



International
Labour
Office
Geneva

**INSTRUMENT FOR THE AMENDMENT
OF THE CONSTITUTION
OF THE INTERNATIONAL LABOUR ORGANISATION,
1997**

Questions and answers

RATIFICATION CAMPAIGN

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Questions and answers

WHAT DOES THE INSTRUMENT OF AMENDMENT PROVIDE?

The Instrument provides for a new paragraph 9 to article 19 of the Constitution, the article which governs the adoption of Conventions and Recommendations and Members' obligations in their respect. The new paragraph is drafted as follows:

By a majority of two-thirds of the votes of delegates present, the Conference, acting on a proposal of the Governing Body, may abrogate any Convention adopted in accordance with the provisions of this article if it appears that the Convention has lost its purpose or that it no longer makes a useful contribution to attaining the objectives of the Organization.

This provision empowers the International Labour Conference to terminate the legal effects for the Organization of international labour Conventions which it judges obsolete or without purpose in respect of the objectives of the Organization.

HOW WAS THE INSTRUMENT OF AMENDMENT ADOPTED?

After in-depth discussions at its 265th (March 1996) and 267th (November 1996) Sessions, the Governing Body decided to place on the agenda of the 85th Session (1997) of the International Labour Conference the question of an amendment to the Constitution with a view to empowering the Conference to abrogate any

obsolete Convention, as well as related amendments to the Standing Orders of the Conference. After examination and approval by the Standing Orders Committee, the Instrument of Amendment was submitted to final record vote by the Conference on 19 June 1997, and was adopted with a majority of 381 votes in favour, three against and five abstentions.

The constitutional amendment has therefore been subject to in-depth consideration within the principal organs of the ILO and has obtained near-unanimous tripartite support at all stages.

WHAT IS THE AIM OF THE INSTRUMENT OF AMENDMENT?

The constitutional amendment is part of a series of initiatives taken by the Organization to reinforce the relevance, impact and coherence of its normative system. By allowing the abrogation of certain Conventions, the constitutional amendment answers a question almost as old as the Organization itself: what to do with international labour Conventions that are ineffective or outdated?

While it has always been possible to adopt new, better suited Conventions on subjects already covered by existing Conventions, the Constitution does not provide a means of dealing with outdated Conventions. True, Conventions adopted after 1929 provide that any Member ratifying a Convention revising another Convention automatically denounces the earlier text. However, that does not solve the problem of obsolete Conventions adopted before 1929, nor that of Conventions that have become obsolete without a revised Convention having been adopted, nor that where such a Convention has been adopted but has not been ratified by all parties to the earlier Convention.

It is true that certain measures introduced over the years have diminished the practical consequences of the accumulation of revising and revised texts. Thus, the Governing Body decided that a certain number of Conventions should be *classified as dormant* (that is, they should in principle no longer occasion reports on their implementation under article 22 of the Constitution), or *shelved* (that is, classified as dormant and no longer published). However, these measures do not eliminate all the constitutional effects of obsolete Conventions, which may in particular still give rise to representations or complaints under articles 24 and 26 of the Constitution.

The abrogation of obsolete Conventions involves their removal from the ILO's body of standards. It therefore satisfies legal

requirements and constitutes a practical and effective method for updating this body of standards. The normative system could therefore be re-centred on those Conventions which make a useful contribution to accomplishing the objectives of the Organization. The relevance, impact and coherence of the system as a whole would consequently be enhanced.

WHAT PROCEDURAL GUARANTEES SURROUND ABROGATION?

