

# Governing Body

341st Session, Geneva, March 2021

Legal Issues and International Labour Standards Section

**LILS**

## Minutes of the Legal Issues and International Labour Standards Section

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## Legal Issues Segment

### 1. Comprehensive review of the Standing Orders of the Conference: Draft consolidated text (GB.341/LILS/1)

1. In preparation for the adoption of a decision by correspondence, the Office held a briefing session for Governing Body members on this item on 31 March 2021.
2. The Screening Group agreed to put the item forward for a decision by correspondence and the decision was approved by consensus and announced to all Governing Body members by a communication of 13 April 2021.

### Decision

3. **The Governing Body decided, by correspondence, to transmit to the Conference the consolidated text of the amended Standing Orders of the International Labour Conference in the appendix of document GB.341/LILS/1 for adoption at its 109th Session (June 2021).**

(GB.341/LILS/1, paragraph 22)

### Summary of the written comments received during the consideration of the item by correspondence <sup>1</sup>

4. **The group of industrialized market economy countries (IMEC)** commended the Office for its excellent work since 2013 involving numerous questionnaires, proposals and consultations in order to ensure a quality outcome that was supported by all groups, and thanked the tripartite partners for their dedication and input over the years. All sides had shown a sense of compromise in the final negotiations and together they had achieved a good consolidated, streamlined and updated text that was adapted to long-standing practices and recent requirements to facilitate the work of the Conference in its two-week format. The group looked forward to testing the amended Standing Orders at an in-person session of the Conference in 2022.
5. **Cuba** considered that there were no precedents for article 10(2). While the intention was to align the practice with the Standing Orders, clarification was required on which reports could be transmitted by the Governing Body for the consideration of the Committee on the Application of Standards. As that Committee was an ILO supervisory body, the Governing Body's authority to transmit reports to it must comply with the provisions of the ILO Constitution and the Compendium of rules applicable to the Governing Body.

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<sup>1</sup> The complete text of each comment in the original language is available on the [Governing Body's web page](#), together with the decision.

## International Labour Standards and Human Rights Segment

### 2. Proposed form for reports to be requested under articles 19(5)(e) and 19(6)(d) of the ILO Constitution in 2022 on the instruments concerning equality of opportunity and treatment (GB.341/LILS/2(Rev.1))

6. The document prepared by the Office for this item was published on the Governing Body website on 22 February 2021 and Governing Body members had the possibility to send comments on the proposed forms until 25 March.
7. On the basis of the comments received, the Office issued a revised version of the document and the Screening Group agreed to put the item forward for a decision by correspondence. The decision was approved by consensus and announced to all Governing Body members by a communication of 13 May 2021.

### Decision

8. **The Governing Body, by correspondence:**
  - (a) requested governments to submit reports for 2022, under article 19 of the ILO Constitution, on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and Recommendation, 1958 (No. 111), the Workers with Family Responsibilities Convention, 1981 (No. 156), and Recommendation (No. 165), as well as the Maternity Protection Convention, 2000 (No. 183), and Recommendation (No. 191); and
  - (b) approved the report form concerning these instruments set out in the appendix to document GB.341/LILS/2(Rev.1).

(GB.341/LILS/2(Rev.1), paragraph 4)

### Summary of the written comment received during the consideration of the item by correspondence <sup>2</sup>

9. **IMEC** thanked the Office for preparing and facilitating the process for finalizing the article 19 report, and expressed appreciation for the social partners' engagement and spirit of compromise throughout. Concise, focused questionnaires helped to ensure replies that were accurate, clear and responsive to the issues, and IMEC had submitted several corresponding proposals that had been endorsed by all constituents. The Office's efforts to take into account the various views expressed at previous sessions of the Governing Body, including by hosting consultations and making available a virtual platform for submitting written comments, had facilitated the discussions and helped to reach agreement.

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<sup>2</sup> The complete text of each comment in the original language is available on the [Governing Body's web page](#), together with the decision.

10. IMEC was open to discussions on how to further improve the process for finalizing article 19 questionnaires and had several suggestions. In particular, it would be helpful if the Office organized an informal consultation prior to the March 2022 session of the Governing Body to exchange preliminary views. The consultation could also include a tutorial on how to navigate the virtual platform to ensure that it was effective, transparent and inclusive. That could help prevent some of the challenges constituents had experienced and make the process smoother for finalizing future questionnaires.

### 3. Proposed form for reports on the application of ratified Conventions (article 22 of the Constitution): The Violence and Harassment Convention, 2019 (No. 190) (GB.341/LILS/3(Rev.1))

11. The document prepared by the Office for this item was published on the Governing Body website on 22 February 2021 and Governing Body members had the possibility to send comments on the proposed forms until 25 March.
12. On the basis of the comments received, the Office issued a revised version of the document and the Screening Group agreed to put the item forward for a decision by correspondence. The decision was approved by consensus and announced to all Governing Body members by a communication of 13 May 2021.

