



Employers' handbook ON ILO standards-related activities

Alfred Wisskirchen and Christian Hess

INTERNATIONAL LABOUR OFFICE · GENEVA

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ON ILO STANDARDS-RELATED ACTIVITIES**

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Alfred Wiskirchen and Christian Hess

Bureau for Employers' Activities (ACT/EMP)

International Labour Office Geneva

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Preface

Standards-related activities, particularly international labour standards (ILS), have been a central means of action for the International Labour Organization (ILO) since its foundation in 1919. A body of more than 370 ILS, including a comprehensive system of supervision, have been built up over time with the objective of promoting social progress. The ILO's tripartite structure, including the involvement of employers, has been an essential feature of this work.

Today, ILS still play an important role as guiding principles in labour and social policy. However, they have also come under criticism for being too rigid at times, and for failing to respond to changing needs. As a result, a debate about reforming the ILS system has gained momentum in recent years and has already led to a number of important changes. The employers in the ILO were amongst those who initiated this debate and they have constructively engaged in it.

It is clear that any serious participation in ILO's standards-related activities, including the reform debate, requires a sound knowledge of ILS and related procedures. The main purpose of this publication is therefore to contribute to enhancing this knowledge and to point out further ways to deepen it amongst those not sufficiently familiar with ILO standards-related activities. Without intending to cover all the technical details, which are already dealt with in existing ILO publications, the handbook focuses on issues and questions which are of particular interest to employers or which call for a particular input from them.

The publication is, first of all, intended to be used in training courses/seminars for representatives of employers' organizations in charge of ILS matters. It may also serve as a reference for employer participants in the International Labour Conference (ILC) and other ILO meetings; for Employer members of the ILO Governing Body; and, more generally, for employer representatives of ILO member States interested in ILS matters. Finally, the publication explains the employers' views on ILO standards-related activities to other ILO constituents.

I would like to thank the two authors of this publication for their clear and knowledgeable presentation of the material. Mr. Alfred Wisskirchen, Director and Head of the Labour Law Department of the Confederation of German Employers' Associations (BDA), has served for 19 years as the employers' spokesman in the Conference Committee on the Application of Conventions and Recommendations, and has thus accumulated rich experience on the subject matter. Dr. jur. Christian Hess, Deputy Head of the BDA Department on International Social Policy and the European Union, worked for two years in the ILO International Labour Standards Department before he joined BDA in 1992. In 2000, he took up a new assignment with the Bureau for Employers' Activities (ACT/EMP) of the ILO.

Last, but not least, I am very grateful to colleagues in the IOE and the ILO for their valuable input and advice on this important subject.

I hope that this publication will be widely disseminated and well received.

Geneva, July 2001

Jean-François Retournard
Director,
Bureau for Employers' Activities, ILO

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Abbreviations

Applications Committee	Conference Committee on the Application of Conventions and Recommendations
Committee of Experts	Committee of Experts on the Application of Conventions and Recommendations
EU	European Union
EC	European Communities
CJEC	Court of Justice of the European Communities
GB	ILO Governing Body
ICJ	International Court of Justice
IDEA	ILO Declaration Expert Advisers
ILC	International Labour Conference
ILO	International Labour Office, International Labour Organization
ILR	<i>International Labour Review</i>
ILS	International Labour Standards
IOE	International Organisation of Employers
NGOs	Non-governmental organizations
TC	Technical cooperation
Vienna Convention	Vienna Convention on the Law of Treaties
WTO	World Trade Organisation

* * *

I. Introduction

International Labour Standards (ILS): The core of ILO standards-related activities

ILO standards-related activities include International Labour Standards (ILS), codes of practice, technical guidelines, resolutions, conclusions and declarations. These various instruments all serve a particular purpose, and they differ accordingly in their subject matter, detail of regulation, degree of commitment, form of adoption and follow-up. The present publication deals mainly with ILS which, for the time being, form the core of ILO standards-related activities. The other instruments are discussed in Chapter VII, in particular.

Broadly speaking, ILS are legal instruments which embody international rules on social and working conditions. They take the form of International Labour Conventions and International Labour Recommendations. There is an important legal difference between the two:

- *Conventions (and protocols to them)*, when ratified by ILO member States, create binding legal obligations to give effect to their provisions in national policy, legislation and practice.
- *Recommendations* are not open to ratification, simply providing guidance for national policy, legislation and practice. They are self-contained instruments, although in the past, often at the same time, a Convention and a more descriptive Recommendation on the same issue have been adopted.

Typically, an ILO Convention is built up in the following way:

- Title, including the number of the Convention and the year of adoption;
- Preamble, giving reasons for its adoption and mentioning related instruments;
- Provisions setting out, in general terms, the main obligations of the Convention;
- Provisions dealing with definitions, scope of the instrument, and exemptions;
- Provisions setting out the Convention's principles and minimum standards;
- Provisions describing measures/methods of implementation;
- Standardized final articles dealing with procedural questions, such as entry into force, ratification and denunciation of the Convention.

The competent body within the ILO for the elaboration and adoption of ILS is the International Labour Conference (ILC) in which each member State is represented by two government delegates, one employers' delegate and one workers' delegate. ILS require a two-thirds majority of the ILC for their adoption.

A total of 184 Conventions and 192 Recommendations have been adopted to date, covering numerous aspects of labour and social policy. In order to allow an overview, the ILO Secretariat has put them into the following twelve categories (note that a new categorization is presently in preparation which will take into account the new four strategic objectives of the ILO and which will be based on the concept of “families of ILS”; see also Chapter IX):

- Basic human rights;
- Employment;
- Social policy;
- Labour administration;
- Industrial relations;
- Conditions of work;
- Social security;
- Employment of women;
- Employment of children and young persons;
- Migrant workers;
- Indigenous and tribal peoples;
- Others (such as seafarers, plantation workers etc.).

It is obvious that not all ILO Conventions and Recommendations adopted in the past 81 years are considered equally useful today. The ILO Governing Body has repeatedly examined existing ILS and classified them according to their current relevance (see Appendix 2: Summary table on decisions taken regarding International Labour Conventions and Recommendations, from GB.820/LILS/WP/PRS/1/2).

Eight Conventions in the category “basic human rights”, which are called “ILO fundamental Conventions (*see box below*), are considered particularly important for social and economic development. This is because the recognition of the fundamental labour principles and rights they contain is seen as a precondition and a catalyst for the application of other ILS. In recent years, consensus on the need to promote respect of these fundamental Conventions has grown within and outside the ILO. The following major developments are to be mentioned in this regard:

- A ratification campaign regarding the fundamental Conventions, which started in 1995, has yielded significant results (these instruments have the largest number of ratifications of ILO Conventions).
- The ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, which reflects and seeks to promote the principles contained in the fundamental Conventions, was adopted in 1998.
- The Global Compact, which was launched in 1999 by the UN Secretary General as a joint initiative of the UN and business to strengthen the human dimension of the global economy, focuses in its labour chapter on the principles of fundamental Conventions.
- Other international organizations, such as OECD, WTO and the World Bank, in their own activities, have taken an increasing interest in the ILO fundamental Conventions and their operational implications.

ILO fundamental Conventions

- Forced Labour Convention, 1930 (No. 29)
- Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- Equal Remuneration Convention, 1951 (No. 100)
- Abolition of Forced Labour Convention, 1956 (No. 105)
- Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
- Minimum Age Convention, 1973 (No. 138)
- Worst Forms of Child Labour Convention, 1999 (No. 182)

For more detail, see:

- ILO: *Summaries of international labour standards* (Geneva, 1991);
- ILO: *International Labour Conventions and Recommendations 1919 – 1995*, Volumes I, II and III (Geneva, 1996) + leaflets containing the text of individual Conventions and Recommendations adopted after 1995;
- ILO website: www.ilo.org (International Labour Standards).

History of ILO standard-setting

Already in the nineteenth century, as a result of increasing industrialization, a need was felt for the promotion of better labour conditions by way of regulation at international level.

At international conferences in Berlin (1890) and Brussels (1897) attempts were made to set up an international labour standard-setting machinery. These attempts, however, did not bear fruit.

In 1901, the International Association for Labour Legislation was founded in Basel. The Association held international conferences in Bern in 1905 and 1906, which adopted two international labour conventions (reduction of white lead; ban on night shifts in industry for women workers). The outbreak of the First World War in 1914 prevented the adoption of further instruments.

In 1919, as Part XIII of the Treaty of Versailles, the ILO was founded and standard-setting began the same year with the adoption of six Conventions and six Recommendations. In contrast to the International Association for Labour Legislation, the ILO involved workers' and employers' representatives from member States in its standard-setting work right from the beginning. The objective was to benefit from their particular experience in labour questions in order to make ILS realistic and widely applicable.

In the period between the two World Wars, the ILO adopted ILS on the minimum age for employment, hours of work, weekly rest, holidays with pay and maternity protection, among others.

The ILO was the only part of the League of Nations to survive the Second World War and standard-setting work was taken up again in 1946. ILS were adopted on issues such as freedom of association, equality of opportunity in employment, minimum wages, labour administration, industrial relations, employment policy, working conditions, social security, occupational health, and employment at sea. As time went by, international rules were developed on many social and labour issues, and made available to member States.

During the decades of the “cold war”, ILO standard-setting and supervision were repeatedly attacked by communist countries, which regarded these activities as interference with national sovereignty. Because of communist party domination, true freedom of association and tripartism did not exist in most of these countries until 1990.

To date, ILS have exerted a remarkable influence on national labour law and practice in countries all over the world. Although other means of action, in particular technical cooperation, have gained importance over the years, ILS have retained a key role in this regard and tripartism is still a unique feature in ILO standards-related activities. The ILO is regarded as the most important international organization setting, promoting and supervising ILS. Its outstanding normative role in social and labour matters has been reconfirmed and strengthened in recent years by the World Summit for Social Development, held in Copenhagen in 1995 and by the WTO Ministerial Meeting in Singapore in 1996.

Appendix 1 lists the official titles of all Conventions and Recommendations adopted by the ILO in chronological order. These provide a good historical overview of ILO standard-setting.

For more detail, see:

- Waline, Pierre: *Un patron au bureau international du travail* (Paris, 1976).
- Oechslin, J.-J.: *The International Organisation of Employers, Three quarters of a century at the service of enterprises (1913 – 1998)* (Geneva, 2001).

Rationale for ILS

The basic idea behind ILS is to promote improvements in social and labour conditions at national level through regulation at international level.

The reasons and motives for ILS are affirmed in more detail in the Preamble to the ILO Constitution. They were complemented in 1944 by the Declaration of Philadelphia, which is appended to the ILO Constitution.

Despite changes of interpretation and shifts in emphasis over the course of time, the basic justification for ILS remains valid to date:

- *There is a need to adopt humane conditions of work.*
This is the moral or humanitarian motive for setting ILS. The Declaration of Philadelphia (1944) complemented this motive with the more dynamic concept that “all human beings ... have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security

and equal opportunity.” The moral and humanitarian motive for ILO standard-setting has probably been the most important and convincing one, to date.

- *Bad labour conditions are a source of unrest and therefore a danger to peace.*
After the First World War, when the ILO was founded, this political motive for standard-setting was particularly strong. In view of the numerous conflicts in regions and countries with particularly poor labour and living conditions, it is still relevant today.

- *Failure by one nation to improve working conditions is an obstacle to other nations wishing to do so.*

This economic motive addresses the problem of countries which raise labour standards unilaterally. Fears are sometimes expressed that these countries face higher labour costs, which place them at a disadvantage in international competition.

II. ILS and employers

Relevance of ILS to employers

In the first place, ILS are addressed to governments. Nevertheless, they are also relevant to employers in the following ways:

- Normally, employers are affected by ILS through *national legislation*. Although these effects are often *long term*, they may nevertheless be significant. For instance, when a country ratifies an ILO Convention, this instrument sets the framework for national legislation and practice on a certain subject. If existing national legislation or practice does not comply with the Convention, new labour laws, amendments of existing laws or new implementation directives may be the result. As a consequence, employers may be required to change their present labour practices, which can involve significant administrative measures and costs, as the case may be.
- Even if ILS are not taken up by national legislation, the contents of *collective agreements* may be inspired by them; these agreements may involve similar obligations regarding labour practices for employers covered by the agreement.
- Finally, ILS can become relevant to employers as a *source of practical guidance* in areas not covered by national legislation or collective agreements. In particular, companies operating internationally have considered ILS in developing their codes of conduct or other initiatives in the field of corporate social responsibility.

Given the relevance of ILS for employers and their potential impact on them, it follows that employers should play a part in formulating, implementing and supervising them. It is their role to ensure that due account is taken of the employers' perspective, especially the needs of enterprises of different sizes operating in different geographical areas, economic sectors and social frameworks. Thus, together with governments and workers, employers are responsible for making ILS and their implementation realistic and meaningful. Only with the active engagement of employers can ILS reflect the balance which they need if they are to meet expectations.

General attitude of employers towards ILS

Employers share with workers and governments the objectives of promoting social justice and improving observance of internationally recognized human/labour

rights and principles. In their view, international labour regulation is one essential element of a strategy to further these *social objectives* worldwide.

In the present globalizing economic environment, ILS have an important role to play in that they can offer internationally recognized guidance on dealing with social problems occurring in this context. Thus, they can contribute to a better acceptance of the changes imposed by globalization and trade liberalization, the continuation of which is itself a precondition for future social progress.

