members (see table 1).

**Table 1. Members attending the fifth meeting of the SRM TWG (September 2019)**

<b>Members representing Governments</b>
Brazil
Cameroon
China
Colombia
India
Iran, Islamic Republic of
Kenya
Lithuania
Mali
Mexico
Namibia
Netherlands
Republic of Korea
Romania
Sweden
United States
<b>Members representing Employers</b>
Ms S. Regenbogen (Canada), Vice-Chairperson
Mr A. Echavarría Saldarriaga (Colombia)
Ms L. Sephomolo (Lesotho)
Mr A Schweinfurth Enciso (Spain)
Mr P. O'Reilly (New Zealand)
Mr M. Teran Moscoso (Ecuador)
Mr K. Weerasinghe (Sri Lanka)

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**Members representing Workers**

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Ms C. Passchier (Netherlands), Vice-Chairperson

Mr P. Asafu-Adjaye (Ghana)

Ms A. Brown (United Kingdom)

Mr D. Kyooh (Australia)

Ms F. Magaya (Zimbabwe)

Mr M. Norðdahl (Iceland)

Ms M. Pujadas (Argentina)

Mr C. Serroyen (Belgium)

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2. In accordance with the decision taken by the SRM TWG at its fourth meeting, eight advisers attended the meeting to support the Government members.

***Tripartite discussions leading to consensual recommendations***

3. At its fifth meeting, the SRM TWG's discussions were challenging, frank and substantively rich. The SRM TWG reached consensually agreed decisions on all matters under consideration due to the determination of its members to find joint solutions to the complex issues the Governing Body required it to address.
4. In the course of its rich discussions, the SRM TWG stressed the importance of its mandate to ensure a clear, robust and up-to-date body of international labour standards that respond to the changing patterns of the world of work, for the purpose of the protection of workers and taking into account the needs of sustainable enterprises.<sup>1</sup> The responsibility that this entailed was particularly clear to the members in the ILO's Centenary year and in relation to the issues falling within its work programme for the meeting. The setting, promotion, ratification and supervision of international labour standards is recognized in the ILO Centenary Declaration for the Future of Work as fundamental to the ILO.<sup>2</sup>
5. The SRM TWG considered that its work would only be successful if it had a real world impact. As the SRM TWG had stressed in its previous reports, this requires its recommendations, as approved by the Governing Body, to be fully implemented by the Organization and tripartite constituents. Governments should take concerted steps to give effect to the recommendations, recognizing the need for the involvement of the social partners in the process and the support of the Office. In the context of the incrementally increasing number and variety of its recommendations requiring active follow-up, the SRM TWG highlighted that the allocation of the necessary resources to the Office should be considered by the Governing Body to safeguard the provision of responsive and effective Office support to the tripartite constituents.
6. In that context, the SRM TWG undertook a thorough examination of the standards it was called on to review and once again developed integrated packages of practical and time-bound follow-up action, each balancing complementary and interrelated elements. Based on the classifications recommended for each instrument, the follow-up packages comprised, variously, promotional activities for up-to-date instruments, including technical assistance to support ratification or full implementation, and steps towards the consideration of the abrogation or withdrawal of any outdated instruments.

<sup>1</sup> Para. 8 of the [terms of reference of the SRM TWG](#).

<sup>2</sup> [ILO Centenary Declaration for the Future of Work](#), Part IV(A).



7. In relation to those follow-up packages, the Workers' group emphasized the importance of active steps towards ratification of instruments and the particular need for solid, proactive and well-resourced campaigns to ensure member States are indeed replacing ratifications of outdated Conventions with ratifications of related up-to-date Conventions. Abrogation of Conventions in force in member States without ratifications of the relevant more up-to-date instruments would lead to a gap in legal protection in those member States. International labour standards play a distinct role in offering international legal protection vis-à-vis national legislation, as recognized in the ILO Centenary Declaration for the Future of Work and the mandate of the SRM TWG.
8. The Employers' group clarified that the decision on ratification of a Convention was a sovereign act by ILO member States which reflected national tripartite priorities and capacities to implement the Convention. Promotion of ratification of a Convention should be understood to mean that the Office, upon request, provided information and support to tripartite constituents in countries interested in taking steps to ratify a Convention. The Employers noted that the abrogation of outdated instruments did not necessarily lead to a potential gap in legal protection in member States. It could not be assumed that following abrogation all national laws and practice implementing the abrogated Convention were cancelled as a consequence.
9. The Government group stressed the practical challenges for governments in ratifying instruments and the Office's role in this regard. It also emphasized that duplication of standards, which also leads to excessive reporting burdens, should be avoided. National circumstances should always be taken into account.

***Review of seven instruments, and consideration of the follow-up to one outdated instrument, on employment policy***

10. In accordance with the decision taken by the Governing Body in October–November 2018, the SRM TWG reviewed the seven instruments concerning employment policy in the initial programme of work: the Unemployment Convention, 1919 (No. 2), the Employment Service Convention, 1948 (No. 88), the Employment Service Recommendation, 1948 (No. 83), the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), the Private Employment Agencies Convention, 1997 (No. 181), the Private Employment Agencies Recommendation, 1997 (No. 188) and the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189). It further considered the follow-up to be taken to one instrument that had previously been determined to be outdated: the Fee-Charging Employment Agencies Convention, 1933 (No. 34). The SRM TWG's resulting consensual recommendations are attached in paragraphs 5–8 of Annex I to this report.
11. The SRM TWG noted the significance of the topic of employment policy to the Organization, as was emphasized in the ILO Centenary Declaration for the Future of Work. The Employers' group highlighted the role of sustainable enterprises and the need for an enabling environment to create full and productive employment and decent work for all. When member States ratify Conventions, they should take into account whether its implementation fosters an enabling environment for sustainable enterprises in general. The Workers' group stressed the importance of addressing both unemployment and underemployment as central components of the mandate of the ILO. The Government group recalled the significance of the governance Convention, the Employment Policy Convention, 1964 (No. 122).