#### Decision

13. **The Governing Body, by correspondence, approved the report form for the Violence and Harassment Convention, 2019 (No. 190), set out in the appendix to document GB.341/LILS/3(Rev.1).**

(GB.341/LILS/3(Rev.1), paragraph 2)

### 4. Proposed amendments to the form for reports to be requested under article 22 of the ILO Constitution in relation to the Maritime Labour Convention, 2006, as amended (MLC, 2006) (GB.341/LILS/4)

14. The document prepared by the Office for this item was published on the Governing Body website on 22 February 2021 and Governing Body members had the possibility to send comments on the proposed forms until 25 March. The Office did not receive any comments on the document.
15. The Screening Group agreed to put the item forward for a decision by correspondence and the decision was approved by consensus and announced to all Governing Body members by a communication of 13 April 2021.

#### Decision

16. **The Governing Body approved, by correspondence, the proposed changes to be inserted in the report form for the Maritime Labour Convention, 2006, as amended**

(MLC, 2006), to be used as the basis for the preparation of reports due under article 22 of the ILO Constitution.

(GB.341/LILS/4, paragraph 9)

## 5. Second evaluation of the functioning of the Standards Review Mechanism Tripartite Working Group (GB.341/LILS/5)

17. The Governing Body had before it an amendment to subparagraph (c) of the draft decision proposed by the Employers' group and a subamendment proposed by IMEC. The amendment and subamendment had been circulated by the Office.
18. The amendment proposed by the Employers' group read as follows:
  - (c) requested the SRM TWG to take its guidance into account in continuing its work and that it continue to be kept informed of the functioning of the SRM TWG on the basis of a detailed and thorough analysis of lessons learned, challenges and areas of opportunity for improvement, so as to allow it to undertake a further evaluation no later than March 2022.
19. The subamendment proposed by IMEC read as follows:
  - (c) requested the SRM TWG to take its guidance into account in continuing its work and that it continue to be kept informed of the functioning of the SRM TWG, including on the basis of a detailed and thorough analysis of lessons learned, challenges and areas of opportunity for improvement, prepared by the Office, in consultation with the Officers, so as to allow it to undertake a further evaluation no later than March 2022.
20. **The Chairperson** invited Governing Body members to indicate their support for either subparagraph (b1) or (b2) of the draft decision.
21. **The Worker spokesperson** said that her group would assess the success of, and its continued engagement in, the Standards Review Mechanism Tripartite Working Group (SRM TWG) based on its capacity to place new standards on the agenda of the International Labour Conference and rates of ratification of up-to-date standards. The length of the lapse between the SRM TWG's recommendations and the Organization's response meant that gaps in protection for workers persisted in law and in practice. The SRM TWG's follow-up activities constituted a high institutional priority, and the elaboration of new standards must be placed on the Conference's agenda at the earliest opportunity.
22. While she welcomed the information on ratification numbers contained in the report of the Officers of the SRM TWG, she requested that in future the Office include a list of the Conventions ratified. She invited Member States to follow the example of those that had ratified Conventions and requested confirmation that the SRM TWG's recommendations were included in Decent Work Country Programmes and development cooperation activities. In order to prevent gaps in legal protection, Member States must consider ratifying up-to-date instruments relating to the six outdated standards proposed for abrogation and withdrawal. She requested additional information on the promotion of up-to-date standards relating to those outdated standards.