Apart from their value for social development, employers recognize that an appropriate implementation of ILS can also contribute to the achievement of *economic objectives* in that they can strengthen the functioning of enterprises and markets. These *economic benefits* are particularly evident with fundamental ILS, although not limited to them:

- Respect for the ILS on *freedom of association, freedom of collective bargaining and tripartite consultation* reflects and complements democracy, free choice and the rule of law, which are necessary framework conditions for the healthy functioning of a market economy. Moreover, observance of these ILS can create an environment that encourages more efficient work organization, innovation and higher productivity. Finally, these standards have the potential to contribute to social peace, thus helping to attract investment and facilitate the adjustment of enterprises to external shocks, such as financial crises.
- Application of the ILS on *abolition of discrimination in employment* against women and minorities can improve the allocation and utilization of human resources and thus increase economic efficiency. The same applies to the ILS on *abolition of forced and compulsory labour*.
- Apart from the humanitarian aspect, implementation of the ILS on *elimination of child labour*, combined with education and training, can improve the skills of the next generation of workers and can thus be a positive factor in the economic development of a country.

In the employers' view, ILS will, however, lead to social and economic benefits only when they:

- concentrate on setting worldwide relevant *minimum rules*, rather than seeking international harmonization at an ideal level;
- provide realistic and practicable orientation to *countries which lack experience in labour standards*, particularly developing countries;
- are *flexible* enough to accommodate differences of development levels and changing needs;
- are based on a thorough *assessment* of their likely *impact*.

Furthermore, in the employers' view, the beneficial effects of ILS depend to a large extent on a balanced *application* and the reasonable exercise of rights contained in them. The exercise of these rights has to respect the social and economic environment, the common good and the higher rights of other individuals and groups. In particular, the competitive needs of enterprises must receive adequate attention in the implementation of ILS since enterprises are the source of employment and thus the very foundation for any application of ILS.

Apart from that, it is evident that the significance of individual ILS varies in different circumstances and may increase or decrease in the course of time. It should also be noted that certain ILS, already at their adoption, have been seen by employers as contributing little to economic and social development: the majority of the employers to the International Labour Conference (ILC) either abstained on or voted against seven out of the 57 Conventions adopted between 1970 and 2001.

Employers' views on selected ILS

On many occasions in the process of adoption, revision and supervision of ILS, employers have given their opinion on certain standards or specific provisions and their application. The views expressed by the employers in the Committee on the Application of Conventions and Recommendations of the ILC since 1990 on a number of Conventions are summarized below. These views may give a broad idea of the usefulness and value of ILS from the employers' perspective, as well as the problems involved with some of them.

- *Minimum Wage-Fixing Machinery Convention, 1928 (No. 26)*
The employers stressed at the ILC in 1992 that the major function of systems for fixing minimum wages was to enable workers to lead a dignified life. However, a vast number of other measures were available to States. A better solution than minimum wage setting could be to ensure that collective bargaining could take place, free of state intervention. In practice, there was a risk that minimum wages could interfere with collective bargaining. Moreover, minimum wages could result in job losses, if they were fixed too high.
- *Night Work (Women) Convention (Revised), 1948 (No. 89), and Protocol of 1990*
At the ILC in 2001, the employers expressed their firm belief that this Convention, as well as its predecessors of 1919 and 1934 respectively, were "synonymous with sex discrimination and were contrary to the overriding principle of equal opportunity and treatment in the workplace". A general ban on night work of women, as provided for by this instrument, inhibited women to compete freely and equally with men in the labour market and deprived them of employment opportunities. Since the intended protections were based upon gender stereotypes and archaic cultural norms as to the women's role in society, they were no protections at all. Therefore, the Convention, including its Protocol of 1990, was no longer relevant and should be shelved or denounced.
- *Paid Educational Leave Convention, 1974 (No. 140)*
The employers noted at the ILC in 1991 the high level of requirements that this Convention imposed, reflecting the great optimism prevailing at the time of its adoption. Today, many countries were not able to meet these requirements. The distance between the ambitious objectives of the instrument and the national reality was particularly flagrant for countries which had to use the very small resources at their disposal to fight illiteracy rather than to provide additional training to workers who had already reached a certain educational level. The employers also emphasized that when paid educational leave was granted, account should be

taken of the interests and needs of the enterprise, and of the link between the training and the job carried out.

- *Human Resources Development Convention, 1975 (No. 142)*
Also at the ILC in 1991, the employers stressed the importance and topicality of this instrument. They also noted the enormous scope of its concept and its impact on extended domains of social life and economic development. The Convention had a “promotional” character and was therefore flexible by nature. The latter was particularly important because the content of vocational training and vocational guidance could be very different in an industrialized economy, an agricultural country or a developing nation.
- *Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)*
At the ILC in 1999, the employers expressed the view that the character of migration had changed to such an extent since the Convention was adopted, that even the key terms of the instrument were no longer universally accepted. For instance, the Convention made no distinction between migration for permanent settlement and temporary migration, nor did it allow operating on the basis of reciprocity. Following the oil price shock of 1973, the Convention sought to restrain migration, whereas in today’s integrating world economy, migration was inevitable. For all these reasons, the employers believed that the Convention should be revised.
- *Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)*
At the ILC in 2000, the employers considered this Convention to be one of the most successful ILO instruments both in terms of ratification and effective application. It was “a very flexible instrument which prescribed in simple terms what logic and common sense dictated with regard to consultations on ILO standards”. In particular, the nature and form of the procedures for consultation were left to national practice. An essential point was that consultations had to be carried out with employers’ and workers’ organizations, which had a particular responsibility in social and labour matters. This point distinguished them from NGOs.
- *Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147)*
The employers noted at the ILC in 1990 the comprehensive and, at the same time, flexible character of this instrument, in that it required ratifying States to adopt legislation “substantially equivalent” (Art. 2 (a)) to Conventions mentioned in the Appendix. They also stressed that the Convention had a greater influence in the world than the relatively small number of ratifications suggested, owing to provisions which allowed port State intervention.
- *Labour Administration Convention, 1978 (No. 150)*
The employers emphasized at the ILC in 1997 that employment laws and regulations would be worthless if there were no system of labour administration to assess and enforce compliance. In this respect, Convention No. 150 provided a structure, general guidelines and an institutional framework. The instrument was short and composed of clear general principles, which gave ratifying States a great deal of discretion as regards implementation. The provisions of the Convention did not, for the most part, impose an obligation to produce specific results, but rather encouraged ratifying States to use their best efforts to improve labour administration

systems. Because of this flexibility the Convention had a model character and should be ratified.

- *Workers with Family Responsibilities Convention, 1981 (No. 156)*
The employers noted at the ILC in 1993 that this Convention sought to promote an evolution in the family responsibility roles of men and women. Since these roles, however, depended on cultural traditions, individual values and attitudes, changes lent themselves only in a limited way to standard-setting. Moreover, the instrument was overloaded with comprehensive and ideal targets, which did not allow for any real flexibility in implementation, although very few specific measures were stipulated. Nevertheless, the employers supported the objective of creating conditions which would enable workers to combine their family and occupational responsibilities to the greatest extent possible, not least because their full potential and capability would otherwise be lost. Therefore, the employers continued to promote a more harmonious combination of these responsibilities.
- *Termination of Employment Convention, 1982 (No. 158)*
At the ILC in 1995, the employers noted that this Convention as a whole set very high and demanding requirements. The majority of ILO member States had some form of protection in this field which was generally, however, below rather than above the standards set by the Convention. This also explained the relatively small number of ratifications. Employers had an own interest in retaining workers, particularly when they had invested in their training. However, any protection beyond the simple prohibition of arbitrary dismissal complicated the capacity of enterprises to adapt to operational or general economic changes. One serious problem in this respect was Article 9 of the Convention regarding burden of proof, which was linked by the Committee of Experts “to the principle whereby in labour disputes legal provisions must be interpreted in favour of the worker.” Similarly, Article 12, which required the payment of a severance allowance even in case of justified dismissal was seen as inadequate. The employers believed that the Convention should, for these reasons, be revised.
- *Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No.159)*
As regards this instrument, the employers at the ILC in 1998 commended the efforts made by the ILO to improve the situation of persons with disabilities, who made up a particularly disadvantaged category of the population. The Convention defined disability in terms of difficulty in securing and advancing in suitable employment. The employers appreciated this concept and they also stressed the flexibility of the instrument. For example, the provisions on vocational rehabilitation allowed each country to adopt the measures which were most suitable for its particular national situation. The instrument avoided rigid definitions and aims and was promotional in character.

For more detail, see:

- ILO: *Reports of the Conference Committee on the Application of Conventions and Recommendations*, in particular *Part One: General Report (Reports requested under art. 19 of the Constitution)*, in: *Record of Proceedings*, International Labour Conference (Geneva, yearly).

III. The creation of ILS

General remarks

The creation of ILS extends over several stages, beginning with the selection of standard-setting items and finishing with the adoption of a new Convention/Recommendation by the ILC.

Employers' and workers' delegates participate on an equal footing with government delegates at every stage of this process.

The selection of items for standard-setting

The selection of items for new standards, together with the preceding preparation of respective proposals, is the first critical phase in the standard-setting process, for the following reasons:

- In the past, the selection of an item for standard-setting has almost always led to the later adoption of (a) new ILS.
- The preparation of an item, preceding selection, gives a certain direction to the standard-setting process, which is likely to be reflected in the final outcome.

The body responsible for the selection of items for standard-setting is the ILO Governing Body (GB). The GB considers any suggestion made by national employers' and workers' organizations (art. 14, para. 1, ILO Constitution). It is also for the GB to make rules to ensure "a thorough technical preparation and adequate consultation of the Members primarily concerned, by means of a preparatory conference or otherwise ..." (art. 14, para. 2, ILO Constitution).

In practice, the GB selects items from a collection of standard-setting items, which is regularly updated by the ILO secretariat, taking into account recent developments. In updating the collection, the ILO secretariat is informed by direct annual consultations, comments and proposals from employers, workers and governments. Often, proposals originate from resolutions or conclusions adopted by the ILC or by ILO sectoral, regional or other meetings. (*See box on following page.*)

One cannot overemphasize the importance of a thorough preparation of standard-setting proposals and a selection reflecting proper understanding and real consensus: these are preconditions for relevant and widely accepted ILS (see Chapter IX). For this reason, it is imperative that employers, particularly those represented in the Governing

Selection of standard-setting items – questions to be asked

- Is there a clear need to address a particular problem in social policy at international level?
- Would standard-setting be the best means of addressing this problem (or are there other, more suitable means of action, e.g. a general discussion by the ILC, a code of Practice, technical cooperation, etc.)?
- Is a future standard likely to be based on tripartite consensus and is it likely to be widely implemented?
- Would standard-setting on a particular item contribute to harmonious economic development or might it negatively impact on the competitiveness/viability of enterprises and the creation of employment?
- If all these questions have been answered in the affirmative, would the adoption of a self-contained Recommendation suffice or would a potentially binding Convention be justified?

Body, actively engage in the selection of standard-setting items as well as the preceding examinations and consultations.

The elaboration and adoption of ILS

Once a standard-setting item has been selected, the competence for its elaboration and possible adoption lies with the International Labour Conference (ILC). The respective procedures are governed by section E of its Standing Orders.

As a rule, the setting of ILS follows the so-called double discussion procedure (Art. 39, Standing Orders of the ILC). Exceptionally, in cases of special urgency or in particular circumstances, the single discussion procedure is applied (Art. 38, Standing Orders of the ILC).

Broadly speaking, the double-discussion procedure consists of each two rounds of written consultation, preparation of law/practice reports and draft instruments by the ILO secretariat, and tripartite discussion at the ILC.

Elaboration and adoption of ILS – questions to be asked by employers

- What would be the likely effect on employers in my country of a provision proposed for inclusion in an ILS in case of implementation/ratification of the ILS, anticipating, as far as possible, the way the provision could be translated into national law and practice?
- If negative effects are to be expected, are there suitable alternatives which would be acceptable to other constituents? Would a more flexible wording solve the problem, or should the proposed provision not appear in the future instrument?
- Are other provisions required, which could facilitate implementation for employers and enhance the impact of the future ILS?
- Would the instrument as a whole meet the concerns of employers in my country?

The scope and contents of the new instruments are refined at each step of the procedure, with a view to making them acceptable to the majority of ILO constituents. Several years generally elapse from the time when the decision is made to place an item on the agenda of the ILC to the time when a new instrument is finally adopted (*see table on following page*).

It is important that employers engage seriously in this phase of standard-setting in order to have their concerns reflected in the final instruments (see boxes). In giving their views and making their own proposals, they should pay particular attention to explaining their reasons, since this is likely to enhance understanding and acceptance of governments and workers. Moreover, employers should coordinate their views and input with employer colleagues from other countries and seek, as far as possible, agreement with government and workers in their home country.

ILO regulations provide for the following opportunities for employers' and workers' engagement in the elaboration and adoption of ILS (see also Appendices 3 and 4):

- Governments, before finalizing their replies to the law/practice report and the questionnaire, are requested to consult the most representative organizations of employers and workers (art. 39, para. 1, Standing Orders of the ILC).
- Under Convention No. 144 concerning Tripartite Consultations to Promote the Implementation of International Labour Standards, governments must consult representative employers' and workers' organizations on their "replies to questionnaires concerning items on the agenda of the International Labour Conference" and their "comments on proposed texts to be discussed by the Conference" (Art. 5, para. 1 (a)). These consultations are obligatory for governments of countries which have ratified Convention No. 144.
- Employer and worker delegates to the ILC (art. 3, ILO Constitution) are entitled to give their views and to vote in the first discussion, which usually leads to the adoption of conclusions.
- Governments are requested to consult the most representative organizations of employers and workers on the draft instruments prepared by the Office on the basis of the first discussion at the ILC. In particular, employers' and workers' organizations shall be asked "whether they have any amendments to suggest or comments to make" (Art. 39, para. 6, Standing Orders of the ILC).
- Employer and worker delegates to the ILC (Art. 3, ILO Constitution) can participate in the second discussion on the draft instruments, as well as in the final vote on adoption of the resulting texts.