12. In reaching its consensual recommendations concerning the *Unemployment Convention, 1919 (No. 2)*,<sup>3</sup> the SRM TWG agreed that unemployment remained a key concern in the current and future world of work.
13. The Workers' group underlined that Convention No. 2 remained highly relevant and useful for the significant number of ratifying States. With the exception of one provision, the Convention was not out of step with the modern regulatory approach. Many member States with ratifications of Convention No. 2 would need to ratify one or more later Conventions to ensure that all the subject matters addressed in the Convention were covered by international standards since no subsequent Convention had revised Convention No. 2. Given the acknowledged difficulties in guaranteeing ratification, strong caution should be exercised before recommending the abrogation of Convention No. 2, and priority should be given to adopting a package of measures to ensure that coverage and protection are increased, rather than decreased. The Convention should not be abrogated until its ratifying States had ratified Conventions encapsulating its relevant provisions.
14. The Employers' group stressed that the approach and contents of Convention No. 2 for the most part were only of historical interest and no longer relevant in today's context. This concerned in particular the unduly short reporting intervals for ratifying countries and the coordination role given to the Office in the operations of national systems, as reflected in Articles 1 and 2(3). The Employers emphasized that more up-to-date Conventions existed that adequately covered all of the subject matters in Convention No. 2. For that reason, its abrogation would not result in a gap of coverage. The SRM TWG should suggest a clear and reasonable date to the Governing Body on the abrogation of the Convention. The Employers highlighted that 12 countries were bound by later Conventions that regulated all of the subjects in Convention No. 2 and noted that those member States should be advised of the denunciation option.
15. The Government group equally stressed that later Conventions took a different regulatory approach to the subject matters covered by Convention No. 2. One aim of the SRM TWG was to have a clear body of standards; duplication of standards – which can lead to an excessive reporting burden – should be avoided. There should be a clear timeline towards the abrogation of Convention No. 2, including promotion of the ratification of the later instruments and the provision of technical assistance where requested. At a later date, the results of this follow-up should be assessed and an appropriate date for the abrogation of the Convention should be set.
16. Accordingly, the SRM TWG classified Convention No. 2 as an outdated instrument. It recommended that follow-up action should include plans of action tailored to the member States currently bound by the Convention, encouraging them to ratify Conventions Nos 88, 102 (Part IV), 118, 160 and 168, as relevant, to avoid a gap in legal protection. The implementation of the action plans will be evaluated in 2026 with a view to taking an informed decision on the appropriate date at which the International Labour Conference should consider the abrogation or withdrawal of Convention No. 2.
17. In its rich discussion on the instruments concerning *public employment services*,<sup>4</sup> the SRM TWG agreed that they held a vital place in well-functioning labour markets. In relation to Paragraph 26 of Recommendation No. 83, which stated that “Systematic efforts should be made to develop the efficiency of the employment service in such manner as to obviate the need for private employment agencies in all occupations except those in which the competent authority considers that for special reasons the existence of private agencies is desirable or essential”, the SRM TWG noted a possible contradiction with the newer regulatory approach

<sup>3</sup> Convention No. 2, discussed in SRM TWG/2019/[Technical Note 1](#); recommendations contained in para. 5 of Annex I to this report.

<sup>4</sup> Convention No. 88 and Recommendation No. 83, discussed in SRM TWG/2019/[Technical Note 2](#); recommendations contained in para. 6 of annex I to this report.

taken in Convention No. 181. It further noted that the Convention and its accompanying Recommendation should be read together, and that at the time that the Recommendation was adopted it had been explained that this Paragraph would “not ... give justification to any Government to abolish private employment agencies”.<sup>5</sup>