23. Discussions relating to the SRM TWG were not easy. Without effective follow-up, supported by the necessary resources and attention, doubts would remain as to the ILO's commitment to ensuring that the SRM TWG fulfilled its mandate. While the broad support of governments for the implementation of the SRM TWG's recommendations was commendable, the persistent lack of support from the Employers' group was of grave concern.
24. Her group supported the original text of subparagraphs (a), (b1) and (c) of the draft decision. The amendment proposed by the Employers' group was not only unacceptable to her group, but also directly undermined the SRM TWG's key role in providing a robust, up-to-date body of international labour standards. The commitment of all constituents was necessary if its recommendations on the abrogation and withdrawal of outdated instruments were to be implemented and the consequent gaps addressed in new standards. The Employers' group had stated that the role of the SRM TWG was limited to making recommendations, that not all of its Officers were Governing Body members and that it was the Governing Body that decided whether to implement its recommendations. It was unclear why the Employers wished to downplay the weight of the SRM TWG's recommendations when the Employers' group had appointed to serve on the SRM TWG highly esteemed Employer spokespersons on the Conference Committee on the Application of Standards and the Committee on Freedom of Association. However, she concurred that the final decisions on the SRM TWG's recommendations rested with the Governing Body, as had already been illustrated on several occasions.
25. The Employers' preference for subparagraph (b2), whereby the Governing Body simply noted the information provided in the report on lessons learned and possible future directions, contradicted previous Governing Body decisions that called for follow-up action to the SRM TWG's recommendations. The SRM TWG's very existence was called into question by the Employers' refusal to take its recommendations seriously. She urgently requested that the Employers' group reconsider its position and express clear support for subparagraph (b1); if not, her group would be forced to consider its continued commitment to the work of the SRM TWG.
26. She welcomed the consistent support of IMEC and other government groups for the SRM TWG, which she hoped to see translated into support for the standard-setting agenda on the four occupational safety and health regulatory gaps. Her group would support IMEC's subamendment to the Employers' amendment to subparagraph (c) of the draft decision, which she understood as asking the SRM TWG to address more explicitly the lessons learned, challenges and areas for improvement.
27. **The Employer spokesperson** said that his group would have welcomed more detailed information on the work of the SRM TWG, including differences of opinion expressed in it. The reinstatement of the practice followed by the Cartier Working Party, namely, the inclusion of constituents' differences of opinion and disagreements, in the SRM TWG's reports would improve the Governing Body's understanding, evaluations and decision-making and strengthen the functioning of the SRM TWG, which was increasingly finding difficulty in reaching consensus. The recognition of mechanisms and tools other than standards would create a more efficient, coherent system.
28. There were misconceptions surrounding the SRM TWG's role. The expectation of some that the information it submitted to the Governing Body would include

recommendations for the creation of standards, without the opportunity for further discussion, caused a range of problems, including in relation to the Governing Body's exclusive competence to place items on the agenda of the International Labour Conference and to identify standard-setting priorities. The SRM TWG should consider the situation of individual Member States when promoting Conventions; it should not be assumed that Conventions would be ratified simply because they were the most up to date. More cautious language was required when referring to potential gaps in legal protection following the withdrawal or abrogation of a standard, in order to make it clear that such action would not automatically create gaps in all Member States.

29. His group supported subparagraph (b2) because the SRM TWG's recommendations must not restrict the Governing Body's capacity to define priorities for the agenda of the International Labour Conference. However, his group did not support the subamendment proposed by IMEC because the analysis should be carried out by the SRM TWG, not the Office. The work of the SRM TWG was essential to ensuring that the body of standards was up-to-date and reflected the world of work, the need to protect workers and the realities of sustainable businesses. He objected to the Workers' representation of his group's views, which were entirely consistent with its past approach to the SRM TWG's reports. He urged governments to support subparagraph (b2) and his group's proposed amendments.
30. **Speaking on behalf of the Africa group**, a Government representative of Namibia expressed support for the continued role and work of the SRM TWG. The COVID-19 pandemic had prevented the SRM TWG from meeting since September 2019, and she expressed concern that 68 of the 235 instruments included in its programme of work had yet to be reviewed. Her group therefore recommended that the SRM TWG continue its work. The Office should continue to send letters to Member States regarding the Governing Body's decisions on follow-up action as part of the Centenary Ratification Campaign. Her group supported subparagraph (b2) of the draft decision and proposed an amendment to subparagraph (c), which was not seconded and therefore fell.
31. **Speaking on behalf of the Asia and Pacific group (ASPAG)**, a Government representative of Saudi Arabia said that his group reaffirmed the overall objective of the SRM TWG and noted with appreciation its efforts and significant role in the consolidation and modernization of ILO labour standards. While the SRM TWG's recommendations were welcome, the limited frequency of its meetings could affect progress in the scheduled review of the remaining instruments. Follow-up activities must continue to be funded with existing resources, and the implementation of the SRM TWG's recommendations should be viewed as a package of interconnected, complementary and mutually reinforcing elements. His group supported the original draft decision and subparagraph (b2).
32. **Speaking on behalf of the group of Latin American and Caribbean countries (GRULAC)**, a Government representative of Barbados welcomed the ongoing work of the SRM TWG, which was of particular importance to his group, given the high number of ratifications of international labour standards by Member States in the region. The ratification of any new Convention entailed complex decisions at the national level to implement or strengthen legislation and a burden for ministries of labour; the Standards Review Mechanism provided clarity to address barriers to the ratification of new instruments. His group was not yet ready to express its position on subparagraph (b) of the draft decision.