Universality and flexibility of ILS

The most important feature of ILS vis-à-vis national labour regulation is their *universality*. This means that ILS should provide standards and social policy objectives, which are realistic and useful for ILO member States at all stages of development and in all regions of the world. In principle, all ILO member countries

Selection, elaboration and adoption of ILO Conventions and Recommendations		
Calendar	ILO/government action	Employer involvement/action
March (Year 1)	Governing Body (GB) selects items for standard-setting by the International Labour Conference (ILC).	Employers in the GB comment on proposals submitted by the ILO secretariat.
February/ March (Year 2)	ILO sends a law and practice report, including a questionnaire regarding scope and direction of standard-setting, to governments for reply by 30 June; governments, in replying, are required to consult workers' and employers' organizations.	Employers transmit their replies to the questionnaire and/or their comments on their government's reply via the government or directly to the ILO.
January/ February (Year 3)	ILO circulates a report containing analyses and summaries of replies received as well as draft conclusions on the subject.	Employers – on the basis of both ILO reports – prepare their input for the first ILC discussion, coordinate their position with employers from other countries and consult, where appropriate, with their national government/worker counterparts.
June (Year 3)	ILC holds a first discussion, usually in a tripartite technical committee, and adopts conclusions on the subject.	Employers engage in the work of the tripartite technical ILC committee, commenting on and proposing amendments to the draft conclusions.
August/ September (Year 3)	ILO sends out a report containing a summary of the ILC discussion and draft instruments prepared on that basis to governments for comments by 30 November; governments are to consult employers' and workers' organizations in the usual way.	Employers forward their comments on the draft instruments, any proposals for amendments/changes and any comments on their government's reply via their government or directly to the ILO.
February/ March (Year 4)	ILO circulates a report containing a summary of comments received and the revised draft instruments.	Employers – on the basis of both ILO reports – prepare their input for the second ILC discussion, coordinate their position with employers from other countries and consult, where appropriate, with their national government/worker counterparts.
June (Year 4)	ILC holds a second discussion, usually in a tripartite technical committee; final vote by the ILC on the proposed new standards.	Employers engage in the work of the technical tripartite ILC committee, commenting on and, where necessary, proposing amendments to the draft standards; they participate in the final vote.

should be in a position, with reasonable efforts, to implement and ratify an ILO Convention.

The most important means to achieve universality is *flexibility*. The ILO Constitution requires the ILC, in framing a Convention or Recommendation of a general nature, to “have due regard to those countries in which climatic conditions, the imperfect development of industrial organisation, or other special circumstances make the industrial conditions substantially different” and to “suggest the modifications, if any, which it considers may be required to meet the case of such countries” (art. 19, para. 3). This provision corresponds to the principle of uniform application and supervision of ILO Conventions which means that differing applications of the provisions of a Convention are not allowed (no “double-standards”), unless this is expressly foreseen in the instrument itself.

In order to make flexibility an inherent part of the elaboration and implementation of ILS, a systematic approach is required which involves the following measures and steps:

- First of all, in the process of elaborating a new instrument, any *potential problems* which might arise in the application of a proposed provision *must be put forward*, so that they can be understood and taken into account. This is a particular responsibility for representatives from the type of countries mentioned above in art. 19, para. 3. Hence, employers’ organizations in developing countries should raise any potential application problems that draft standards may pose for companies in their home countries. However, employers’ organizations from industrialized countries, too, in view of the widely differing labour and social systems among these countries, need to raise possible difficulties that draft provisions may cause for their member companies.
- Secondly, the problems raised must *systematically* be given *special attention* and *must be taken seriously* in the elaboration process. This means that the search for flexible solutions must take precedence over removing difficulties by means of majority decisions. Voting should therefore be confined to very exceptional cases.
- In the past decades, *flexibility devices* regarding scope, extent of obligations and methods of application have been developed by the ILC. It is imperative that employers taking part in the standard-setting process are not only aware of these means of flexibility, but also take a proactive role in proposing them, wherever appropriate (*see box on following page*). Moreover, employers should be creative in identifying practicable new forms of flexibility.
- Lastly, flexibility needs to be *sustained* in the implementation and supervision of ILS and, where the need arises, *extended* (see Chapter VI). This means, for instance, that the effect of flexibility devices built into a Convention must not subsequently be limited by a restrictive interpretation by ILO supervisory bodies (see Chapter V).

However, flexibility devices, such as exceptions and exemptions, should not be seen as a justification for the setting of inappropriately high protection levels. This would be contrary to the function of ILS as universal *minimum* standards.

Flexibility devices for ILS

- Adopting a Convention laying down general principles only; an accompanying Recommendation (or a code of practice) gives guidance on practical implementation.
- Adopting instruments/provisions whose validity is connected to a time limit (trial instruments/clauses), if the possible impact of a standard is unclear.
- Defining minimum conditions. This does not imply a lowering of existing higher national standards, as the ILO Constitution explicitly states that ILS do not hinder more favourable conditions at the national level (art. 19, para. 8).
- Fixing the general aims of social policy and leaving the determination of methods for application to the national level (promotional standards).
- Omitting provisions if their universal relevance and lasting value are seriously questioned.
- Including clauses which allow exemption from certain obligations for particular economic branches or certain categories of enterprises/workers.
- Adopting Conventions consisting of several parts. Ratifying member States can choose a minimum number of parts for compliance.
- Including "equivalence" clauses, which allow departure from a given standard provided comparable protection is afforded overall.
- Including so-called "escalator" clauses, which permit interim lower standards for countries at a lower level of economic/administrative development.
- Including modifiers which seek to widen the latitude of implementation, such as "wherever practicable", "in accordance with national law and practice", "by methods appropriate to national conditions and practice and by stages as necessary" or "in appropriate circumstances".
- Using clauses which give national employers' and workers' organizations a more prominent role in implementation, stating for instance that effect should be given to the provisions of a Convention "in cooperation with employers' and workers' organizations" or "by means of collective agreements or in any other manner consistent with national law and practice".
- Adopting an autonomous Recommendation only (this possibility has rarely been used since 1970).

For more detail, see:

- ILO: *Handbook of procedures relating to international labour Conventions and Recommendations*, Rev. 2 (Geneva, 1998).
- Servais, J. M.: "Flexibility and rigidity in international labour standards", *International Labour Review*, Vol. 125, No. 2, March-April 1986.

IV. The implementation of ILS

General remarks

ILS, once adopted by the ILC, only have an impact when they find their way into the law and practice of member States. Therefore, ILO constitutional provisions, in particular those regarding submission, seek to establish a link between ILS and the competent institutions at national level. The purpose of establishing this link, however, is *to promote and facilitate implementation*, not to impose it. Hence, unless a member States has voluntarily committed itself (by ratification) to implement a Convention, there is *no constitutional obligation* for it to do so.

Although implementation of ILS and the preceding decisions are primarily a government responsibility, employers' and workers' organizations, both at national and international level, have significant contributions to make in this regard. This is reflected in two ILC resolutions of 1971 and 1977 calling for the strengthening of tripartism, as well as in Convention No. 144 and Recommendation No. 152 regarding Tripartite Consultation (the contents are explained in more detail below and the texts of both instruments appear in Appendix 3).

Submission to the competent authorities

New ILS, after their adoption by the ILC, are communicated by the ILO secretariat to all member governments (art. 19, paras. 5 (a), 6 (a), ILO Constitution). Member governments are then required to submit the new ILS to the competent national authorities within one year after the closing of the ILC or within 18 months in exceptional circumstances (art. 19, paras. 5 (b), 6 (b), 7 (a) and (b) (i), ILO Constitution).

The objective of submission is officially to inform the competent national authorities of the adoption of a new ILO instrument. Through this formal act, the competent authorities are enabled to examine the new ILS and decide whether it would be appropriate – immediately or later – to implement it or to ratify and implement it in the case of Conventions. They can also determine the legal or administrative measures that would be required in this case.

A GB Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities contains additional explanations as to the content and scope of the submission obligation:

- *Competent national authority*: This is the body that has the power to enact legislation or to take other action to implement the instrument. Usually this is the parliament; however, depending on national rules, it may be a different body.
- *Form of submission*: The submission “should always be accompanied or followed by a statement or proposals setting out the government’s views as to the action to be taken on the instruments”, since “Article 19 of the Constitution is clearly aimed at obtaining a decision from the competent authorities”.
- *Extent of submission*: It is emphasized in the *Memorandum* that “governments have complete freedom as to the nature of the proposals to be made” to the competent authorities and that submission “does not imply any obligation to propose the ratification or application of the instrument in question”. Thus, a government may, in full accordance with the above ILO constitutional rules, propose that the competent authorities not ratify a Convention or that a decision in this regard be postponed.

Employers’ and workers’ organizations, first of all, must be *informed* by their government that it has fulfilled the submission obligation (Art. 23, para. 2, ILO Constitution; for more detail see Chapter V). Over and above that, governments should *consult* representative organizations of employers and workers on “... the proposals to be made to the competent authority or authorities in connection with the submission of Conventions and Recommendations ...” (Art. 5, para. 1 (b) of Convention No. 144 and Para. 5 (b) of Recommendation No. 152). These consultations are obligatory for countries which have ratified Convention No. 144.

As a result of this information/consultation, employers know whether, when and in what way the government intends to implement a new instrument. They are in a position to comment on the government’s plans or to present their own proposals. For example, they may specify why, in their view, the ratification or the intended way of implementing a particular Convention would or would not correspond to the needs of employers in the country, generally or at present.

For more detail, see:

- ILO: *Revision of the Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities*, GB.212/SC/4/1 (Geneva, 1980).
- ILO: *Handbook of procedures relating to international labour Conventions and Recommendations*, Rev. 2 (Geneva, 1998).

Ratification and implementation of Conventions

Under international law, ratification of a Convention is the voluntary undertaking by a member State to apply the Convention’s provisions in national law and practice.

The main purpose of ratification is to promote, through international legal commitments, the application of labour standards in member States. In addition, ratification has the following significant functions:

- For a member State, ratification of a Convention is also an opportunity to highlight at international level its own priorities in the field of labour standards and to encourage and give moral support to other countries' efforts to implement ILS.
- For the ILO, ratification is also an important indicator of the success or failure of a Convention. A widely ratified Convention points to its universal acceptance and

Ratification of ILO Conventions (July 2001)

- There have been in total 6,923 ratifications of the 184 ILO Conventions (ratifications still in force: 6,341); regularly updated figures are displayed on the ILO homepage: www.ilo.org; thus, on average, each of the 175 ILO member States has ratified 39.6 Conventions or 21.5 per cent of the 184 ILO Conventions.
- The eight so-called fundamental Conventions have received particularly many ratifications: Convention No. 29, ratified by 158 (90.3 per cent of all) ILO member States, is the Convention with the highest number of ratifications; Convention No. 182, with 84 ratifications since 17 June 1999, has received more ratifications than any other Convention during a comparable period of time. All fundamental Conventions together have received 1,093 ratifications.
- Although the number of ratifications is an important indicator of the acceptance and usefulness of Conventions, it does not always give a reliable idea of the number of workers and employers covered. For instance, Convention No. 87, although one of the most successful ILO Conventions, with 136 ratifications, does not apply directly to approximately half of the workers and employers worldwide, because a few of the most densely populated countries have not yet ratified it. On the other hand, Conventions or core elements of them are sometimes implemented without having been ratified and thus may affect more employers and workers than the ratification record suggests.
- It is also interesting to note that, as regards more recent Conventions, there is a certain disparity between governments' attitude towards *adoption* on the one hand and *ratification* on the other: of the governments which voted in favour of the 50 ILO Conventions adopted between 1970 and 1996, only some 20 per cent have ratified the same Conventions later on.

usefulness. On the other hand, a Convention which over a longer period of time has received only few ratifications is probably not relevant or helpful (*see also box above*).

As regards the procedure for ratification, the ILO Constitution provides that "if the Member obtains the consent of the authority or authorities within whose competence the matter lies, it will communicate the formal ratification of the Convention to the Director-General and will take such action as may be necessary to make effective the provisions of such Convention" (art. 19, paras. 5 (d), 7 (a)).

Although there are no constitutional requirements as to the form of ratification, the intention of the Member concerned to be bound by a certain Convention must be clearly expressed in the communication of the ratification to the ILO. Furthermore,

certain Conventions require an accompanying declaration, e.g. regarding the extent of the obligations accepted. To give an example: the ratification of Convention No. 160 concerning Labour Statistics requires the ratifying member State (Art. 16, para. 2) to specify which of the nine Articles of Part II of the Convention it accepts. Accompanying declarations are optional for certain other Conventions.

A ratification usually becomes effective for the State concerned 12 months after its communication to the ILO Director-General, provided that the Convention in question has already entered into force. Entry into force occurs 12 months after the second ratification for most Conventions.