The decision to abrogate a Convention is hedged by procedural conditions which aim to ensure that no Convention is abrogated without very wide tripartite support. The principal conditions are as follows:

- The proposal to abrogate a Convention must be initiated by the Governing Body. Under article 12bis of the Standing Orders of the Governing Body, the decision to place an item on the agenda of the Conference concerning the abrogation of a Convention must, as far as possible, be reached by consensus or, where this is not possible, by a four-fifths majority of members of the Governing Body. This last condition is not required under the procedure for the adoption of a Convention.
- At least 18 months before the session of the Conference, the Office must communicate to all governments a brief report as well as a questionnaire requesting governments to indicate their position regarding the envisaged abrogation, after consultation with the most representative employers' and workers' organizations. The Office then draws up the report containing the final proposal submitted to the Conference on the basis of the replies received (article 45bis of the Standing Orders of the Conference).
- After discussing the proposed abrogation, the Conference decides by consensus or, where this is not possible, by a preliminary vote requiring a two-thirds majority, to submit the proposal to a final vote. Such a qualified majority is not required at this stage for the adoption of a Convention.
- As for the adoption of a Convention, a proposed abrogation requires a two-thirds majority of votes from delegates present to pass.

The abrogation procedure is thus similar to the procedure for the adoption of a Convention. However, certain conditions are more restrictive in abrogation, and therefore provide greater protection of tripartite consensus.

WHICH CONVENTIONS MIGHT BE ABROGATED?

According to the terms of the constitutional amendment of 1997, a Convention may be abrogated if "it appears that the Convention has lost its purpose or that it no longer makes a useful contribution to attaining the objectives of the Organization". It is for the Governing Body and then for the Conference to decide whether this substantive condition is fulfilled.

On the basis of the work of its Working Party on Policy regarding the Revision of Standards, the Governing Body has already identified seven Conventions which could opportunely be abrogated:

- The Night Work (Women) Convention, 1919 (No. 4);
- The Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15);
- The Protection against Accidents (Dockers) Convention, 1929 (No. 28);
- The Night Work (Women) Convention (Revised), 1934 (No. 41);
- The Minimum Age (Non-Industrial Employment) Convention (Revised), 1937 (No. 60);
- The Hours of Work and Rest Periods (Road Transport) Convention, 1939 (No. 67);
- The Paid Vacations (Seafarers) Convention (Revised), 1949 (No. 91).

WHAT EXACTLY IS THE EFFECT OF ABROGATION OF A CONVENTION?

The use of the term "abrogation" in the context of the constitutional amendment of 1997 must not give rise to errors, in particular resulting from the different uses of the term within national legal systems. The effect of the abrogation of a Convention within the meaning of the 1997 amendment is to eliminate definitively all legal effects arising out of the Convention between the Organization and its Members. Thus, Members that have ratified the Convention are no longer obliged to submit reports under article 22 of the Constitution and can no longer be subject to representations

(article 24) and complaints (article 26) for non-observance of the Convention. For its part, the Organization is no longer obliged to undertake any activities in respect of the abrogated Convention. In particular, its supervisory bodies are not required to examine the implementation of the Convention. The Office will also cease to publish the text of the Convention and the official information regarding its ratifications and denunciations. Electronic archiving will nevertheless be maintained for historical purposes.

While an abrogated Convention thus ceases to be an *ILO* Convention, nothing prevents those member States that have ratified it (and which might oppose its abrogation) from considering that they remain bound *inter se* by its provisions. But they may no longer call on the ILO to supervise observance and maintain the procedural obligations in respect of Conventions which no longer serve its objectives, and assume the resulting costs.

Furthermore, the abrogation of a Convention in no way implies that Members must revoke the legislative or other measures taken to give effect to the provisions of the Convention internally.

HAS THE CONFERENCE NOT ALREADY WITHDRAWN
CONVENTIONS? WHAT IS THE DIFFERENCE BETWEEN
THE WITHDRAWAL AND THE ABRIGATION OF A CONVENTION?

At its 88th Session (2000), the International Labour Conference did in fact withdraw five Conventions: Nos. 31, 46, 51, 61 and 66.

The withdrawal of Conventions was provided for by an amendment to the Standing Orders of the Conference that was adopted at the same time as the constitutional amendment of 1997. In accordance with article 45bis of the Standing Orders of the Conference, while abrogation applies to Conventions *in force*, withdrawal is possible for Conventions which are *not in force* as well as for Recommendations.