- 33. Speaking on behalf of IMEC**, a Government representative of the United States of America expressed her group's full support for the SRM TWG, particularly given the importance of standards during COVID-19 recovery. Noting the progress made by the SRM TWG in its first five meetings and its recommendations on approaches to future standard-setting activity, she observed that social dialogue had led to consensus recommendations being issued annually. However, much remained to be done; 68 instruments awaited review. She encouraged the SRM TWG to be ambitious when scheduling discussions in order to accelerate its work and welcomed the involvement of Government advisers in the review of highly technical instruments. The SRM TWG had repeatedly emphasized the need for practical and time-bound follow-up to its recommendations; she asked the Office to provide information on the progress of follow-up actions planned for 2020 or 2021 that had been affected by the COVID-19 pandemic and encouraged Member States and social partners to implement such actions swiftly. She expressed support for subparagraphs (a) and (b1) of the original draft decision. In respect of subparagraph (c), her group had proposed a subamendment to the amendment proposed by the Employers' group.
- 34. Speaking on behalf of the European Union (EU) and its Member States**, a Government representative of Germany said that Montenegro, Albania and Norway aligned themselves with her statement. Emphasizing the importance of the SRM, she noted the far-reaching impact of the first five meetings of the SRM TWG. However, 68 instruments were pending review and follow-up actions to the recommendations remained to be implemented. She underscored the need for the participation of Government advisers when discussing technical instruments. Standard-setting should be considered an institutional priority, particularly in light of the COVID-19 pandemic and the need for a sustainable, equitable and inclusive recovery from that crisis.
- 35.** It was regrettable that the pandemic had delayed the work of the SRM TWG and the Office's follow-up actions. She expressed support for the thematic integration approach to occupational safety and health standards and the need for preparatory activities to implement it, as well as for the implementation of measures to ensure timely follow-up to all of the SRM TWG's previous recommendations. She looked forward to the next evaluation, to take place no later than March 2022. The EU and its Member States expressed support for subparagraphs (a) and (b1) of the original draft decision, and for subparagraph (c) as subamended by IMEC.
- 36. A Government representative of Cuba** recognized the importance of the SRM TWG and encouraged it to continue its work. He noted that the COVID-19 pandemic had delayed the second evaluation of the SRM TWG. He expressed support for subparagraph (b2) of the draft decision.
- 37. A Government representative of Brazil** stated his Government's support for the mandate of the SRM TWG, welcomed its recommendations and acknowledged the need for follow-up action. However, the Governing Body should not merely rubber-stamp the recommendations; instead, it should be able to have a real discussion of the recommendations and how best to implement them. He therefore supported the Employers' proposed amendment.
- 38. The Worker spokesperson** said that the minutes of the SRM TWG, which were made available to all groups, did indeed reflect the differences in the groups' positions, and that decisions were made by consensus, in accordance with the terms of reference.

There was no suggestion that the Governing Body should merely rubber-stamp the recommendations of the SRM TWG. However, those recommendations had been made in good faith, and must be taken seriously. The Governing Body had taken sovereign decisions to confirm previous recommendations of the SRM TWG and those decisions must be implemented. The Standards Review Mechanism was part of a very difficult and carefully reached tripartite agreement, and executing that agreement in good faith meant that the activity of the SRM TWG must lead to results. The Governing Body had the authority to decide how and when to follow up on the recommendations of the SRM TWG.

39. **The Employer spokesperson** said that his group took the discussion and analyses of the SRM TWG very seriously, and had always acted in good faith. When the first report of the SRM TWG was submitted in March 2017, the Governing Body had merely noted the report and asked to be kept informed of the functioning of the Group. However, the current draft decision wrongly anticipated the reaction of Governing Body members and included elements that were part of the reports of the SRM TWG. There should be a clear separation of the technical discussions of the subject-matter experts and the Governing Body's discussion of the practical and policy implications of the recommendations. That is why the Employers were proposing that the Governing Body should receive a detailed and thorough analysis of lessons learned, challenges and areas of opportunity for improvement.
40. **The Chairperson** noted that neither option for subparagraph (b) of the draft decision enjoyed a clear majority, and proposed that the social partners and interested Governments should meet separately to agree on new wording with a view to achieving consensus.
41. **A representative of the Director-General** (Director, International Labour Standards Department), responding to questions of the Governing Body, explained that the status of ratifications of updated Conventions registered since the launch of the Centenary Ratification Campaign was indicated in table 3 of the Appendix to GB.341/LILS/5; since the publication of that document, eight further ratifications had been registered, and other States were also considering ratifying the instruments listed. The Office had noted the request to include in future reports information on the Conventions and countries to which ratifications referred.
42. The Office had continued its activities related to the work of the SRM during the pandemic. It had followed up on the personalized letters regarding recommendations emerging from the SRM evaluation by offering technical assistance to national governments where it was considered necessary or helpful. Standards specialists on the ground had finalized 30 action plans, and 28 further action plans were close to being finished, to encourage follow-up to the Governing Body's decisions. The Office had also continued with actions not directly related to standards, which included preparing tools such as technical guidelines and studies to promote standards.
43. Follow-up of recommendations in the context of DWCPs was ongoing, and the Office was considering how best to mainstream the follow-up in DWCPs.
44. **The Worker spokesperson** emphasized that in order to reach a consensus on the draft decision, it was crucial to ensure that agreements were given effect. There was a need

to follow up not only on the recommendations of the SRM TWG, including on standard-setting, but also the decisions of the Governing Body.