The obligation to make effective a ratified Convention means incorporating its provisions into national law and practice. This involves giving effect to any provisions which are not self-executing and eliminating or preventing any conflict between the provisions of the Convention and earlier national law and practice. In this context, the competent authorities in the country will also have to determine the means of enforcement. However, the employers believe that sanctions as a means of enforcement must be introduced only if the Convention explicitly prescribes them (see “Interpretation of Conventions and Recommendations” in Chapter V).

Governments must *inform* employers’ and workers’ organizations of the ratification and of the measures designed to give effect to the provisions of the Convention (prt. 23, para. 2, ILO Constitution; for more detail see Chapter V). Apart from that, employers and workers – depending on the contents of the individual instrument – are involved to a different degree in the actual *implementation* of ratified Conventions:

- In the absence of legislation or other forms of government regulation and when the instrument permits implementation other than by government regulation, such as by *collective agreements*, employers and workers can play a direct role in incorporating the provisions of a Convention into national practice.
- Most Conventions provide for some form of *consultation/hearing of employers and workers*. Some of them, for instance, state a “right to participate” in implementation; others refer to implementation in “agreement” or “full consultation” with workers’ and employers’ organizations.
- The principle of *tripartite consultation* is highlighted in Recommendation No. 152, which states that governments should consult with representative organizations of employers and workers on the preparation and implementation of legislative or other measures to give effect to Conventions – especially when ratified – and Recommendations (Para. 5 (c)).

It is up to employers at national level to use these opportunities to make sure that their views are taken into account in any decision on ratification or implementation of a Convention so that the measures introduced take account of their specific needs and wishes.

In this respect, it is particularly important that employers draw the attention of their government to the *flexibility* offered by a given Convention. For instance, the government may leave implementation to collective bargaining instead of legislation, if the Convention provides for that. Otherwise, employers may propose to limit legislation to a broad framework, leaving the details to be determined at company level.

Employers may also propose the exemption of certain branches, types of enterprises or categories of workers, if the implementation of certain standards would cause serious problems (see Chapter III).

In preparing their position and proposals, employers at national level have to try *to anticipate the impact of the proposed implementation* on the operations and the competitiveness of their member enterprises. For this, an analysis of the particular economic situation and needs of member enterprises is of primary relevance. Additional orientation on the likely effect of implementing a Convention may be obtained from employers in other countries who have already gained experience in this regard. Finally, statements made by employer representatives in the elaboration and supervision of the Convention in question could give further guidance.

Implementation of ILO Conventions and Recommendations

Government action

Submission of newly adopted ILS to the competent national authorities within 12 (18) months after the close of the ILC; governments should inform and consult with employers' and workers' organizations on proposals to be made in connection with the submission.

Ratification of a Convention by a government; government involves employers and workers in the implementation process, as stipulated by the Convention in question or by other ILO rules.

Non-ratification or non-implementation of a new Convention or Recommendation; governments should consult employers' and workers' organizations on re-examination at appropriate intervals.

Employer involvement/action

Employers remind their government of submission, if necessary; they present their views and proposals on any government suggestions made in connection with the submission.

Employers are informed of ratification; they engage in the implementation process (collective bargaining; consultation on ways and means of implementation).

Employers are informed of the decision not to ratify or implement a new Convention; they engage in re-examinations and present their views and proposals.

As stated before, Recommendations, by their nature, cannot be ratified. Apart from that, what has been said above about the role of employers in the implementation of Conventions applies equally to Recommendations.

Non-ratification of Conventions

Although the main feature of Conventions as distinct from Recommendations is that they can be ratified, there is no obligation for member States to take this step (art. 19, para. 5 (e), ILO Constitution): "If the Member does not obtain the consent of the authority or authorities within whose competence the matter lies, no further obligation shall rest upon the Member ...".

This provision implies the following options/scenarios:

- A member State intends to ratify a Convention after it has brought national law and practice into line with the provisions of the Convention. This is often a gradual process leading to ratification only after a (longer) period of time, particularly when the adaptations to be made involve a rise of labour standards which depend on higher productivity levels.
- A member State sees ratification of a Convention as generally inappropriate. This does not necessarily mean that the Member disagrees with the main objectives of the Convention. Minor disparities or peculiarities in domestic law and practice, such as the distribution of legislative competence in Federal States, often lead to a government's decision not to ratify. Law and practice may nevertheless be broadly in compliance with the substantial principles of a Convention.

If the competent authorities do not consent to ratify a new Convention, employers' and workers' organizations must be *informed* of this decision (art. 23, para. 2, ILO Constitution, see Chapter V). In addition, governments should *consult* employers' and workers' organizations on "the re-examination at appropriate intervals of unratified Conventions and of Recommendations to which effect has not yet been given, to consider what measures might be taken to promote their implementation and ratification as appropriate" (Art. 5, para. 1 (c) of Convention No. 144; para. 5 (d) of Recommendation No. 152). These consultations are obligatory for governments of countries having ratified Convention No. 144.

See also:

- ILO: *List of ratifications by Convention and by country (as at 31 December)*, Report III (Part 2), International Labour Conference (Geneva, issued yearly).
- IOE: *Analysis of Ratifications of ILO Conventions (1970-1996)* (November 2000).

V. The supervision of ILS

General overview

ILS supervision covers the various constitutional obligations arising for member States in connection with ILS. Its *basic purpose* is to promote proper implementation of ratified Conventions, in particular to raise shortcomings in their application and work towards correction.

The centre of ILS supervision is the so-called *regular supervision*, which is complemented by *special supervisory procedures*. ILS supervision comprises legal assessment, tripartite scrutiny and, where appropriate, direct contacts and technical support to member States. It is based on the philosophy that the best implementation results will be achieved through dialogue, encouragement and advice/assistance. Sanctions (of a non-economic nature) have so far been applied only in exceptional cases. With its comprehensive and sophisticated procedures, the ILO supervisory system is probably one of the most efficient in the UN system.

Employers and workers are not only an essential source of information for the ILS supervisory system, they also play a central role in the legal evaluation and correction of cases of non-compliance.

Regular supervision

Regular supervision is based on the systematic collection of relevant information. To this end, governments are required to send *reports* to the ILO containing information regarding the four following issues:

1. *Submission of Conventions and Recommendations adopted by the ILC to the competent national authorities (art. 19, paras. 5 (c), 6 (c), 7 (a), (b) (iii), ILO Constitution)*

In this respect, governments should not only inform the ILO about the fact of submission, but also give particulars of the authority or authorities regarded as competent, as well as of the action taken by them (see also Chapter IV).

2. *Effect given to ratified Conventions (Art. 22, ILO Constitution)*

Article 22 reports, which concern the obligation by ILO member States to implement a ratified Convention, can be considered as the core of the reporting system. Over time, a sophisticated system of reporting has been built up and developed further with a view to obtaining a maximum of relevant information, while

Regular supervision – obligation to report on the submission of new Conventions and Recommendations to the competent national authorities		
Calendar	ILO/government action	Employer involvement/action
August (Year 1)	ILO sends the texts of newly adopted instruments to governments; governments are obliged to submit these instruments to the competent authorities within 12 (18) months and to report on this to the ILO; they are also to consult representative organizations of employers and workers on proposals to be made to the competent authorities.	Employers comment on government proposals to the competent authorities and present their suggestions.
March (Year 2)	ILO sends letter to national employers' and workers' organizations informing them, among other things, about the above obligations of their government.	Employers are in a position to remind their government of its submission and reporting obligations, if necessary.
June, exceptionally December (Year 2)	Deadline for submission of new instruments and for reporting to the ILO; copies of submission documents are to be sent to employers' and workers' organizations.	

containing the work load for governments and the ILO secretariat. The system distinguishes between first and second reports on the one hand and subsequent periodic and non-periodic reports on the other:

- *First and second reports*
For all Conventions, a detailed report is requested upon its entry into force for a country (one year after ratification) and two years later (in certain circumstances, one year later).
- *Subsequent periodic reports*
Subsequently, on certain Conventions, regarded as priority Conventions (Nos. 29, 81, 87, 98, 100, 105, 111, 122, 129, 138, 144, 182) reports are requested every two years. On all other Conventions, except shelved Conventions (see Chapter VI), simplified reports are requested every five years.
- *Subsequent non-periodic reports*
In particular cases, the supervisory organs may also request detailed reports outside the above intervals. This might happen if comments are received from employers' or workers' organizations on the application of a particular Convention.

Governments supply information on the basis of report forms approved by the GB. They are requested not only to present the legal situation, but also to describe

Regular supervision – obligation to report on the implementation of ratified Conventions		
Calendar	ILO/government action	Employer involvement/ action
February (Year 1)	ILO sends a request for due reports on the implementation of ratified Conventions, including report forms and comments by supervisory bodies to governments; governments are to consult employers' and workers' organizations on the contents of their reply.	Employers give their views and suggestions on the reply to be sent by their government; they may also send their comments on the application of the ratified Convention directly to the ILO.
March (Year 1)	ILO sends letter to national employers' and workers' organizations informing them, among other things, about the above obligations of their government.	Employers are in a position to remind their government of its reporting obligations, if necessary.
Between 1 June and 1 September (Year 1)	Deadline for government reports to be sent to the ILO; copies are to be sent to employers'/workers' organizations.	
November/ December (Year 1)	Committee of Experts meets to examine government reports, including employers' and workers' comments.	Employer spokesman of the ILC Applications Committee participates in a special session of the Committee of Experts.
March (Year 2)	Report of the Committee of Experts, containing assessments of the implementation of ratified Conventions, is published.	Employers, on the basis of the Report of the Committee of Experts, prepare themselves for the discussion at the ILC.
June (Year 2)	Applications Committee of the ILC, on the basis of the Report of the Committee of Experts, discusses selected cases of implementation of ratified Conventions.	Employer delegates to the ILC participate in the sittings of the Applications Committee and give their views on the cases discussed.
After June (Year 2)	Governments are supposed to correct cases of non-compliance on the basis of the findings of the Committee of Experts and the conclusions of the Applications Committee of the ILC.	Employers may remind their government to correct the application of ratified Conventions in line with the findings of the Committee of Experts and the conclusions of the Applications Committee of the ILC.

the practical application, which is after all the final purpose. Incidentally, important conclusions on the practical application of ILO instruments in general in a given country can be drawn from the Article 22 reports on Convention No. 81 regarding Labour Inspection (if ratified by the country).

3. *Effect given to ratified Conventions in non-metropolitan territories (Art. 35, ILO Constitution)*

The substance of the information requested under this provision corresponds to that requested under Article 22. The difference is that it relates to the application of ratified Conventions by member States *in non-metropolitan countries for whose international relations they are responsible*. With many former colonies gaining independence, this provision has become less relevant over recent decades.

4. *Position of law and practice regarding unratified Conventions (Art. 19, paras. 5 (e), 7 (a), (b) (iv), ILO Constitution) and Recommendations (Art. 19, para. 6 (d), 7 (a), (b) (v), ILO Constitution)*

In addition to reporting on *ratified* Conventions, every year, the GB chooses one or more Conventions (and accompanying Recommendations) of current interest and calls upon those member States which have *not ratified* them to report on the position of their law and practice. As far as the accompanying Recommendation is concerned, *all* member States are requested to report. For instance, such reports were requested, in 2001, on the Dock Work Convention (No. 137) and Recommendation (No. 145), 1973. Governments are expected to report on the extent to which effect has been given, or is proposed to be given, to these instruments, as well as on the difficulties which prevent or delay ratification. In the case of Recommendations, governments are called upon to report any modifications which they find necessary to make in applying them.

These reports provide the ILO with information on the present state of implementation of these instruments, obstacles to their ratification and application, and the possible need for assistance or revision. Another function of the reports is to direct attention to relevant Conventions and Recommendations which have not been widely ratified or implemented. The objective here is to promote them and to prevent them from falling into oblivion.

Article 23, para. 2, of the ILO Constitution entitles representative employers' and workers' organizations to receive copies of all the above-mentioned information and reports supplied by their government to the ILO. In order to ensure that this provision is effectively observed, the report forms require governments to state to which organizations of employers and workers they have sent copies of their reports. In addition, employers' and workers' organizations are informed directly by the ILO of the individual reporting obligations of their governments, respective comments of the supervisory bodies, report forms etc. (see sample of ILO letter in Appendix 5). Thus, employers' and workers' organizations are in a position to remind governments of their various reporting obligations. It cannot be emphasized enough that fulfilment of the reporting duties by governments is critical for maintaining an effective supervisory system. Moreover, employers' and workers' organizations can communicate their point of view to the ILO, either directly or via their government. For instance, they are

Regular supervision – obligation to report on the position of law and practice regarding unratified Conventions and Recommendations		
Calendar	ILO/government action	Employer involvement/ action
November (Year 1)/ March (Year 2)	GB selects a group of Conventions (and accompanying Recommendations) on which non-ratifying governments will be requested to report.	Employer members in the GB engage in the discussion on the selection of Conventions and Recommendations for reporting.
September (Year 2)	ILO sends a request for reports on the selected instruments, including report forms, to governments; governments are to consult employers' and workers' organizations on their replies.	Employers give their views and suggestions on the reply to be sent by their government; they may also send their comments on the selected instruments directly to the ILO.
March (Year 3)	ILO sends letter to national employers' and workers' organizations informing them, among other things, about the above obligations of their government.	Employers are in a position to remind their government of its reporting obligation, if necessary.
April (Year 3)	Deadline for government reports; copies of the reports are to be sent to employers' and workers' organizations.	
November/ December (Year 3)	Committee of Experts makes the "General Survey".	Employer spokesman in the Applications Committee participates in a special sitting of the Committee of Experts.
March (Year 4)	Publication of the "General Survey".	Employers prepare their comments on the "General Survey" for the ILC.
June (Year 4)	Applications Committee of the ILC discusses the "General survey".	Employer delegates to the ILC participate in the discussion of the the "General Survey" in the Applications Committee.

free at any time to send their comments on the application of ratified Conventions to the ILO. These comments will be duly considered by the ILO supervisory organs. Employers and workers can thus actively contribute to making the information base of ILO regular supervision as complete, relevant and reliable as possible.