18. In the course of discussions, the Employers’ group stressed the important complementary role of private employment agencies in contemporary labour markets. They did not fully agree with all the assessments made in the Office note on the current relevance of the provisions of Convention No. 88. There were some provisions in the Convention that were not fully up-to-date, such as Articles 11 and 12 to 14. These shortcomings had to be considered even if they did not affect the relevance of the core principles of Convention No. 88 and its overall classification as up-to-date. They also highlighted that Paragraph 26 of Recommendation No. 83 could no longer be considered up-to-date in light of the fundamental change of perception of the role of private employment agencies.
19. The Workers’ group highlighted that Convention No. 88 and Recommendation No. 83 remained fundamental in the promotion of inclusive and non-discriminatory labour markets. Its provisions were consistent with the modern regulatory approach. In relation to follow-up, the Workers’ group stressed in relation to Paragraph 26 of Recommendation No. 83 that the purpose of that provision was to ensure that public employment agencies were developed efficiently so that they maintained a strong and primary role in the labour market. It noted further that, while collaborations between public employment agencies and other partner organizations were not problematic per se, it was essential to prioritize the role of the social partners. Partnerships in service delivery could be considered but the governance of public employment services should remain tripartite.
20. The Government group stressed the importance of public employment services in general, and supported the provision of technical assistance aiming to improve their ability to respond to emerging challenges in the world of work.
21. Accordingly, the SRM TWG classified Convention No. 88 and Recommendation No. 83 as up-to-date instruments. It recommended promotion of the ratification and effective implementation of Convention No. 88, as well as the provision of technical assistance, as requested, to support public employment services in responding to current and emerging challenges in the world of work.
22. Further to its discussion on the instruments concerned with *private employment agencies*<sup>6</sup> the SRM TWG classified Convention No. 181 and Recommendation No. 188 as up-to-date and Convention No. 96 as outdated. The earlier classification of Convention No. 34 as an outdated instrument was confirmed. The SRM TWG exchanged views on the optimal package of practical and time-bound follow-up action in relation to these instruments.
23. The Workers’ group pointed out that Convention No. 96 still represented a valid approach for some member States and that for many countries it would not be easy to move to ratification of the revising Convention No. 181. Whether and how private employment agencies were permitted and regulated was a very complex issue that raised a lot of controversy in many countries. There were enormous challenges for workers employed through private employment agencies in the exercise of their fundamental rights and in particular the right to freedom of association and collective bargaining. There were serious deficiencies in the monitoring of private employment agencies, illegal fee charging, wage theft, and serious cases of exploitation of workers in vulnerable situations. The replacement of workers employed through secure contracts with agency workers was also predominant

<sup>5</sup> Record of Proceedings: *Appendix VII: Employment Service Organisation*, International Labour Conference, 31st Session, 1948, p. 413.

<sup>6</sup> Conventions Nos 34, 96 and 181 and Recommendation No. 188, discussed in SRM TWG/2019/[Technical Note 3](#); recommendations contained in para. 7 of Annex I to this report.

contributing to prevalence of disguised employment and other forms of non-standard employment. A road map integrally including the social partners in a national dialogue could support member States in considering the ratification of Convention No. 181. Any abrogation or withdrawal of Convention No. 96 should be linked with a realistic and proactive road map allowing sufficient time to ensure ratification of Convention No. 181. It was also necessary to be realistic about the number of actions that the SRM TWG and the Governing Body could require at the same time of governments and the Office in the different areas dealt with by the SRM TWG in its last five meetings.

24. The Employers' group stressed that Convention No. 34 had been closed for further ratification for many years, and was made no longer in force since 2006 when Bulgaria denounced the Convention leaving Chile as the only ratifying country. Given that the Convention was no longer in force, it was no longer possible for Chile to denounce it. It followed from this that the withdrawal of Convention No. 34 would not leave any gap of protection in Chile, even if Chile did not ratify the later Convention No. 181. The Employers considered that Convention No. 34 should be withdrawn as soon as possible and the proposal for withdrawal should be put on the agenda of the Conference at the earliest possible date that is in 2021. The Employers' group stated that Convention No. 96 was contrary to Convention No. 181, which epitomized the up-to-date regulatory approach to private employment agencies. While it agreed that member States which had ratified Convention No. 96 should have the opportunity to consider ratifying Convention No. 181 before it was abrogated, the group stressed that it was important to propose a reasonable short-term date for abrogation to be considered by the Conference (i.e. 2023). Abrogation or withdrawal should not be connected to ratification. The Employers' group considered Convention No. 181 to be up-to-date and supported the promotion of its ratification and implementation. The Employers also suggested looking into the possibility of developing a consolidated instrument on employment services that provided a framework for all employment-related services provided by – and principles for the cooperation between – public and private employment agencies. The Employers' group expressed difficulty in making an assessment about Recommendation No. 188 as the technical note contained no information or analysis on this instrument. It also noted that Recommendation No. 188 was unduly detailed and included certain provisions that were outdated such as paragraph 6.
25. Governments stressed that, insofar as its Part II was contrary to the approach of Convention No. 181, Convention No. 96 was clearly outdated. The Government group believed that a clear road map was necessary to give governments and the Office sufficient time to allow for ratifications of up-to-date Conventions before proceeding with abrogation or withdrawal of outdated Conventions. Any road map or strategy must be feasible and time-bound.
26. Following its discussion, the SRM TWG agreed that the package of follow-up action in relation to the instruments concerning private employment agencies should promote ratification of Convention No. 181; involve plans of action tailored to the member States currently bound by Convention No. 96 encouraging ratification of Convention No. 181 to avoid a gap in legal protection; and involve consideration of the withdrawal of Convention No. 34 by the Conference in 2021 and the abrogation or withdrawal, as relevant, of Convention No. 96 by the Conference in 2030.
27. In reaching its consensual recommendations on the instrument on *job creation in SMEs*,<sup>7</sup> the SRM TWG highlighted that SMEs played an important role in promoting decent work and job creation. Classifying Recommendation No. 189 as up-to-date, the SRM TWG discussed the appropriate follow-up action.
28. In the course of discussions, the Employers' group stressed that Part II(A)(ix) of the ILO Centenary Declaration calls for the ILO to direct its efforts to support the private sector as a

<sup>7</sup> Recommendation No. 189, discussed in SRM TWG/2019/[Technical Note 4](#); recommendations contained in para. 8 of annex I to this report.

principal source of economic growth and job creation. SMEs play an essential role in economic contribution and job creation across the world. Recommendation No. 189 is the only instrument that contains comprehensive guidance on the necessary elements aiming at promoting conducive environment for SMEs to create decent jobs. The Employers' group considered Recommendation No. 189 to be an up-to-date instrument and agreed that the Office should continue to provide guidance to member States on effective implementation.