45. Following informal discussions led by the chairing officer for the item, the Governing Body considered a revised draft decision.
46. **The Worker spokesperson** expressed her group's gratitude to the chairing officer for the efforts to build consensus. Her group supported the revised draft decision.

## Decision

**47. In undertaking its second evaluation of the functioning of the Standards Review Mechanism Tripartite Working Group (SRM TWG), the Governing Body noted the information provided by the Officers of the SRM TWG and:**

- (a) **expressed its gratitude to the SRM TWG for its ongoing work to ensure a clear, robust and up-to-date body of international labour standards;**
- (b) **reiterated the importance of the SRM TWG and accordingly stressed the need for follow-up by Member States, social partners as well as by the Office to its recommendations as adopted by the Governing Body; and**
- (c) **requested the SRM TWG to take its guidance into account in continuing its work and that it continue to be kept informed of the functioning of the SRM TWG so as to allow it to undertake a further evaluation no later than March 2022.**

(GB.341/LILS/5, paragraph 3, as amended by the Governing Body)

## 6. Procedure for the appointment of members of the Committee of Experts on the Application of Conventions and Recommendations (GB.341/LILS/6)

48. The Governing Body had before it an amendment to the draft decision which had been proposed by GRULAC, which read:

The Governing Body, in the interest of a continuous improvement and strengthening of the ILO supervisory system towards full transparency, tripartism and geographical balance, decided to adopt henceforth the following procedure for the appointment of future members to the Committee of Experts on the Application of Conventions and Recommendations (CEACR):

- I. The CEACR shall be composed of 20 independent members, comprising five members per geographical region and covering a broad range of legal systems;
- II. Each member shall be elected for a six-year term, which can be renewed only once, unless there is tripartite agreement on not to renew it;
- III. In the period of six months before one of the CEACR members ends his or her term, the Governing Body shall establish an "ad hoc" tripartite committee tasked with making recommendations on the appointment of a new expert, or on the renewal of the term of the expert who has ended his or her tenure. The tripartite committee shall be composed of two members from each group and shall conduct its work under the following terms:

- (a) the vacancy should be communicated as widely as possible within the relevant geographical region, in order to ensure the broadest possible pool of qualified applicants;
- (b) suitable candidates from different countries within the geographical region concerned should be identified and interviewed by the tripartite committee;
- (c) when deliberating on potential names to be recommended to the Governing Body, the tripartite committee shall give due consideration to the need to ensure proper balance among countries within the geographical region concerned;
- (d) if the tripartite committee fails to reach consensus on a single name, it can submit a list comprising of up to three names to the Governing Body.

**49.** The Governing Body also had before it a subamendment proposed by the Employers' group, which read:

The Governing Body, in the interest of a continuous improvement and strengthening of the ILO supervisory system towards full transparency, tripartism and geographical balance, decided to adopt henceforth the following procedure for the appointment of future members to the Committee of Experts on the Application of Conventions and Recommendations (CEACR):

- ~~I.~~ ~~The CEACR shall be composed of 20 independent members, comprising five members per geographical region and covering a broad range of legal systems;~~
- ~~II.~~ Each member shall be elected for a three ~~six~~-year term, which can be renewed twice ~~only once~~, unless there is tripartite agreement ~~on not to renew it~~;
- ~~III.~~ ~~In the period of six months before one of the CEACR members ends his or her term, the~~ The Governing Body shall establish an "ad hoc" tripartite committee ~~tasked~~ mandated with identifying and making recommendations on the appointment of a new experts, or on the renewal of the term of the experts ~~who has ended his or her tenure~~. The tripartite committee shall be composed of two members from each group and shall conduct ~~its work under~~ the following ~~term~~tasks:
  - (a) to review the existing criteria for the selection of new Experts
  - ~~(a)~~ ~~the vacancy should be~~ to communicated vacancies as widely as possible within the relevant geographical regions, ~~in order to ensure the broadest possible pool of qualified applicants;~~
  - ~~(b)~~ to identify and interview suitable candidates ~~from different countries within the geographical region concerned should be identified and interviewed by the tripartite committee;~~
  - ~~(c)~~ to give proposals for nomination of new Experts or renewal of the term of experts ~~when deliberating on potential names to be recommended to the Officers of the Governing Body, the tripartite committee shall give due consideration to the need to ensure proper balance among countries within the geographical region concerned;~~
  - ~~(d)~~ ~~if the tripartite committee fails to reach consensus on a single name, it can submit a list comprising of up to three names to the Governing Body.~~

**50.** **The Employer spokesperson** said that while the division of competence between the Committee of Experts and the Conference Committee on the Application of Standards remained formally valid, in reality the balance had shifted significantly towards the Committee of Experts over time. Its report was no longer just a preparatory report for the work of the Conference, but had become a self-contained document considered by many as the ILO's official view on compliance with ratified Conventions, on the basis of

which far-reaching decisions were now made. Tripartite influence on the supervision of ILO standards had diminished, as the Committee on the Application of Standards could only discuss a fraction of the assessments made by the Committee of Experts.