During the early years of the Office, government reports requested under ILO regular supervision were directly considered by the ILC. In order to cope with the growing number of ratified Conventions and consequently the volume of reports, the ILC decided in 1926 to set up two bodies for regular supervision:

- (a) The *Committee of Experts on the Application of Conventions and Recommendations* (“*Committee of Experts*”).

The essential task of this Committee is to carry out a preliminary technical examination of the government reports under Articles 19, 22 and 35 of the ILO Constitution, to make an assessment of compliance with obligations under ILO regulations and thus to prepare the ground for the respective discussion to be conducted by the ILC. The Committee of Experts is presently composed of 19 legal experts from all over the world, who reflect different legal, economic and social systems. They are appointed by the GB for a renewable term of three years. The general criteria for the work of the Committee are independence, impartiality and objectivity. Over and above that, specific rules applying to the interpretation of international instruments have to be observed by the Committee (see “The interpretation of ILS” below). In arriving at its conclusions, the Committee also draws on additional information, including comments submitted by employers’ and workers’ organizations. The Committee meets once a year in November/December in private session.

The Committee’s assessments, normally reached by consensus, are set out in a report presented first to the GB and then to the ILC. This *Report of the Committee of Experts* is made up of three parts (Part One and Part Two make up the first volume, Part Three the second volume):

- *Part One: General Report (Report III, Part 1 A)*

Part One draws attention to matters of general interest, such as questions of principle regarding the interpretation and application of fundamental Conventions, ratifications and denunciations of Conventions, cases of progress, governments’ compliance with reporting obligations, information on technical assistance, the role of employers’ and workers’ organizations and collaboration with other international organizations.

- *Part Two: Observations concerning particular countries (Report III, Part 1A)*

Part Two is devoted to assessing member States’ compliance with obligations related to Conventions and Recommendations, particularly ratified Conventions. The assessments take the form of “observations” and “direct requests”:

- *Observations* are usually made in cases of failure to fulfil obligations under ratified Conventions. Since they are also used to express cautions, requests for information or satisfaction, they do not necessarily imply negative findings.
- *Direct requests*, which are only listed in the Report as having been directed to the member State concerned, relate to technical questions or to clarifications. For example, a “direct request” is made if a government fails to consult employers’ and workers’ organizations, or if it does not identify the organizations

of employers or workers to which copies of its reports to the ILO have been sent (Art. 23, para. 2, ILO Constitution).

Cases of non-compliance are reported until they have been resolved. On the other hand, the Committee of Experts also “notes with interest” government measures to ensure a fuller application of ratified Conventions or “expresses its satisfaction” when the necessary changes have been made. A list of such cases of progress is included in a special section of Part One of its Report.

- *Part Three: General Survey (Report III, Part 1B)*

Part Three consists of information on law and practice regarding selected Conventions and Recommendations on which reports have been supplied by governments under Article 19, 22 and 35 of the ILO Constitution.

(b) *The Conference Committee on the Application of Conventions and Recommendations (“Applications Committee”).*

Since 1927 the ILC has delegated its supervisory function to one of its standing committees, the Applications Committee. Like the ILC itself, the Applications Committee is a tripartite body, representing employers, workers and governments. The work of the Applications Committee (see art. 7 of the Standing Orders of the ILC) consists in considering the measures taken by ILO member States to fulfil their obligations under ILS, in particular regarding ratified Conventions (art. 22, 35, ILO Constitution). The Applications Committee takes as a starting point for its assessment the *Report of the Committee of Experts* and additional ILS-related information. In order to deliver its mandate in a convincing way and to have an impact, it is indispensable, in the employers’ view, that the Applications Committee – like the Committee of Experts – adheres to the principles of objectivity and impartiality, as well as to the existing rules of interpretation. The work of the Applications Committee is organized along the following schedule:

- *General discussion*

This part of the discussion gives the Committee an opportunity to comment on ILS-related matters of principle or general interest, in particular those dealt with in Part One (General report) and Part Three (General Survey) of the *Report of the Committee of Experts*.

- *Discussion of individual cases*

The Committee then discusses a number of selected cases, which are the subject of “Observations” in Part Two of the *Report of the Committee of Experts*. Governments are invited to respond to the “Observations” orally or in writing, so that the Committee can make an up-to-date evaluation of the problem. Governments may amplify information previously supplied, draw attention to particular difficulties or indicate the steps they have taken or intend to take. Other members of the Committee may comment on the government statement and suggest possible solutions, including technical assistance by the ILO (see Chapter VIII).

The *Report of the Applications Committee* is presented to the plenary of the ILC and later incorporated into the *ILC Record of Proceedings*. It reflects the

Committee's discussions and conclusions and gives a topical overview of the application of ILS and problems encountered in this regard. The report also includes "special paragraphs", which (usually) name countries persistently ignoring their ILS-related obligations. In this case, public pressure will be generated or increased to correct the situation.

The employer members of the Applications Committee have equal voting rights with the government and worker members. They can call the attention of the Committee to any matters which they believe should be considered. The active engagement of employer members is essential not least because the evaluation of cases brought before the Committee often has far-reaching consequences for the understanding and interpretation of ILS.

Although employer members of the Applications Committee have mostly concurred with the findings of the Committee of Experts and based their conclusions on them, there have been cases of disagreement. One example is the interpretation of Convention No. 87 by the Committee of Experts regarding the "right to strike" (see "Interpretation of Conventions and Recommendations" below).

This disparity between the interpretations of the two Committees led to a discussion about the mandates of these two regular supervisory organs and the relationship between them. The Committee of Experts initially held the view that "in so far as its views are not contradicted by the International Court of Justice, they are to be considered as valid and generally recognised" (para. 7, *Report of the Committee of Experts*, ILC, 1990). The employer members of the Applications Committee, supported by several governments, opposed this statement as it was, in their view, not in keeping with the technical and supportive function of the Committee of Experts. When the Committee of Experts was set up by the ILC in 1926, there was agreement that it "would have no judicial capacity, nor would it be competent to give interpretations of the provisions of the Conventions nor to decide in favour of one interpretation rather than another" (see ILC, 8th session, final record, Appendix V, p. 405). This distribution of roles between the Committee of Experts and the Applications Committee was reaffirmed by the ILO GB in 1947 ("It has been recognised from the outset that the technical examination of the annual reports carried out by the Experts is an indispensable preliminary to the over-all survey of application conducted by the Conference through its Committee on the Application of Conventions", Minutes of the 103rd session of the GB, December 1947, p. 173) and by the Committee of Experts itself ("The Committee's basic purposes and principles have, however, remained essentially the same ...", *Report of the Committee of Experts*, ILC, 63rd Session 1977, para. 29). Furthermore, the employers pointed out that according to Art. 7 of the Standing Orders of the International Labour Conference, the evaluation function of the Applications Committee was unrestricted. Therefore, the views of the Committee of Experts could not take precedence over diverging views held by the Applications Committee.

On this intervention, the Committee of Experts in its subsequent report conceded that the employer members of the Applications Committee had "the right to depart" from the Committee of Experts' views (para. 12, *Report of the Committee of Experts*, ILC, 1991). The employers concluded that if they had this right then the other members of the Committee and thus the Committee as a whole necessarily must have the same right, too.

As a result, they saw the statement of the Committee of Experts as a confirmation of their own view that the Applications Committee of the ILC had a *comprehensive* mandate in assessing cases brought before it, which included legal assessments.

In the employers' view, mutual respect and good cooperation between the two supervisory organs require not only that the Applications Committee consider the views of the Committee of Experts in its evaluation of cases; they also require that the Committee of Experts, in interpreting the scope and contents of Conventions, take into account the views expressed in the Applications Committee. In recent years, measures have been taken to strengthen cooperation and coherence between the two regular supervisory bodies. The Chairman of the Committee of Experts attends as an observer the general discussion of the meeting of the Applications Committee, and the employers' and workers' vice-chairpersons of the Applications Committee take part in a special sitting of the Committee of Experts.

Special supervisory procedures

The regular supervision of ratified Conventions explained above is complemented by two special procedures. Compared to the rather "promotional" nature of regular supervision, these special procedures are "contentious" in character. They also allow for a more detailed examination of alleged non-compliance of ratified Conventions.

(1) Representations of non-observance of ratified Conventions (art. 24, 25, ILO Constitution)

This procedure allows any industrial association of workers and employers to make a representation to the ILO that a member State has failed to apply a ratified Convention. If the representation is considered receivable, the GB may set up a tripartite committee to examine the matter and present its conclusions and recommendations. The GB may then invite the government in question to take part in its consideration of the matter and give its views on the case. If no statement or no satisfactory statement is received from the government, the GB may decide to publish the representation, including the government's statement, if there is one.

In the past years, there has been a rising tendency in the number of representations from workers' organizations, which has led to an increasing workload for the ILO secretariat and the GB. Ways to streamline this procedure are currently being examined.

(2) Complaints of non-observance of ratified Conventions (art. 26ff., ILO Constitution)

Under this procedure, an ILO member State can lodge a complaint against another member State, if it finds that the other member State is not effectively observing a Convention which both have ratified. Such a complaint may also be made by a delegate to the ILC or the GB may initiate the procedure of its own motion. Similar to the procedure under article 24, the GB may then invite the government in question to take part in its discussion and to give its view on the complaint. If no reply or no satisfactory reply is forthcoming, the GB may set up a Commission of Inquiry,

which will report its findings and recommendations on the case. If the parties involved do not accept these recommendations, they may bring the matter to the International Court of Justice (ICJ). If the government concerned fails to carry out the recommendations of the Commission of Inquiry or the ICJ, the GB may refer the case to the ILC for further action.

Compared with representations under article 24, only rare use has been made of this special procedure. Nevertheless, complaints under article 26 can have a significant impact in mobilizing international public pressure. A case in point is the complaint made in 1996 against Myanmar regarding non-compliance with Convention No. 29 on Forced Labour. A Commission of Inquiry set up in 1998 found that there were still “widespread and systematic” violations of the Convention in the country. Because of the government’s continued failure, the ILC – for the first time – adopted measures under article 33 of the ILO Constitution in June 2000. Article 33 allows the ILC to take “such action as it may deem wise and expedient” to secure the implementation of recommendations of a Commission of Inquiry.

Interpretation of Conventions and Recommendations

Interpretation of the scope and meaning of Conventions and Recommendations is an indispensable part of the legal assessment to be made in both the application and the supervision of ILS. In this respect, the ILO Constitution (art. 37, para. 1) clearly states that the only body competent to give *authoritative* interpretations of Conventions is the International Court of Justice (ICJ). So far, however, the ICJ has never been invoked; a single appeal was made to its predecessor on one occasion in 1932.

Non-authoritative interpretations and explanations of ILS are provided in the reports of the Committee of Experts and the Applications Committee. Moreover, upon request, the ILO secretariat gives informal opinions on the meaning of ILS which are published in the *Official Bulletin* in the form of a “Memorandum by the International Labour Office” if they are of general interest. Nevertheless, it must be emphasized once again that neither the ILO supervisory organs nor the secretariat are competent to interpret Conventions in an authoritative and binding manner.

In interpreting ILS, the constitutional rules of the ILO must be observed. For instance, it follows from art. 19, para. 3 of the ILO Constitution that provisions of ILO Conventions must be interpreted in a uniform manner. It is, therefore, not possible to give diverging interpretations for different countries, e. g. to interpret the requirements of a Convention for developing countries less strictly than for industrialized countries.

In the absence of other ILO interpretation rules, the employers in the Applications Committee have consistently taken the view that interpretations and explanations given by ILO supervisory organs have to be in line with the provisions of the Vienna Convention on the Law of Treaties. This Convention “applies to ... any treaty adopted within an international organization ...” (Art. 5, Vienna Convention). The Committee of Experts explicitly confirmed the applicability of the Vienna Convention in its “Gen-

eral survey” of 1990 (see para. 244, footnote 13) on Convention No. 147 concerning Merchant Shipping (Minimum Standards). Since the Vienna Convention reflects generally applicable international customary law, its rules apply even to those ILO Conventions which entered into force before it became effective in 1980 (see Art. 4, Vienna Convention). According to the Vienna Convention a “treaty shall be interpreted in good faith in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose” (Art. 31, para. 1 Vienna Convention). The context shall comprise “any agreements or any instruments made in connection with the conclusion of the treaty” (Art. 31, para. 2 Vienna Convention). Together with the context, any “subsequent agreement regarding the interpretation of the treaty and any subsequent practice which establishes such an agreement between the parties” shall be taken into account (Art. 31, para. 3 Vienna Convention). As supplementary means of interpretation, recourse may also be had to the “preparatory work and the circumstances of the conclusion” of the treaty (Art. 32 Vienna Convention).