29. The Workers' group considered that there were many decent work gaps, notably in the areas of freedom of association and collective bargaining as well as wages and working conditions, in SMEs and called for the promotion of decent work in SMEs to be specifically addressed in the further work by the Office and the tripartite constituents on Recommendation No. 189.
30. The Government group stressed the importance of job creation in SMEs, and noted the difficulties with definitions as national circumstances differed greatly.
31. Accordingly, the SRM TWG classified Recommendation No. 189 as an up-to-date instrument and recommended the provision of technical assistance, as requested, to promote its effective implementation, including guidance on the promotion of job creation and decent work in SMEs in the future of the world of work and the establishment of an enabling environment for sustainable SMEs.

### ***Consideration of matters concerning the SRM TWG's review process***

32. As in past years, the SRM TWG considered elements of its dynamic and flexible review process and procedure, including monitoring the Organization's follow-up of its work. The SRM TWG welcomed the information contained in information documents concerning the internal work plan for its initial programme of work,<sup>8</sup> the determination of follow-up to classification decisions<sup>9</sup> and the synergies between its work and other ILO initiatives.<sup>10</sup> The SRM TWG also considered information provided by the Legal Adviser following its request at its fourth meeting. In particular, it noted the information provided on the possible ways in which international labour standards may be revised, and provided comments on a glossary of terms related to international labour standards.
33. The SRM TWG paid particular attention to the Office's report on its follow-up of previous recommendations. It noted the concrete steps taken since its last meeting including the significant cross-Office collaboration involving both headquarters and the field, the development of tools to customize the Governing Body's requests for member States, and the proposal to establish a help desk on the SRM TWG.<sup>11</sup> The SRM TWG emphasized the necessity of providing support to member States that requested it, of integrating support for the social partners in activities, and of continuing the momentum and building on synergies so as to show results in coming years. It would continue to monitor the implementation of its recommendations at subsequent meetings.

<sup>8</sup> See SRM TWG/2019/[Information document 1](#).

<sup>9</sup> See SRM TWG/2019/[Information document 3](#).

<sup>10</sup> See SRM TWG/2019/[Information document 4](#).

<sup>11</sup> See SRM TWG/2019/[Information document 2](#).

**Consideration of the institutional implications of the SRM TWG's review process**

34. The SRM TWG discussed two working papers that it had requested the Office to prepare in follow-up to its previous discussion.<sup>12</sup> Once again, the particularly rich and wide-ranging discussion touched on ILO standards policy, including the form and scope of new standards, the revision and amendment of existing standards, the process of standard-setting, and the promotion of ratification and implementation. The SRM TWG agreed that effect should be given to the 2017 and 2018 Governing Body decisions calling for the Office to prepare proposals for possible standard-setting items on the topics of biological hazards, ergonomics and manual handling, chemical hazards and guarding of machinery.<sup>13</sup> Mindful of the Governing Body's mandate to set the agenda of the Conference, the SRM TWG provided guidance for the Office to take into account when developing standard-setting proposals that should be discussed by the Governing Body at its 338th Session (March 2020). Its resulting consensual recommendations in this regard are attached in paragraph 9 of Annex I to this report.
35. In the course of its discussion on *ensuring coherence and consistency in the standard-setting follow-up to the SRM TWG recommendations on OSH*,<sup>14</sup> the SRM TWG reaffirmed its previous decision to elaborate the "thematic integration" approach taking into account the questions and points raised regarding the three approaches discussed at the meeting.<sup>15</sup> It recalled the need for standard-setting proposals to address the four subtopics on OSH as previously determined by the Governing Body, and highlighted the appropriateness of taking advantage of innovations when determining the form of new standards so as to encourage ratification and facilitate future revisions.
36. The Employers' group stressed that any recommendations on concrete ways of standard-setting on the four OSH risks should not be hastily rushed without in-depth discussions of all relevant aspects. The overall architecture of the need for an overall concept on OSH standards should be considered. The objective of standard-setting action on OSH risks should be to contribute to the concentration, rationalization and simplification of the present "complex web" of presently 43 OSH instruments. The advantages of concentration and rationalization included, among others, a more even and complete ratification and implementation of OSH standards; a significant reduction of repetition and duplication within existing OSH standards; and more effective and efficient compliance and implementation of standards. It underlined that the form and scope of new standards on the four OSH subtopics had not been prescribed by the Governing Body's previous decisions. The group indicated that the possible options within the "thematic integration" approach included the adoption of a new integrated instrument to address OSH risks in general, such as a new protocol or recommendation to Convention No. 155 or Convention No. 187. Such an integrated instrument could be accompanied by non-normative and more detailed instruments such as technical guidelines and codes of practice. The Employers did not see value in adopting new separate instruments for each of the four OSH subtopics. In any case, the Employers' group highlighted that it was premature to make more concrete recommendations until at least some basic agreement on an overall concept for standard-setting in the OSH area had emerged. The Employers' group also recalled their earlier request for "pilot simulations" on possible standard-setting on specific OSH risks, which could assist in determining the most suitable form of standard-setting. Variations could

<sup>12</sup> GB.334/LILS/3, appendix, paras 35–36 (report of the fourth meeting).