- 51.** The Employers' group therefore considered it necessary to review the process for appointing members of the Committee of Experts to ensure that it met the needs of tripartite governance in the supervision of ILO standards. The current criteria for the selection and appointment of experts addressed various required competencies but not the need for impartiality and independence. The identification of potential new experts was currently left to the Office, which supported the experts in preparing their assessments and therefore had considerable influence over them. From a governance and transparency point of view, it did not seem appropriate for those involved in shaping the work of the experts to also be the ones to identify them. Concerning the length of the experts' mandate, the present maximum of 15 years was too long; it should only be possible to renew the three-year term twice. The resulting maximum of nine years would mean that, on average, two vacancies would have to be filled per year, which was administratively feasible. The Employers' group proposed that an ad hoc tripartite committee should be created to review the professional profile of the experts, identify new candidates and collect proposals from the tripartite constituents, shortlist and interview candidates, and make proposals for new experts for approval by the Governing Body. After almost 100 years, the process of appointing members of the Committee of Experts warranted a review to ensure sound tripartite governance and transparency. The group's proposed subamendment aimed to pave the way for such a process.
- 52.** **The Worker spokesperson** welcomed the fact that the Committee of Experts had almost reached gender parity and that geographical balance had been achieved. In addition to the experts' technical expertise, the principles of independence, objectivity and impartiality had been consistently upheld by the Conference and the Governing Body as the cornerstone of the Committee of Experts, and the Office must continue to play a central role in the identification of suitable candidates. The 15-year term limit for the Committee of Experts should be maintained, as it allowed experts to transition into the role, and ensured continuity and stability in the Committee and the development of the necessary expertise on the ILO standards for which the experts were responsible.
- 53.** The proposed amendment and subamendment intended to drastically change the current procedures and practices, which was inappropriate and unacceptable. The Workers could not accept the GRULAC amendment, as it politicized the whole selection procedure, would lead to the loss of the experts' impartiality, independence and technical expertise, and would undermine the credibility of the supervisory system. The Governing Body already had a role in deciding on the appointment of the experts, as its Officers made recommendations based on proposals from the Office. It should not be more involved in the process by appointing an ad hoc tripartite committee, as proposed in the amendment; the selection process should remain with the Office. If tripartite constituents organized interviews, experts would be subject to pressure from groups that were dissatisfied with the Committee's observations. There would also be a risk that technical expertise, impartiality and independence would no longer be the primary selection criteria. It was unacceptable that the amendment envisaged no role for the Office in the identification of experts.
- 54.** For the same reasons, the Workers' group could not support the Employers' proposed subamendment. The group was satisfied with the current selection process and criteria.

The only change to which her group could agree would be for the Office to publicize vacancies in the Committee of Experts based on the current criteria to have the broadest possible pool of qualified applicants. It could also support the proposal for the Office to provide further details on candidates when submitting their names for appointment and renewal to the Governing Body. She therefore supported the original draft decision.

- 55. Speaking on behalf of the Africa group**, a Government representative of Lesotho said that to ensure that longstanding concerns regarding the appointment of experts were addressed, the Governing Body should be involved from the very early stages. The geographical diversity aspect was problematic for the subregions of Africa in view of the continent's geographical spread. The current selection and appointment procedures were subjective and therefore presented several bottlenecks in recruiting from a wide range of experts globally. Some selection criteria lacked transparency and clarity and should therefore be reviewed, namely "ability to accept the essentially administrative nature of the work combined with intellectual incisiveness", "sensitivity and openness to the views of ILO tripartite constituents" and "ability to influence or add a dimension to ILO work in the country in which the experts live". To increase transparency and inclusivity, vacancies should be communicated to the relevant bureaus of the regions as well as ILO regional offices. The Africa group did not support the draft decision proposed by the Office but would work with the proponents of the amendments to formulate a new draft decision aimed at achieving consensus. The Office should develop a new draft incorporating the subamendments by other groups to submit to the 343rd Session of the Governing Body.
- 56. Speaking on behalf of a large majority of countries of Latin America and the Caribbean**, a Government representative of Barbados said that the current selection process should be revised and strengthened by increasing transparency, accountability, effectiveness and efficiency, with tripartite engagement and with a view to avoiding undue delays in recruitment. It had recently taken more than a year to complete the selection of one expert. Such shortcomings needed to be addressed to improve and strengthen the supervisory system. It was vital to give concrete meaning to the commitment in the Centenary Declaration to ensure the full, equal and democratic participation of constituents in the ILO's governance. That was why his group had proposed amending the draft decision to seek consensus among all tripartite partners. It was still considering the subamendment put forward by the Employers.
- 57. Speaking on behalf of IMEC**, a Government representative of Australia said that her group agreed that the characteristics of members being recognized experts, impartial, technically competent and independent were of vital importance to ensure that the Committee of Experts continued to enjoy the highest levels of authority and credibility in the ILO's supervisory system. The group supported the existing competitive and transparent appointment process ensuring that experts were chosen on the basis of their qualifications alone. Appointments were already based on tripartism, as they were made according to criteria developed by the Officers of the Governing Body and the final decision was always made by the Governing Body itself, not on proposals of countries of which candidates were nationals. IMEC endorsed the current selection methods, but was also in favour of a wider and more transparent outreach process when vacancies arose. The Committee itself had set the maximum term of 15 years, which enabled experts to fully understand the issues over time and engage in dialogue with constituents sometimes over many years. IMEC supported the Office in continuing to coordinate the recruitment process in accordance with the existing protocols so that appointments and