Apart from the Vienna Convention, other rules of international common law, such as the principle *in dubio mitius*, must be observed in interpreting ILO Conventions. The principle *in dubio mitius* requires that the least far-reaching interpretation be applied to the member State bound by the treaty in cases where there are several possible interpretations.

These are not just theoretical considerations: they do have concrete relevance. For many years, a contentious issue has been the interpretation given by the Committee of Experts on Conventions No. 87 and 98 regarding the “right to strike” (see box below).

**“The right to strike” – views of the Employer members
of the Applications Committee**

For many years, the employer members of the Applications Committee have opposed the views of the Committee of Experts, who derived a “right to strike” from Conventions Nos. 87 and 98 and, in addition, saw details of such a “right” embedded in these instruments. Supported by a number of government members, the employers have consistently held that the Committee of Experts’ extensive interpretations in this regard were not in line with the rules of the Vienna Convention (Art. 31, 32). First of all, the employers have pointed out that the *text* of ILO Conventions Nos. 87 and 98 contained no reference to “strike” or a “right to strike”. (The term “strike” is mentioned in only two ILO instruments: Convention No. 105 and Recommendation No. 92 – the latter instrument also mentions “lockouts”. However, these instruments neither provide for a “right to strike”, nor regulate the conditions of a strike. They simply establish rules on legal consequences, which could arise in connection with or as a result of a strike or lock-out.) Moreover, there had been no *subsequent agreement* and no *subsequent practice in the application* of the Conventions *establishing agreement between the parties on the interpretation* regarding a “right to strike”. Finally, the *preparatory works* and the *circumstances of the conclusion* of Conventions Nos. 87 and 98 clearly proved the intention of the ILC to exclude the “strike” issue from the standard-setting. In the case of Convention No. 87, this intention emerged already from the preparatory report (see Report VII, 31st session of the ILC, 1948, Conclusions, p. 87: “Several gov-

ernments, ..., have nevertheless emphasised, justifiably it would appear, that the proposed Convention relates only to the freedom of association and not to the right to strike ... In these circumstances, it has appeared to the Office to be preferable not to include a provision on this point in the proposed Convention concerning freedom of association"), so that no proposals regarding a "right to strike" were made during the actual Conference discussions. In the Conference discussion preceding the adoption of Convention No. 98, two amendments regarding the inclusion of a "right to strike" were proposed and subsequently rejected (see *Record of Proceedings*, 32nd Session of the ILC, 1949, Appendix VII, pp. 468 and 470: "The Chairman ruled that this amendment was not receivable, on the ground that the question of the right to strike was not covered by the proposed text ...". "An amendment ... relating to the guarantee of the right to strike... Was declared not to be receivable for the reasons already mentioned in connection with the former amendment ..."). Therefore, when the Committee of Experts derived details of a "right to strike" from these Conventions, it was developing new standards rather than supervising existing instruments. The employers have conceded that a "right to strike", as well as a "right to lock out", existed in many countries and might even be acknowledged under international common law. However, the evaluation of the Committee of Experts had to be based on ratified ILO Conventions only. Since an ILO Convention regulating the "right to strike" did not exist, it would first need to be created. The competent body to do this, however, was the ILC.

Apart from this, the employers have held that the interpretation of the "right to strike" given by the Committee of Experts was not balanced in that it has – gradually – extended the "right to strike" to a maximum and thus has not adequately considered the legitimate rights and freedoms of employers as well as of others. Although strikes were directed against employers, their inevitable and sometimes calculated damaging effects were increasingly and intensively felt by third parties and the general public. For instance, the Committee's strict notion of essential services and its broad acceptance of political and solidarity strikes generally ignored these effects. Its "one size fits all" approach did not take into account the differing legal contexts and stages of economic and industrial development. Although elements of its conception of a "right to strike" existed in individual member States, on the whole it went beyond the law and practice in most democratic countries and was therefore politically inopportune.

The employers have the impression that – in response to their arguments – the Committee of Experts has started to apply a more nuanced approach in recent years in that it has concentrated on cases where a "right to strike" was non-existent or, as a result of restrictions, virtually non-existent.

Also in connection with Convention No. 87, the employers disagreed with the Committee of Experts' interpretation of freedom of association regarding so-called "union security clauses". The Committee of Experts considered that such clauses, which make trade union membership or payment of union dues compulsory, are in compliance with Convention No. 87 if they are the result of free negotiations and not imposed by the law itself (see General Survey, ILC, 81st Session, 1994, paras. 102, 103). The employers, however, have considered "union security clauses" generally as

an infringement of the individual freedom not to associate which, in their view, is a logical and inalienable part of the freedom to associate. The employers argued that, for the individual worker, it makes no difference whether the pressure to join a union results from a collective agreement or a law.

Another case of disagreement regarding the interpretation of Conventions arose from the Committee of Experts' view that member States must make provision for "sanctions" as a means of enforcing ratified Conventions irrespective of what the Conventions themselves prescribed in this regard (*Report of the Committee of Experts*, ILC, 82nd session, 1995, para. 116). Here, the employers claimed that where a Convention was silent on "sanctions" – which was the case with most Conventions – it was for the ratifying member State to choose the means of enforcement it deemed appropriate. Article 19, Para. 5 (d) of the ILO Constitution clearly set out the freedom for member States to "take such action as may be necessary to make effective the provisions" of a ratified Convention and did not require them to take specific measures. The employers were gratified to note that, in 1998, the Committee of Experts abandoned its doubtful interpretation regarding "sanctions" (*Report of the Committee of Experts*, ILC, 86th session, 1998, para. 186).

Nevertheless, in the view of the employers and a number of governments, the Committee of Experts, by creating – through extensive interpretations – "new obligations" of this type, blurred the difference between supervising the law and making the law. In so doing, it not only eroded the authority of its findings, but also created uncertainty about future obligations and discouraged the ratification and implementation of ILO Conventions.

The employers have always emphasized that their criticism of the Committee of Experts' interpretations was meant to strengthen the supervisory system. In order to provide more transparency, they suggested that the Committee of Experts should highlight and explain any new interpretation in the general part of its report, in its observations and in general surveys, so that they were more readily evident.

Apart from these criticisms and proposals, the employers in the Applications Committee have supported and repeatedly expressed their appreciation of the generally high quality of the work of the Committee of Experts.

For more detail see:

- ILO: *Handbook of procedures relating to international labour Conventions and Recommendations*, Rev. 2 (Geneva, 1998).
- ILO: *ILO Law on Freedom of Association – Standards and Procedures* (Geneva, 1995).
- ILO: *The right to strike, Report of the Committee on the Application of Standards*, International Labour Conference, 81st Session, *Record of Proceedings, Provisional Record No. 25*, para. 115ff. (Geneva, 1994) (see excerpts in Appendix 9).

VI. Methods of renewing ILS

General overview

With a body of over 370 ILS adopted over a period of more than 80 years, the question of renewal has become increasingly relevant. Aware of this fact, the GB has repeatedly reviewed existing ILS and identified those in need of renewing: a GB Working Party set up in 1995 has formulated important recommendations in this regard. Among other things, it found that out of 184 existing Conventions, only around 70 were up to date (see Summary table in Appendix 2). Although many Conventions and Recommendations have been replaced or revised over time, it is nevertheless remarkable that until 1997 no procedures existed for the abrogation and withdrawal of Conventions and Recommendations.

In the view of employers, a permanent process of renewal is indispensable if ILS are to meet current requirements and to give generally accepted guidance. The present reform debate is expected to lead to improvements in this respect (see Chapter IX).

Existing methods for renewing ILS depend on the degree of change needed. One way of adapting the individual provisions of Conventions to minor changes can be to introduce a new interpretation or to abandon an existing one. If a more far-reaching change is needed, a (partial) revision, including adoption of an additional Protocol, can be a solution. Finally, if an entire instrument is considered to be no longer useful, abrogation, withdrawal or shelving are appropriate alternatives.

The revision of ILS

The central method of renewing ILS is by revising them. Important *indicators* of the need to revise a particular instrument are government reports forming the basis of “General Surveys”, the findings of GB Working Parties mandated to review existing ILS, and “pure” denunciations of Conventions (see “Denunciation of Conventions” below).

The most important *procedures* for revising ILS are the following:

- *Revision of a Convention:*

The normal practice for revising Conventions has been to adopt a new Convention, incorporating valid ideas from the older instrument. The double discussion procedure is usually applied in these cases, although the single discussion procedure may also be used in connection with preparatory meetings. An example of the

latter was the General Discussion at the ILC in 1996 on the Fee-Charging Employment Agencies Convention (Revised) No. 96, which was revised by the ILC one year later. There is also a specific revision procedure for Conventions (Art. 44, Standing Orders of the ILC), which consists of amending the original text. However, this has not been used for a number of years. Furthermore, if the objective of revision is to supplement an older Convention rather than change its text or replace it, another possibility is to adopt a (ratifiable) Protocol. Here too, the single discussion procedure may be applied.

- *Revision of a Recommendation:*

A specific revision procedure for Recommendations is contained in Article 45, Standing Orders of the ILC. In practice, however, the ILC has tended to replace Recommendations rather than to use this procedure.

There are important *legal differences* between the revision of a Convention and a Recommendation:

- In case of revision of a *Convention*, the standard final articles of ILO Conventions (from Convention No. 27 onwards) provide for the following:
 - Once the new revising Convention has come into force, the older instrument is closed to further ratifications.
 - Ratification of the new revising Convention by a member State automatically involves denunciation of the older Convention (see below “Denunciation of Conventions”);
 - The older Convention remains in force, as it stands, for those member States which have ratified it, but which have not ratified the new revising Convention.
- In case of revision of a *Recommendation*, which is less difficult because of its non-binding character, the new or amended instrument immediately takes the place of the older one.

The employers in the GB have repeatedly stressed that, in their opinion, the revision of older Conventions should take precedence over the adoption of Conventions on new issues. Given the lack of acceptance of many older Conventions, one important objective of revision from the employers’ point of view is to eradicate unnecessary rigidities standing in the way of broader ratification and implementation. To this end, flexibility devices should be used more systematically (see Chapter III). This seems all the more necessary in view of the fact that certain revising Conventions, even after a considerable time, have received fewer ratifications than the original instruments.

In the employers’ view, flexible ILS generally remain relevant for a longer period and are consequently less liable to revision. Therefore, an important objective in framing new Conventions should be the creation of “long-lasting” instruments, which are unlikely to need revising for a long time.

Abrogation, withdrawal and shelving of ILS

Abrogation, withdrawal and shelving are methods of renewing the body of ILS by eliminating outdated and obsolete instruments *which have already been replaced or where there is no intention to replace them*:

- The possibility of *abrogating* a Convention was introduced by the ILC only in 1997 in an amendment to the ILO Constitution (future art. 19, para. 9, ILO Constitution; since this amendment has not yet entered into force (*see box below*) this procedure cannot be used for the time being). According to this amendment, the ILC is enabled to abrogate, by a majority of two-thirds of the votes of delegates present, any Convention in force that is considered to have lost its purpose or no longer to make a useful contribution to attaining the ILO's objectives. Before considering the abrogation of a particular Convention by the ILC, the GB should, as far as possible, reach a consensus on this question, or, if such a consensus cannot be reached, take a decision by a four-fifths majority of its members (art. 12bis, para. 2, Standing Orders of the GB).
- *Withdrawal* concerns outdated Conventions which have not entered into force or which are no longer in force as a result of denunciations, or outdated Recommendations (art. 11 and 45bis, Standing Orders of the ILC). The above-mentioned rule concerning the decision by the GB on abrogation of ILS applies to withdrawals, too. For the first time, five outdated Conventions from the 1930s were withdrawn by the ILC in 2000; the withdrawal of a further 20 Recommendations is foreseen for the ILC in 2002.
- *Shelving* of Conventions means that their ratification is no longer encouraged and that their publication in Office documents, studies and research papers will be modified. It also means that detailed reports on the application of these Conven-

Status of ratification regarding the constitutional amendment on the abrogation of Conventions

- According to art. 36 of the ILO Constitution, a constitutional amendment takes effect when it has been accepted or ratified by "two-thirds of the Members of the Organisation including five of the ten Members which are represented on the Governing Body as Members of chief industrial importance ...".
- By July 2001, the constitutional amendment regarding the abrogation of Conventions has been ratified by 65 out of the necessary 117 Members and five out of the necessary five Members of chief industrial importance (for up-to-date figures, see the ILO website: www.ilo.org (Sitemap/Legal Services)).

tions will no longer be requested on a regular basis. However, shelving has no effect on the status of a Convention in the legal system of member States that have ratified them, nor does it remove the obligation for these States to implement the Convention. Consequently, shelved Conventions can still be the subject of exami-

nation in ILO regular supervision, as well as of complaints/representations under ILO special supervisory procedures.

The employers have welcomed the new abrogation and withdrawal procedures as important complements to the existing methods of renewing ILS. They expressed the hope that the constitutional amendment regarding abrogation will soon receive the necessary number of ratifications so that it can enter into force and *be put in practice*. From an employers' viewpoint, it is also to be hoped that the four-fifths majority requirement for a GB decision to put an abrogation or withdrawal item on the ILC agenda will not turn out to be an obstacle to the use of this procedure. It should be noted that this requirement does not exist for the inclusion of *standard-setting items* on the agenda of the ILC.

Pending the coming into effect of the above constitutional amendment regarding abrogation, in the employers' view, the possibilities of shelving of outdated Conventions should be more fully exploited. Ratification of shelved Conventions should be actively discouraged by the Office and supervision of such instruments should be avoided, as far as possible.