<sup>13</sup> GB.331/PV, para. 723(f).

<sup>14</sup> See SRM TWG/2019/working paper 1.

<sup>15</sup> GB.334/LILS/3, appendix, para. 35 (report of the fourth meeting).

concern the type of standard-setting action, which could for instance result in a Protocol, a Convention, a Recommendation, or a Convention and a Recommendation. Alternatively, new instruments to complement the existing up-to-date instruments could follow a similar structure to the Maritime Labour Convention, 2006, combining binding and non-binding provisions into a single instrument. A further alternative could be to complement the existing up-to-date instruments through the adoption of a new integrated instrument on OSH risks in general; this could integrate all instruments concerning specific risks – other than those that are already up-to-date – to provide an umbrella framework that is applicable to all risks. Stressing the autonomy of the Governing Body, the Employers' group emphasized that the way to move forward in relation to implementing the thematic approach to standard-setting on the four OSH subtopics should be left to the discretion of the Governing Body.

37. The Workers' group recalled that in 2017 the Governing Body had adopted the SRM TWG's recommendations requesting standard-setting proposals on each of the four OSH subtopics. This would entail the preparation of four standard-setting items to be placed on the agenda of the Conference on ergonomics and manual handling; biological hazards; chemical hazards; and the guarding of machinery. In that context, it was now time to ensure follow-up to this recommendation as a matter of institutional priority. In this regard, the Workers' group reaffirmed its openness to the "thematic integration" approach as the basis for standard-setting on each of the four identified OSH subtopics as previously agreed, while emphasizing that this should not lead to lowering standards or levels of protection for workers, which would be contrary to the mandate of the SRM TWG and the ILO as a whole. While it considered that protocols could be appropriate in certain areas, it stressed that the possibility of adopting a single instrument on OSH risks in general was certainly not an appropriate option, as it did not constitute a thematic integration approach, had already been rejected in recent years by experts as not the right way forward for the different groups of OSH risks as each of them would need a different and customized regulatory approach, and did not accord with the Governing Body's previous decisions of 2017 and 2018. The Workers' group therefore expressed its strong opposition to such a suggestion and believed it was unhelpful and inappropriate to bring this proposal back on the table despite the clear absence of tripartite support for it already in the previous round of discussion in the SRM TWG in 2018. Believing that the SRM TWG should now move beyond its previous recommendations, the Workers' group suggested a sequencing of standard-setting for the four OSH subtopics that could be determined according to feasibility for constituents and the Office, for instance in terms of the amount of time needed for technical and other preparations, dealing first with one of the four topics on which preparations in the Office would already be well advanced. The Workers' group had heard the Office explain that this could be the case for chemical hazards, and could imagine starting with preparing a possible Protocol to Convention No. 170. In addition to standard-setting, the Workers' group highlighted the necessity to ensure that the SRM TWG fulfilled its mandate of ensuring the universal ratification and implementation of up-to-date Conventions.
38. The Government group stressed that the starting points were the 2017 Governing Body decision and the "thematic integration" approach, as consensually recommended by the SRM TWG in its previous meetings and endorsed by the Governing Body, which should be customized to the particular topic being regulated. Further, while indicating that in general integration was desirable as it would simplify the reporting burden for member States and so incentivize ratification, a single instrument on the OSH risks was not desirable for technical purposes. Reiterating the challenges faced by member States in ratifying instruments, Government members stressed the need to take into account national circumstances and highlighted the desirability of integrating innovative elements into revising instruments with the objective of goal-oriented standards that are widely ratified and can be easily amended to be kept up-to-date. This may include taking inspiration from the MLC, 2006. Governments supported a sequencing of four standard-setting exercises, some governments expressing their preference for beginning with the topic of chemical hazards.

39. During the discussion on *addressing the impact of SRM TWG recommendations on the Conference agenda and the Office*,<sup>16</sup> the SRM TWG agreed that new methods should ensure that its recommendations were effectively and systematically followed-up. After discussing the four options for managing the impact on the Conference agenda of its recommendations for standard-setting on OSH, the SRM TWG believed that the Governing Body would benefit from the richness of its discussions in deciding the best approach to take, taking into account the need for time efficiency, inclusivity and cost-effectiveness.
40. The Employers' group highlighted that recommendations on addressing the impact of SRM TWG recommendations on the Conference agenda and the Office were somewhat premature. The appropriate process for the standard-setting items should be contingent on the scope and form that the new standards would take. Presently, there were no signs that a backlog of standard-setting items existed or that such a backlog could emerge in the near future. So far, there has been no difficulty to accommodate standard-setting proposals coming from the SRM TWG or other ILO forums. In that context, the Employers recalled that they were not in favour of separate standard-setting processes on each of the four items, but preferred the possible adoption of a new integrated instrument on OSH risks in general. Moreover, the group noted that more Office resources might be needed for systematic preparation of non-binding documents that complement ILO OSH standards.
41. The Workers' group considered that the SRM TWG had already several times recommended that putting its recommendations into effect was a matter of institutional priority, and that this was certainly the case with regard to the recommendations to address the regulatory gaps in the four areas of OSH risks identified. It was now the time to take the next steps and address the more practical and organizational dimensions of the matter. The option of a dedicated standard-setting item on OSH on the Conference agenda, combined with preparatory technical committees to provide the necessary high degree of technical expertise, was preferable in terms of cost and feasibility. Recognizing that the Governing Body must remain free to choose to place standard-setting items on other topics than those coming out of SRM TWG recommendations on the Conference agenda, it was necessary to allow for the possibility of having more than one standard-setting item on the Conference agenda at the same time. While the "ad hoc management" option was undesirable as it was unlikely to have a real impact, the Workers' group found the idea of a separate OSH session of the Conference in which all four outstanding OSH subtopics – when sufficiently prepared – could be addressed and a high profile could be given to the role of the ILO in the area of OSH, to be interesting.
42. The Government group proposed three criteria for assessing the options in the working paper: the standard-setting process should be time efficient, inclusive and cost effective. In that context, the Government group also believed that the "ad hoc management" option had proven to be ineffective based on past experience and that a dedicated standard-setting item on OSH combined with preparatory technical committees was preferable, on the understanding that it was essential that the Governing Body retained its flexibility to respond to emerging needs by placing an item on the agenda of the Conference. The Government group believed that the idea of a separate OSH session of the Conference was neither feasible nor cost-effective.