It was considered that the Conference did not require formal constitutional authorization to *withdraw* a Convention that was not in force since in this instance, as in the case of a Recommendation, there are no constitutional obligations between Members or between the Organization in respect of its Members. The constitutional amendment of 1997 on the abrogation of obsolete Conventions therefore only concerns Conventions *in force*.

The principal effect of withdrawing a Convention is to prevent it from entering into force by closing it to ratification. As with abrogated Conventions, the Office also stops publishing the text of the Convention and the official information concerning it.

WHEN WILL THE INSTRUMENT OF AMENDMENT ENTER INTO FORCE?

In conformity with article 36 of the Constitution, the constitutional amendment of 1997 will enter into force once ratified or accepted by two-thirds of the Members of the Organization, including five of the ten Members which are represented on the Governing Body as Members of chief industrial importance.

While this latter condition has been met – six Members of chief industrial importance have already ratified or accepted the instrument – the total number of ratifications and acceptances has not been reached. For the amendment to enter into force, around 25 more ratifications or acceptances are therefore required from Members who have so far neither ratified nor accepted it.

A list of Members that have already ratified the Instrument of Amendment may be found on the Internet site of the Office of the Legal Adviser of the ILO (<http://www.ilo.org/public/english/bureau/leg/>).

WHAT FORM SHOULD THE INSTRUMENT OF RATIFICATION OF THE INSTRUMENT OF AMENDMENT TAKE?

Ratification (or acceptance) is the expression by a member State of its consent to be bound by the constitutional amendment. This consent must therefore be expressed by the representative or representatives of the State having the power to bind the State in its external relations.

Acceptance, mentioned in article 36 of the Constitution as an alternative to ratification, is in every way equivalent to ratification. The choice between the two instruments depends on the constitutional order of the Member concerned.

Below is given an example of the instrument of ratification or acceptance of the Instrument of Amendment of the Constitution of the International Labour Organisation, 1997.

Whereas the Constitution of the International Labour Organisation Instrument of Amendment, 1997, was adopted by the International Labour Conference at its 85th Session, in Geneva, on 19 June 1997,

The Government of, having considered the aforesaid Instrument of Amendment, hereby confirms and ratifies/accepts the same.

IN WITNESS WHEREOF, we have signed these presents

.....

at on the day of 200..

.....
Head of State

and/or

.....
*Minister
of Foreign Affairs*

WHY IS URGENT ACTION NEEDED?

There is consensus within the Organization and its constituents that there is a need to reinforce the relevance, impact and coherence of the ILO's normative system, which is one of the Organization's principal means of action. In its almost 90 years of existence, the ILO has adopted 187 Conventions, of which the majority, at one time or another, have made a useful contribution to achieving the objectives of the ILO. But a certain number of these are clearly outdated and have become obsolete in the face of important changes that have affected the world of work during this period.

In 1995, the Governing Body again decided to examine all ILO instruments with a view to identifying updating requirements. Its Working Party on Policy regarding the Revision of Standards completed this examination in March 2002 after seven years' work. Its recommendations, adopted by the Governing Body, foresee

among other matters the abrogation of certain Conventions. However, the instrument of constitutional amendment making this possible is still not in force, ten years after its adoption, due to an insufficient number of ratifications.

It is however essential for the credibility of the Organization that it should have the means of updating its body of standards and of concentrating its normative action on the Conventions which currently contribute to the achievement of its objectives. The maintenance of obsolete Conventions among the ILO Conventions, which are the global reference for labour standards, is damaging to the clarity and legibility of the Organization's body of standards as a whole, and cannot fail but to diminish its impact.

For this reason the Governing Body, at its 292nd (March 2005) Session, invited the Director-General to "launch, as a priority, a campaign for the ratification or acceptance of the Constitution of the International Labour Organisation Instrument of Amendment, 1997".

WHERE MAY FURTHER INFORMATION BE OBTAINED?

Information on the Instrument of Amendment of 1997 can be found on the website of the Legal Adviser of the ILO, at the following address:

<http://www.ilo.org/public/english/bureau/leg/>

The Office of the Legal Adviser will also willingly reply to any enquiries.

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