reappointments were made in a timely manner. The group therefore supported the original draft decision.

- 58. Speaking on behalf of the EU and its Member States**, a Government representative of Germany said that North Macedonia, Montenegro, Albania and Norway aligned themselves with the statement. The EU and its Member States aligned themselves with the IMEC statement. Her group considered that the current selection process adequately safeguarded the need to ensure an outcome in which the impartiality and independence of new experts could not be questioned. She underscored the importance of filling the recent and upcoming vacancies in a timely manner in accordance with the principles outlined in the document and engaging in a more active and inclusive outreach, to enable the Committee of Experts' work to continue unimpeded. As the EU did not see any need to change the system, it supported the draft decision proposed by the Office.
- 59. A Government representative of India** said that the selection process should involve a public outreach programme with the publication of a call for expressions of interest in reputable international magazines and newspapers, and online. The ILO could send information on vacancies to relevant Member States to circulate to suitably qualified and experienced individuals, and consult relevant Member States before finalizing the selection of candidates for interview. The terms of reference of the Committee of Experts, where they existed, should be amended to make the selection process more inclusive and transparent.
- 60. A Government representative of Cuba** supported the amendment proposed by a large majority of countries of Latin America and the Caribbean, and expressed particular agreement with the criterion on equal geographical distribution for the selection of experts. She also highlighted the importance of respecting the principles of independence, objectivity and impartiality in the process for the selection of the Committee's experts, which would help to ensure their authority and credibility. While her Government acknowledged the reluctance of some constituents to change the selection process, the door to discussions on the matter should not be closed.
- 61. A Government representative of Brazil** said that the current selection procedure was out of tune with the principles of transparency, efficiency, accountability, regional balance and tripartism, and differed greatly from the best practices and rules adopted in similar procedures in other international organizations. It was high time for the ILO to engage in a serious and open debate on improving the selection process. The proposed amendment and subamendment, and the views expressed by several Member States, attested to the legitimate concerns and expectations of constituents, and a constructive interest in discussing a new procedure. His Government did not accept the draft decision proposed by the Office; it fully supported the amendment proposed by a large majority of countries of Latin America and the Caribbean, and the subamendment tabled by the Employers. He suggested that the item be suspended in order for informal consultations to be held and the best tripartite solution to be found.
- 62. The Director-General** noted that the discussion showed the importance of the issue to all and the key role of the Committee in the life of the Organization. In his time as Director-General, the Committee's mandate had been attended by a degree of controversy over a wide range of issues. It was evident from the documents dating from the founding of the Committee, in 1926, that there had always been a clear distinction between the technical role performed by its experts, and the clear political role of bodies

with a tripartite composition, such as the Committee on the Application of Standards. That division of responsibilities was fundamental to the way in which the Organization and its supervisory system operated and the manner in which experts were selected. Since the beginning – with a degree of evolution to address improvements such as the Committee of Experts' gender and geographical composition – the Office had initiated and presented recommendations to the Governing Body, which had final authority over appointments.