### **Preparation for the sixth meeting**

43. The SRM TWG decided that the sixth meeting of the SRM TWG would take place from 14 to 18 September 2020.<sup>17</sup> The SRM TWG discussed the number of instruments that it could reasonably review to allow sufficient time for adequate preparation, and decided it

<sup>16</sup> See SRM TWG/2019/[working paper 2](#).

<sup>17</sup> See SRM TWG/2019/[Information document 6](#).



would review three subtopics within set of instruments 5 on social security, comprising five instruments (see table 2). It would further consider the follow-up taken to five instruments falling within those subtopics and previously determined to be outdated.<sup>18</sup>

44. In relation to the preparatory documents required for the sixth meeting in 2020, the SRM TWG indicated that it did not consider further working papers on the institutional impact of its recommendations on the OSH instruments to be necessary after its discussion at this meeting. Concerning the instruments it would be reviewing at the sixth meeting, the SRM TWG requested the Office to include chapter-by-chapter analyses of the three accompanying Recommendations, in addition to the similar analysis already provided for Conventions and stand-alone Recommendations. This would be trialled on a pilot basis so as to determine its feasibility for the Office and usefulness for SRM TWG members.
45. Finally, in line with its terms of reference, the SRM TWG authorized the attendance of eight advisers to assist the Government members at its sixth meeting. The SRM TWG Chairperson and Vice-Chairpersons may decide at a later date whether representatives of relevant international organizations and other ILO bodies should be invited to attend the meeting.

**Table 2. Instruments proposed for examination at the sixth meeting of the SRM TWG (September 2020)**

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**Social security instruments: Unemployment benefit, comprehensive standards, and medical care and sickness**

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Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168)

Employment Promotion and Protection against Unemployment Recommendation, 1988 (No. 176)

Social Insurance (Agriculture) Recommendation, 1921 (No. 17)

Social Security (Armed Forces) Recommendation, 1944 (No. 68)

Medical Care Recommendation, 1944 (No. 69)

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**Relevant outdated instruments**

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Unemployment Provision Convention, 1934 (No. 44)

Unemployment Provision Recommendation, 1934 (No. 44)

Sickness Insurance (Industry) Convention, 1927 (No. 24)

Sickness Insurance (Agriculture) Convention, 1927 (No. 25)

Sickness Insurance Recommendation, 1927 (No. 29)

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<sup>18</sup> See SRM TWG/2019/[Information document 5](#).

## Annex I

### **Recommendations adopted by the SRM TWG at its fifth meeting, submitted to the Governing Body at its 337th Session (October–November 2019) pursuant to paragraph 22 of the terms of reference of the SRM TWG**

1. In formulating these recommendations, the SRM TWG reiterates its mandate to contribute to the overall objective of the SRM to ensure the ILO has a clear, robust and up-to-date body of international labour standards that respond to the changing patterns of the world of work, for the purpose of the protection of workers and taking into account the needs of sustainable enterprises.<sup>1</sup> It considers it timely, at the fifth meeting of the SRM TWG, that the ILO Centenary Declaration for the Future of Work, 2019 stressed the fundamental importance of international labour standards and confirmed the value of this objective.<sup>2</sup>
2. As in past meetings, the SRM TWG has carefully reviewed selected international labour standards included within its initial programme of work with a view to making recommendations to the Governing Body on:<sup>3</sup>
  - (a) the status of the standards examined;
  - (b) the identification of gaps in coverage, including those requiring new standards;
  - (c) practical and time-bound follow-up action, as appropriate.
3. Recognizing the complexity of its work, and the interrelatedness of its recommendations within each topic, the SRM TWG once again decided to organize its recommendations into practical and time-bound packages of follow-up action. The components of those packages of follow-up action are interconnected, complementary and mutually reinforcing.
4. In line with its terms of reference, the SRM TWG submits its recommendations to the Governing Body for decision, and recommends that the Governing Body take the necessary steps to implement the recommendations set out below.