Denunciation of Conventions

Renewal is also an issue for individual ILO member States wishing to keep up to date their obligations under ratified Conventions. Denunciation provides an important means to terminate obligations under Conventions which, in the view of a government, are outdated or no longer correspond to the needs of the country. In legal terms, it is the *actus contrarius* to the ratification of a Convention. There are two forms of denunciation:

- *Denunciations connected to the ratification of a revising Convention:* The standard final articles as from Convention No. 27 usually provide that a ratified Convention is "automatically" denounced when a revising Convention (which has entered into force) is ratified. Once ratification of the new revising Convention becomes effective the commitments arising from the original instrument come to an end. This is the most frequent case of denunciation.
- *"Pure" denunciations:* In the absence of a new revising Convention, or if there is no intention to ratify a revising Convention, there is also the possibility of a "pure" denunciation. However, most Conventions contain a provision restricting such "pure" denunciations to intervals of one year after periods of ten years from the Convention's coming into force. A "pure" denunciation usually takes effect one year after its registration with the Director-General of the ILO.

Convention No. 144 provides for government consultations with national employers' and workers' organizations on any proposal to denounce a ratified Convention (Art. 5, Para. 1 (e); see also para. 5 (f) of Recommendation No. 152). Such consultations are obligatory for countries having ratified Convention No. 144. In addition, the ILO Governing Body has stated as a general principle that, if denunciation is contemplated, the government should fully consult employers' and workers' organizations on

Denunciations of ILO Conventions

- By July 2001, 582 denunciations of ILO Conventions have been registered.
- Out of the 582 denunciations, 102 have not been accompanied by ratification of a revising Convention.
- The instrument which has received the highest number (15) of denunciations not accompanied by ratification of a revising Convention is the Night Work (Women) Convention No. 89 (Revised), 1948.

the problems encountered and the measures to be taken to resolve them. Employers, too, can propose the denunciation of a ratified Convention to their government, if they feel that it no longer meets the needs of the country or of the employers in the country.

Although it may be generally desirable that denunciations of ILO Conventions are accompanied by the ratification of a revising Convention (*see box above*), “pure” denunciations should not necessarily always be seen as negative:

- There may be understandable reasons for denouncing an outdated Convention without ratifying the revising one. For instance, a country may not be in a position to implement all provisions of the new instrument immediately.
- Where a revising Convention does not (yet) exist, the concurrence of “pure” denunciations by several countries may indicate the need to revise a Convention and thus help keep the body of ILS up to date and relevant. A case in point is the denunciation by a number of governments of the Night Work (Women) Convention (Revised) No. 89, 1948. This induced the adoption of a Protocol in 1990, partly revising the Convention, as well as the adoption of the Night Work Convention No. 171, 1990. In order to make this “indicator” function even more effectively, it would be desirable to modify the existing restrictions on denunciations.

For more detail, see:

- ILO: *Handbook of procedures relating to international labour Conventions and Recommendations*, Rev. 2 (Geneva, 1998).
- ILO: *Information note on the progress of work and decisions taken regarding the revision of standards*, GB.LILS/WP/PRS/ (Geneva, presented to the GB at each March and November session).
- ILO: *Methods of revision: Preliminary discussion*, GB.276/LILS/WP/PRS/2 (Geneva, 1999).

VII. Other standards-related activities

General overview

In addition to ILS, other standards-related activities of the ILO play an increasingly important role in influencing social/labour policy, law and practice in member States. These activities include:

- the adoption of codes of practice and technical guidelines;
- the adoption of resolutions and conclusions;
- the adoption of declarations and their follow-up;
- the special Governing Body procedure on Freedom of Association.

ILO codes of practice and *technical guidelines* are adopted by expert meetings. They are non-binding instruments dealing in a comprehensive manner with specific workplace issues, mainly in the field of occupational safety and health. Differently from ILS, they are directly addressed to a wider audience, including national competent authorities, managers of companies and employers' and workers' organizations. There are no specific follow-up procedures, however, the ILO, upon request, provides technical assistance in their implementation. *ILO codes of practice*, which should not be confused with (company or industry) codes of conduct (as for the latter, see Chapter X), have been elaborated, for instance, on the use of chemicals at work (1992), on accident prevention on board ship at sea and in port (1993), on the recording and notification of occupational accidents and diseases (1994), on management of alcohol- and drug-related issues in the workplace (1995), on protection of workers' personal data (1996) and on safety in the use of synthetic vitreous fibre insulation (2000). *ILO technical guidelines* have been adopted e.g. on workers' health surveillance (1997) and on occupational safety and health management systems (2001). From an employers' point of view, ILO codes of practice and technical guidelines play a useful complementary role within the overall system of ILO standards-related activities in that they provide advice and guidance to employers on topical workplace issues in a flexible and practice-oriented manner.

Resolutions and *conclusions* are adopted by the ILC and ILO regional and sectoral meetings. They are non-binding instruments of an adhoc nature calling upon the various actors involved, including the ILO, governments and employers' and workers' organizations, to take particular action. Conclusions reflect the outcome of the discussions on agenda items of a meeting, whereas resolutions deal with related matters outside the agenda. At times, resolutions and conclusions call upon the ILO to examine the option of standard-setting in a particular area or on a particular subject. Moreover,

the results of the first discussion within the ILO double-discussion standard-setting procedure are adopted in the form of conclusions.

The main purpose of ILO *declarations* has been to highlight important principles and policies in international social policy and to follow them up in a regular manner:

- The ILO *Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy*, for instance, is a voluntary instrument setting out principles regarding the conduct of multinational enterprises and the terms of their relations with host countries regarding employment, training, conditions of work and life and industrial relations. It provides for five-yearly surveys on the effect given to it, as well as for an ad hoc procedure to obtain interpretations of its provisions. In a list appended to the Tripartite Declaration, reference is made to relevant ILO Conventions and Recommendations.
- The *ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up*, adopted by the ILC in 1998, is a promotional instrument emphasizing the importance of four principles and rights at work for social and economic development. It should be noted that the principles and rights contained in the Declaration are derived from the ILO Constitution, not from ILS.

Under the *Freedom of Association procedure of the GB*, complaints can be lodged against countries violating the principle of freedom of association. The legal bases of this procedure are the ILO Constitution and the Declaration of Philadelphia, which respectively acknowledge and reaffirm the principle of freedom of association. Since the ILO Constitution is binding upon all ILO member States, complaints can be made against countries regardless of whether they have ratified any ILO Convention in the field of freedom of association.

Because of their significant role among ILO standards-related activities, the *Freedom of Association procedure of the GB* and the *Declaration on Fundamental Principles and Rights at Work and its Follow-up* are described below in more detail.

The Freedom of Association procedure

The *GB Freedom of Association complaints procedure* has its origin in formal agreements concluded between the ILO and the UN Economic and Social Council in 1950. The two main GB organs involved are the *Committee on Freedom of Association* and the *Fact-Finding and Conciliation Commission*. It should be noted that the Fact-Finding and Conciliation Commission, composed of nine independent persons, was originally intended to be the central institution, with the Committee on Freedom of Association being only a preliminary investigating body. However, a major obstacle to this distribution of roles has been the fact that cases can be referred to the Fact-Finding and Conciliation Commission only with the consent of the government concerned. For lack of government consent, the Commission has been seized of only six cases in the 50 years of its existence. Therefore, the Committee on Freedom of Association gradually became the more active and thus the more visible organ. It is composed of nine

members (plus nine substitutes) from the three groups of the GB, acting in an independent capacity, with a chairman added later.

The *main features* of the GB Freedom of Association procedure, which is similar to ILS special supervisory procedures, is the following:

- Complaints can be made by governments, national employers' and workers' organizations directly concerned, as well as by international employers' and workers' organizations having consultative status with the ILO, or as regards matters directly affecting their affiliates.
- In calling on both the plaintiff and the government concerned to provide more detailed information, the Director-General, on behalf of the Committee, seeks to clarify the facts of the case. The Committee may also resort to direct contact missions, which consist of sending a high-level representative of the Director-General to the country in question in order to investigate and gather information on the spot. In addition, the Committee invites the parties to discuss the substance of the issue.
- Having clarified the facts, the Committee submits a report containing conclusions and recommendations for action to the GB. The Committee may either dismiss a complaint (in part or entirely) or, if it discovers an infringement, recommend steps to rectify the situation. After approval by the Governing Body, the report will be published in the *Official Bulletin*.
- In the case of an infringement, the Committee will ask the government concerned to report back on the action it has taken. If the country has ratified one or more Conventions in the field of Freedom of Association, the Committee will refer the matter for follow-up to the regular supervision.
- With the consent of the government concerned, the Committee may also refer the case to the Fact-Finding and Conciliation Commission, whose reports are also published.

It needs to be stressed that the purpose of the Freedom of Association procedure is fact-finding and conciliation, rather than passing judgment (therefore, it is not appropriate to speak of "decisions"). Furthermore, the Committee on Freedom of Association is not a supervisory organ relying on interpretation of ILS. This impression nevertheless arises sometimes, as identical interpretations of the meaning of freedom of association have been given by the Committee of Experts and the Committee on Freedom of Association.

Despite the fact that the Freedom of Association procedure is in most cases invoked by trade unions, employers' organizations are equally entitled to make use of it and have done so on an number of occasions. A case in point is the complaint concerning persecution of the employers' umbrella organization of Nicaragua in 1980 (see box on following page).

Employers' organizations should therefore actively take advantage of this form of ILO assistance in case of discrimination or other illegitimate treatment of employers, of their organizations or representatives. Moreover, it is important that employers' organizations in a country against which a complaint has been lodged by other ILO constituents, give their respective views. This is all the more important if the behaviour

**The complaint by the International Organisation of Employers (IOE)
against the Government of Nicaragua (Case No. 1007) in November 1980**

- The subject of this complaint was the alleged persecution of the national employers' organization (Superior Council for Private Enterprise, COSEP) by Nicaraguan government authorities after the victory of the Sandinista National Liberation Front. The complaint concerned, in essence, the following alleged infringements: the murder by the police on 17 November 1980 of COSEP Vice-President Mr. Jorge Salazar Argüello; the arrest of members of COSEP; censorship of collective agreements; and interference by government authorities in the internal structures of employers' organizations in Nicaragua.
- The Committee on Freedom of Association reached *interim* conclusions in November 1982, February 1984 and May 1984, which confirmed parts of the alleged violations of freedom of association (regarding: control of publications and distribution of information by employers' organizations, and detention of entrepreneurs).
- In February 1995, the Committee considered in its *definitive* conclusions that "the continuing climate of uncertainty and doubt regarding the circumstances surrounding the death of Mr. Salazar cannot but have a detrimental influence on labour relations and on the trust which must prevail among occupational organizations if freedom of association is to be exercised".

of enterprises is mentioned in the reasons for the complaint. As the governments concerned are not formally required to inform or consult employers' or workers' organizations on complaints submitted, the report of the Committee on Freedom of Association, for the time being, is the most important source of information in this regard. The opening paragraphs of the report cite cases the Committee is likely to deal with in the near future.

To date (July 2001) the Committee on Freedom of Association has examined more than 2,100 cases concerning 137 countries. More than 600 principles on the contents, scope and limits of freedom of association have been established over time. The employer members of the Committee on Freedom of Association have always approved the majority views and findings expressed by the Committee. Nevertheless, they have, on a number of occasions, stated in the GB their reservations regarding certain views of the Committee:

- One area of disagreement has been the Committee's extensive recognition of the "right to strike". As far back as 1953, the employers' spokesperson in the GB, Pierre Waline, pointed out that neither the ILO Constitution nor the ILO Conventions included provisions on the "right to strike". It was not a part of freedom of association proper and should therefore only be considered by the Committee as far as freedom of association was affected (see: Minutes of the 121st session of the GB, Fifth sitting, 5 March 1953, page 37). In recent years, the employers in the GB felt it necessary to point out that the "right to strike" was not without limits and that existing regulation on strikes in countries, e. g. as regards replacement of strikers, treatment of workers taking part in solidarity strikes, and compulsory

arbitration, could not be assessed in isolation from the general situation and the overall industrial relations system in a country. Generalized conclusions on these questions were therefore inappropriate since the circumstances varied from country to country.

- Another contentious issue has been the Committee's indifferent attitude towards the "right not to associate". Here, the employers in the GB stated that individual representation, individual bargaining and individual agreements were legitimate and viable options for both employers and workers and should not be discouraged by the Committee's conclusions.

In general, the employers feel that the impact of the Committee's recommendations could be greater if it applied more self-restraint in developing its principles.

For more detail, see:

- IOE: *The Committee on Freedom of Association, Note by the Employer Members of the Committee* (Geneva, March 1996).
- ILO: *ILO Law on Freedom of Association – Standards and Procedures* (Geneva, 1995).
- ILO: *Freedom of Association: A user's guide* (Geneva, 2000).

The ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up

The ILO Declaration on Fundamental Principles and Rights at Work, adopted by the ILC in 1998 (with no opposing votes), can be seen as the most significant achievement in ILO standards-related activities in recent years. It is designed to contribute to the implementation of four principles and rights at work regarded as fundamental to social progress. These principles are:

- freedom of association and the effective recognition of the right to collective bargaining;
- the elimination of all forms of forced or compulsory labour;
- the effective abolition of child labour; and
- the elimination of discrimination in respect of employment and occupation.