63. He neither understood nor accepted the argument that the Office's involvement in that manner, alongside its responsibility for servicing the work of the Committee, was in some way improper or incongruous. The Director-General and the secretariat were held to certain standards of behaviour, including impartiality and independence of any constituent, in keeping with the preservation of the integrity and competence of the Office. In the case of the Committee that had been the case for a period of just under 100 years. The same was not true of the tripartite constituents, whose job was to represent political interests.
64. The proposed amendments to the draft decision, which would transfer responsibility from the Director-General and the Office to constituents, were not compatible with the best way of preserving the independence and integrity of the experts. At the very least, that fundamental proposal, unmatched in the recent history of the Organization, required careful consideration.
65. Nonetheless, improvements could always be made and there had been a number of proposals to improve the identification and selection processes, including interesting ideas about broader, more open processes. It would be sensible to explore those ideas to the fullest extent compatible with the preservation of the experts' integrity and independence and their protection from politicization. The Governing Body could examine the issue further in November 2021. It should be noted, however, that the Committee would require the renewal of the terms of eight members and the selection of two new members prior to November 2021, in order to maintain its critical function.
66. **The Employer spokesperson** clarified that her group's proposal implied no criticism of the Office. It had been outlined in the Centenary Declaration that the Organization gained its strength from involving its tripartite constituents and from them having ownership of the Organization. Current good practice at other organizations of the UN system was to identify experts through a consultative group, which in an ILO context should be a tripartite consultative group. Her group's proposal was reasonable and timely. Noting that both colleagues and the Director-General had agreed that the issue would benefit from further discussion, her group was willing to work towards a consensus-based decision, and to continue the discussion in November to find a more modern, inclusive and transparent selection process.
67. **The Worker spokesperson** reiterated that such an important issue should not be introduced without notice. An extensive debate had already taken place on the supervisory system, including the functioning of the Committee of Experts and the Committee on the Application of Standards and other areas, and no call to discuss the criteria for selecting experts had been made at that time. The discussion under way pitted transparency against independence. The Workers would not engage in any exercise that endangered the necessary integrity and independence of the experts, nor



the integrity and independence that underpinned the credibility of the ILO's supervisory system, which was among the best in the world.

68. Recalling the need to renew and appoint a number of experts in 2021, she called for the Office to act on the suggestion to communicate vacancies as widely as possible, set out in subparagraph iii(a) of the amendment proposed by GRULAC. As for the rest of the proposed amendments, the issue was too complicated, too sensitive and had not been fully discussed. Her group would not agree to adopt a decision that would prejudice further discussion on the issue. The Workers supported the proposal by the Director-General to consider how to improve current practice, rather than enter into consequential and detrimental changes to the selection process.
69. **A Government representative of Brazil** said that, while he did not agree with all of the comments made by the Director-General, he welcomed the proposal that the Governing Body should give further consideration to the issue. He disagreed that there had been inadequate time to prepare for the discussion, as the current session covered a period of two weeks and some agenda items would inevitably be discussed at the end of that time period.
70. With respect to the argument that changing the selection process could infringe upon the experts' impartiality or independence, it should be noted that the tripartite Governing Body was responsible for selecting the Director-General, yet no one would argue that his impartiality, objectivity or independence was affected by that process. The proposal by GRULAC was firmly grounded in the safeguards that any selection process should have in place to ensure, beyond any doubt, the impartiality, objectivity and independence of any expert. The process used by the UN Human Rights Council to select its independent experts involved Member States, and he challenged anyone to state that that process had resulted in the selection of dependent, partial and non-objective experts. His group's proposals were intended to improve the system, which was almost 100 years old, because things changed and were reformed, and the discussion was taking place in a context of attention to increased coherence at the multilateral level. His Government was willing to engage in a conversation about how to move forward on the issue for the benefit of all.
71. **The Chairperson** recalled that the document provided was intended to inform the Governing Body about the existing selection process. There appeared to be broad consensus on the need to communicate posts more widely in future. It did not appear to be possible to enter into discussion on changes to systems and procedures at the current time. She therefore suggested that the draft decision should be amended by inserting the following phrase at the end of the sentence: "and requested the Office to prepare a document for its 343rd Session (November 2021) taking into account the discussion held".
72. **The Worker spokesperson** said that, while her group could accept the amended draft decision read out by the Chairperson as a way forward, that would be on the understanding that the further discussion which would take place in November would not be used to block the renewal of terms and filling of vacancies of Committee experts, and that the groups that had proposed amendments, GRULAC and the Employers, would provide clear reassurances on that matter, in order for the Governing Body to work together in full confidence and good faith.

- 73. Speaking on behalf of GRULAC**, a Government representative of Barbados agreed that further discussion on the issue was needed. His group proposed a subamendment to the amended draft decision read out by the Chairperson: following the words “to prepare” the words “in consultation with the tripartite constituents” should be inserted.
- 74. The Employer spokesperson** supported the proposal by GRULAC to subamend the amended draft decision. It seemed self-evident that the preparation of the document should be undertaken in consultation with the tripartite constituents.
- 75. The Worker spokesperson** said that she was not in favour of extensive consultations with the tripartite constituents; what had to be prepared was clear. The amended draft decision should be adopted as read out by the Chairperson.

## Decision

- 76. The Governing Body took note of the information provided by the Office in document GB.341/LILS/6 and requested the Office to prepare a document for its 343rd Session (November 2021) taking into account the discussion held.**

(GB.341/LILS/6, paragraph 21, as amended by the Governing Body)