### **Unemployment Convention<sup>4</sup>**

5. In relation to the instrument concerning unemployment, the SRM TWG recommends that:
  - 5.1 the Unemployment Convention, 1919 (No. 2), is considered to have the classification of an *outdated* instrument;
  - 5.2 the Governing Body consider a *time-bound and practical package of follow-up action* involving:

<sup>1</sup> Para. 8 of the [terms of reference of the SRM TWG](#).

<sup>2</sup> ILO Centenary Declaration for the Future of Work, Part IV(A): “The setting, promotion, ratification and supervision of international labour standards is of fundamental importance to the ILO. This requires the Organization to have and promote a clear, robust, up-to-date body of international labour standards and to further enhance transparency. International labour standards also need to respond to the changing patterns of the world of work, protect workers and take into account the needs of sustainable enterprises, and be subject to authoritative and effective supervision. The ILO will assist its Members in the ratification and effective application of standards.”

<sup>3</sup> Para. 9 of the terms of reference of the SRM TWG.

<sup>4</sup> See SRM TWG/2019/[Technical Note 1](#).

- (i) Office follow-up, including plans of action tailored to each of the member States concerned, encouraging member States party to the outdated Convention No. 2 to ratify Conventions Nos 88, 102 (Part IV), 118, 160 and 168, as relevant, to avoid a gap in legal protection and including providing technical assistance to support ratification, to member States requesting it;
- (ii) the SRM TWG will evaluate the implementation of the tailored plans of action at its meeting in 2026 with a view to taking an informed decision on the appropriate date at which the International Labour Conference should consider the abrogation or withdrawal of Convention No. 2.

## Employment services <sup>5</sup>

- 6. In relation to the instruments concerning public employment services, the SRM TWG recommends that:
  - 6.1. the Employment Service Convention, 1948 (No. 88) and the Employment Service Recommendation, 1948 (No. 83) are considered to have the classification of *up-to-date* instruments;<sup>6</sup>
  - 6.2. the Governing Body consider a *time-bound and practical package of follow-up action* involving:
    - (i) a campaign to promote the ratification and effective implementation of Convention No. 88, including technical assistance to member States requesting it to support steps towards ratification;
    - (ii) provision by the Office of technical assistance to member States requesting it to support public employment services in responding to challenges in the current and future world of work, including through the development of tools and the compilation of good practices in employment services.

## Private employment agencies <sup>7</sup>

- 7. In relation to the instruments concerning private employment agencies, the SRM TWG recommends that:
  - 7.1. while acknowledging the classification of the Fee-Charging Employment Agencies Convention, 1933 (No. 34), as an *outdated* instrument, the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), is considered to have the classification of an *outdated* instrument and the Private Employment Agencies Convention, 1997 (No. 181) and the Private Employment Agencies Recommendation, 1997 (No. 188) are considered to have the classification of *up-to-date* instruments.
  - 7.2. the Governing Body consider a *time-bound and practical package of follow-up action* involving:
    - (i) a campaign to promote the ratification and effective implementation of Convention No. 181 by member States, including technical assistance to member States requesting it to support steps towards ratification;
    - (ii) Office follow-up, including plans of action tailored to each of the member States concerned, encouraging member States party to the outdated Convention No. 96

<sup>5</sup> See SRM TWG/2019/[Technical Note 2](#).

<sup>6</sup> See para. 17 of the report of the meeting.

<sup>7</sup> See SRM TWG/2019/[Technical Note 3](#).

to ratify the up-to-date Convention No. 181 to avoid a gap in legal protection and including technical assistance to member States requesting it, to support ratification;

- (iii) the withdrawal of Convention No. 34 in 2021 through placing an item to this effect on the agenda of the 110th Session of the International Labour Conference;
- (iv) the abrogation or withdrawal of Convention No. 96 in 2030 through placing an item to this effect on the agenda of the 119th Session of the International Labour Conference.

### **Job creation in SMEs <sup>8</sup>**

- 8. In relation to the instrument concerning job creation in small and medium-sized enterprises (SMEs), the SRM TWG recommends that:
  - 8.1. the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), is considered to have the classification of an *up-to-date* instrument;
  - 8.2. the Governing Body consider a *time-bound and practical package of follow-up action* involving Office technical assistance to member States who request it to promote the effective implementation of Recommendation No. 189 by member States, including the provision of guidance on the promotion of job creation and decent work in SMEs in the future of the world of work and the establishment of an enabling environment for sustainable SMEs.

### **Consideration of the institutional implications of the SRM TWG's review process <sup>9</sup>**

- 9. The SRM TWG discussed two working papers, <sup>10</sup> with a view to giving effect to the 2017 and 2018 Governing Body decisions calling for the Office to prepare proposals for possible standard-setting items on the topics of biological hazards, ergonomics and manual handling, chemical hazards and guarding of machinery. <sup>11</sup> It recommends to the Governing Body that it request the Office to initiate the preparation of proposals for possible standard-setting items for consideration at its 338th Session (March 2020) for inclusion in future agendas of the International Labour Conference. Based on its discussion, the SRM TWG recommends to the Governing Body that the Office be guided by the following elements in preparing those standard-setting proposals for inclusion in the agenda of the Conference at the earliest dates possible and as a matter of institutional priority:
  - 9.1. To implement the *thematic integration approach*. Consideration could be given to combining binding and non-binding elements in the same instrument and to using appropriate approaches, so that instruments can be easily updated in particular with

<sup>8</sup> See SRM TWG/2019/[Technical Note 4](#).

<sup>9</sup> See SRM TWG/2019/working papers [1](#) and [2](#).

<sup>10</sup> *ibid.*

<sup>11</sup> [GB.331/PV](#), para. 723(f): “requested the Office to prepare, for consideration for inclusion at the earliest dates possible in future agendas of the International Labour Conference, proposals for possible standard-setting items: (i) on biological hazards and ergonomics, recognizing the regulatory gaps identified in that regard; (ii) on the consolidation of the instruments concerning chemical hazards; (iii) on the revision of the instruments concerning guarding of machinery; and requested to be kept up to date in that regard”.

respect to technical provisions to ensure the continued relevance of the standards, taking into account national circumstances.

- 9.2. The *process of standard-setting* should be flexible, address the four specific topics, and ensure optimum time efficiency, cost-effectiveness and inclusivity. This may include deciding to have a standard-setting item on the Conference agenda dedicated to the SRM TWG follow-up and it may also include the possibility of two standard-setting items in a given Conference, to maintain the flexibility to respond to developments in the world of work, should the Governing Body so decide. Recognizing the high degree of technical expertise required in relation to occupational safety and health, inclusive preparatory technical activities should be customized to support efficient tripartite standard-setting discussion.

## Annex II

### Legal clarifications provided by the Legal Adviser

1. The Legal Adviser provided clarifications to the SRM TWG in relation to certain legal questions that were raised during the course of its discussions.
2. With regard to the distinction between abrogation of Conventions in force and withdrawal of Conventions that had either never entered into force or were no longer in force due to denunciations, the Legal Adviser recalled the legal opinion provided to the SRM TWG during its second meeting.<sup>1</sup> On this basis, he confirmed that, as there was only one remaining ratification to Convention No. 34 due to denunciations, the Convention was legally no longer in force and therefore the process of “withdrawal” should apply. He indicated that, at its 106th Session (2017), the Conference has used the same “withdrawal” – and not “abrogation” – process with respect to Convention No. 28, which was in the same situation having only one ratification. The Legal Adviser noted, nonetheless, that in practice the distinction between an abrogation and a withdrawal of a Convention had little practical significance since the same procedural guarantees applied to both in terms of Conference majority required, consultation process and timelines for submission to the Conference. Following the decision taken by the Conference to abrogate or withdraw an instrument, the text of the standard in question would be removed from ILO publications and electronic databases. In NORMLEX, reference is only made to the Conference decision by which an instrument has been abrogated or withdrawn while the removed text of the Convention or Recommendation in question may still be consulted (for instance, for research purposes) through a hyperlink. Finally, he noted that in accordance with the applicable rules, if the SRM TWG were to recommend the withdrawal of Convention No. 34 to the Governing Body, Convention No. 34 could be withdrawn at the earliest in June 2021.
3. With regard to revision of standards,<sup>2</sup> the Legal Adviser recalled that articles 44 and 45 of the Standing Orders of the Conference and articles 5.2 and 5.3 of the Standing Orders of the Governing Body provided for one specific procedure for the revision of Conventions and Recommendations. This procedure resulted in the adoption by the Conference of an additional instrument with a new number. The so-called *simplified revision procedure* – approved in principle by the Governing Body in 1965 but never implemented – was intended to be part of the specific revision procedure for Conventions. It would therefore be implemented on the basis of article 44 of the Conference Standing Orders and would result in the adoption by the Conference of a partially revised Convention. The simplification encompassed two elements. First, the revision concerned only non-controversial, technical issues. Second, it involved the appointment by the Conference of a permanent technical revision committee that would meet only when necessary, and the subject of the revision would be sufficiently specific and clear to permit the committee to perform its duties within a few sittings. It was important to clarify, however, that even though the simplified revision procedure could accelerate the overall process, it would still require a Conference plenary vote leading to the adoption of a revising instrument, which would in turn need to be formally accepted by Members. Thus, the mechanism devised in 1965 cannot replace or otherwise bypass the (often lengthy) ratification process.
4. As regards other revision tools, the Legal Adviser clarified that certain techniques can only be of use for future instruments (*pro futuro*) whereas others apply to old/past ones (*ex ante*). For instance, a protocol – which is an international labour Convention in all but name – may be used for the partial revision of an existing Convention allowing its adaptation to evolving

<sup>1</sup> [GB.328/LILS/2/I\(Rev.\)](#), Annex II, para. 2.

<sup>2</sup> [Reference document 2: Revision of international labour standards](#).

conditions. Its main advantage is that most of the provisions of the original Convention remain intact and its ratifications are preserved. Thus, the ratification of a protocol does not imply the denunciation of the original Convention which remains open to new ratifications. While a protocol enters into force under the conditions set out in its final provisions, it can only be ratified if the related Convention has been ratified. For ratifying countries of both instruments, the provisions of the original Convention are to be read as amended by the corresponding provisions of the protocol.

5. In contrast, accelerated amendment clauses – like the tacit acceptance clause in the Maritime Labour Convention, 2006 (MLC, 2006) – may only be used with respect to the eventual revision of future instruments provided of course that such clauses are included in future draft instruments. These clauses lead to the partial revision of specific provisions or parts of a Convention but they do not result in a new instrument. The tacit acceptance process is based on the premise that express objection is needed to prevent adoption of an amendment; in other words, silence over a prescribed period is taken as tacit acceptance. The intention is to facilitate acceptance by avoiding the requirements of a formal ratification.