It is important to note that these principles are derived from the ILO Constitution. Therefore, the Declaration *does not create new* principles, but *affirms* and *highlights* existing constitutional principles. By virtue of their membership, ILO member States have an obligation "to respect, to promote and to realize, in good faith and in accordance with the Constitution" these principles (para. 2).

Of particular significance is the *Follow-up* to the Declaration. It is of a "strictly promotional nature" (Annex, para. 2) and must not be confused with a control mechanism, such as the ILS supervisory system. The follow-up will therefore retain its relevance even when all member States have ratified the Conventions covering these principles.

The essential objective of the follow-up is “to encourage the efforts made by the Members of the Organization to promote the fundamental principles and rights” reaffirmed in the Declaration (Annex, para. 1), among other things by identifying “areas in which the assistance of the Organization through its technical cooperation activities may prove useful ...” (Annex, para. 2). Basically, the follow-up consists of two measures:

- *The Annual Review*

The objective of the Annual Review is to provide an overview of the current situation with regard to *all four principles* in those *member States which have not yet ratified one or more of the Conventions in this field*. The Review is compiled by the Office: it draws on government reports and information from employers’ and workers’ organizations. A group of seven independent experts, the ILO Declaration Expert Advisers (IDEA), is responsible for preparing an *introduction* to the *compilation of Annual Reports*, both of which are subsequently discussed by the Governing Body.

- *The Global Report*

Unlike the Annual Review, the Global Report focuses each year on *one of the four principles* and seeks to give a more in-depth picture of the global and regional trends in *all member States*. Over and above that, it is the function of the global report to evaluate ILO assistance and to identify priorities for future technical cooperation. The first two global reports, on the principle of freedom of association and the effective recognition of the right to collective bargaining and on the elimination of all forms of forced or compulsory labour, were submitted to the ILC in June 2000 and June 2001 respectively. Subsequent reports will address the effective abolition of child labour (2002) and the elimination of discrimination in respect of employment and occupation (2003), after which the cycle will start again.

Employers’ and workers’ organizations, although not directly addressed by the Declaration, have a significant role to play in the follow-up (*see box on following page*). In their introduction to the first annual review the Expert Advisers pointed out that these organizations “are often the source of innovative ideas that could serve as an inspiration to others for future action” and that they “can provide invaluable insights into the actual situation in a country.” Moreover, international organizations of employers and workers “have a valuable contribution to make where national organizations are not able to express their opinions freely.”

The employers in the ILO have fully supported the concept, the adoption and the implementation of the Declaration. They consider it as a complementary tool for the ILO to concentrate its efforts and resources on the effective worldwide application of central labour rules. The Declaration, in the employers’ view, can thus also help counteract protectionist tendencies and promote acceptance of globalization and trade liberalization as essential bases for economic and social development. Consequently, the employers also gave their support to the “Global Compact” initiative of UN Secretary-General which, in its labour part, takes up the four principles of the “Declaration” (see Chapter X).

Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work		
Calendar	ILO/government action	Employer involvement/action
July (Year 1)	ILO sends report forms regarding the <i>Annual Review</i> to governments of countries which have not ratified all the fundamental Conventions; governments are to “seek contributions from the social partners in completing their reports”.	Employers in these countries inform the ILO of their views on the issues to be covered by the Annual Review, either directly or via their government.
September (Year 1)	Deadline for government reports; copies to be sent by governments to employers’ and workers’ organizations.	Employers, if necessary, may remind their government of its reporting obligation.
January (Year 2)	ILO Declaration Expert Advisers (IDEA) meet to review the compilation of Annual Reports and prepare an introduction.	
March (Year 2)	GB discusses Annual Review.	Employer members of the GB take an active part in this discussion.
June (Year 2)	Discussion of the Global Report at the ILC.	Employer delegates to the ILC actively engage in this discussion.
November (Year 2)	GB draws conclusions from the discussions of the Annual Review (March) and the Global Report (June) to identify priorities and plans of action for technical cooperation.	Employer members of the GB participate actively in this discussion and make their proposals in this regard.
After November (Year 2)	Follow-up measures, in particular ILO technical cooperation, at national level.	Employers actively engage in follow-up at national level, including ILO technical cooperation.
At any time	ILO/governments undertake various measures to promote understanding and observance of the Declaration.	Employers’ organizations make their member enterprises’ aware of the relevance of the Declaration and advise them in promoting its principles.

Nevertheless, the employers have emphasized that the rights and principles of the Declaration have to be clearly distinguished from the – more far-reaching – obligations under ILO Conventions. Furthermore, they have stressed that the possible elaboration of a detailed “jurisdiction”, as has been the case with the principle of freedom of asso-

ciation by the Committee on Freedom of Association, is not in line with the promotional character of the Declaration and has to be avoided.

For more detail, see:

- IOE: *The ILO Declaration on Fundamental Principles and Rights at Work: a guide for employers (folder)* (Geneva, 1999).
- ILO: *About the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up (folder)* (Geneva, 2000).

VIII. ILS and technical cooperation

General remarks

Apart from ILS and other standards-related activities, technical cooperation (TC), comprising operational activities and advisory services, is the most important means of action at the ILO's disposal. Whereas ILS seek to spell out the ILO's constitutional values and objectives in a particular context in more lasting terms, TC provides the ILO with a means to promote its objectives in a practical and flexible way, allowing it to react swiftly to changing needs.

The framework for both TC and ILS activities is now provided by the concept of "decent work", which updates ILO's constitutional objectives. "Decent work" has four strategic objectives: to promote and realize fundamental principles and rights at work; to create greater opportunities for women and men to secure decent employment and income; to enhance the coverage and effectiveness of social protection for all; and to strengthen tripartism and social dialogue.

It is generally acknowledged that ILS and TC should be complementary and mutually reinforcing. This understanding of the relationship between ILS and TC is reconfirmed by the new "integrated approach" to ILS activities (see Chapter IX).

Technical cooperation in support of ILS

It is necessary to distinguish between direct and indirect support in the relationship between TC and ILS:

- *Direct support*

Implementation of standards: In recent years, the ILO has reinforced its direct TC in connection with the implementation of ILS. Two out of the eight new "InFocus Programmes" (on promoting the new ILO Declaration; and on Child Labour), whose purpose is to improve the visibility and the targeting of resources for ILO priority issues, are particularly relevant to the implementation of fundamental ILS. Further important steps have been the creation of – presently 16 – multidisciplinary teams (MDTs), including specialists on standards, serving developing regions around the world and the more systematic and focused offer of

TC by ILO supervisory organs to governments facing problems in implementing (ratified) Conventions. From an employers' point of view, it is important that ILO TC offered to governments in the implementation of ILS duly takes into account the economic situation and the needs of enterprises in the respective country. If employers' organizations in member States feel that TC specific to their needs could help them play a more meaningful role in the implementation of ILS, they should make their respective needs known to the ILO.

Creation of standards: Another dimension of direct support, insufficiently used so far, concerns the experience gained from TC in the creation of ILS, particularly in the preparation of items for new ILS. This experience could be especially valuable in making ILS more realistic and needs-oriented. It would give better effect to the constitutional standard-setting principle of having "due regard to those countries in which climatic conditions, the imperfect development of industrial organization, or other special circumstances make the industrial conditions substantially different ..." (art. 19, para. 3, ILO Constitution). Therefore, it would be appropriate for the ILO to tap this experience more systematically in its preparatory work for standard-setting.

- *Indirect support*

Although direct TC support is important for better implementation of ILS, such a limited role would not exhaust the potential of technical cooperation. For this reason, the ILC 1999 "Conclusions concerning the role of the ILO in technical cooperation" rightly pointed out that TC should more generally "help create the enabling environment ... for the realization of the values and principles of the Organization in terms of development, institutional capability, legislation and economic and social policy."

From the employers' perspective, a particularly important aspect of this kind of TC is institutional support to employers' and workers' organizations. The existence of independent and well-functioning organizations of employers and workers engaging in constructive dialogue does not only have favourable effects on economic and social development in ILO member countries; it is also a precondition for the effective implementation and supervision of ILS in general.

ILS in support of technical cooperation

Since many ILO objectives are reflected in ILS, the standards themselves can guide the planning and execution of TC activities. This is evident if a country has ratified relevant ILO Conventions, thus demonstrating the importance it attaches to the implementation of these instruments for its national development. The same is true if the relevance or model function of certain ILS is expressly mentioned in project documents for TC activities, even if the respective Conventions have not been ratified by the country concerned.

Recommendation No. 152 contains a particularly important guiding principle for the execution of TC activities in that it provides for national level tripartite consultations

regarding “the preparation, implementation and evaluation of technical cooperation activities in which the International Labour Organization participates” (Para. 6 (a)).

Nevertheless, in the employers’ view, there are limits to the support function of ILS to TC. Not every ILO objective that can be pursued by means of TC is covered or could be covered by ILS. Even if the objective of an ILO TC project is covered by a Convention, its practical usefulness for guiding the TC activities may sometimes be limited.

The question of conditionality

An issue debated in ILO forums in recent years concerns the possible conditionality between ILS and TC. The question is: Should the offer/execution of TC be made conditional on the observance of (fundamental) ILO Conventions in the recipient country?

In the employers’ view, this would generally be inappropriate. Firstly, in case a country has not ratified the (fundamental) Convention in question, a refusal to provide TC would be tantamount to putting pressure on a country to implement an unratified Convention, which would be in contradiction with the ILO Constitution. Secondly, it is in most cases unlikely that the termination of TC or the respective threat could improve the application of (fundamental) ILO Conventions. Finally, a cancellation of TC may have harmful effects for the intended beneficiaries of the TC activity or third parties not involved and not responsible for the infringement of a (fundamental) Convention. For instance, it would not be acceptable if employers’ and workers’ organizations were “punished” because of violations of fundamental ILS by their government.

Therefore, a differentiated approach must be applied: First of all, TC which is requested by a government with a serious intention to improve compliance with (fundamental) ILO Conventions, should never be refused by the ILO. Other TC should only be discontinued, if it could contribute to the continued violation of (fundamental) Conventions, or if the situation in the country is such that the non-respect of (fundamental) Conventions makes it entirely impossible to achieve the objectives foreseen in the TC project. The rationale for terminating TC in these cases would hence be the credibility of the ILO, coherence of its activities and the necessity to use TC funds responsibly. A relevant case in this regard was the decision by the Governing Body in November 1999 to suspend any TC projects with Myanmar, except those for the purpose of correcting its application of the Forced Labour Convention, 1930 (No. 29), ratified by the country.

For more detail, see:

- ILO: *Handbook of procedures relating to international labour Conventions and Recommendations*, Rev. 2 (Geneva, 1998).
- ILO: *The role of the ILO in technical cooperation*, Report VI, International Labour Conference, 87th Session, Geneva, 1999.
- ILO: *Conclusions concerning the role of the ILO in technical cooperation*, International Labour Conference, 87th Session, Geneva, 1999.

IX. The reform of ILS

General remarks

Reforms and adaptations of the ILS system have been carried out several times during its existence. In particular, the employers have been a driving force in this regard. In recent years, the employers have called for a basic reform in order to halt the decline in influence and acceptance of the ILS system, which is indicated by the following developments:

- *Low ratification record*

Apart from the fundamental instruments, the ratification of ILO Conventions has been low over the past years. Of the 184 ILO Conventions, every ILO member State has presently ratified an average of only 39.4. The more recent Conventions, which should in principle be the more relevant instruments, are particularly badly affected. This fact was recalled by the Director-General in his report *Decent work* to the ILC in 1999: “Of the 23 Conventions and two Protocols adopted in the 15 years from 1983 to 1998, only three have received at least 20 ratifications.”

- *Unsatisfactory implementation*

Despite cases of progress, the yearly Report of the Committee of Experts continues to contain numerous “observations” suggesting that the implementation of ratified Conventions is unsatisfactory and even worsening in certain countries.

- *Decreasing cooperation in supervision*

Government cooperation in the regular supervision of ratified Conventions, if the general tendency over the past decades is considered, is on the decrease. This is shown, for instance, by the falling number of reports submitted to the ILO under article 22. In 2000, only 70.5 per cent of all reports requested were received in time for the Committee of Experts’ session (1990: 71.9 per cent; 1980: 82.2 per cent).

Recent measures and proposals

To address these negative trends, a number of measures have been implemented or at least introduced in an effort to improve the system. These measures include the following:

- *Supervision of ILS*: As from 1995/96, the reporting procedures of the regular supervision have been streamlined and focused on fundamental and priority Conventions. The new reporting procedures were introduced for a trial period of five years; they are presently being revisited.
- *Renewal of existing ILS*: In 1994, the GB set up a standing Working Party on Policy regarding the Revision of Standards whose task is to assess and classify existing ILS (except fundamental and priority Conventions and instruments adopted since 1985). The Working Party has identified a significant number of ILS which it considers obsolete or in need of revision. In 1997, the ILC adopted amendments to the Constitution as well as to its Standing Orders providing for the withdrawal and abrogation of obsolete Conventions. For the abrogation to be applied, the constitutional amendment has yet to enter into force (see Chapter VI).
- *Promotion of fundamental ILS*: In 1995, the Director-General launched a ratification campaign regarding the fundamental Conventions with a view to promoting their universal ratification and implementation.
- *Setting of ILS*: In 1997, with a view to improving the selection of standard-setting items, procedural changes were introduced, involving a more comprehensive list of items developed in direct consultation with ILO constituents. Further proposals for changes in standard-setting were made in the reports of the Director-General to the ILC in 1997 and 1999 (see the excerpts in Appendices 6 and 7).
Recently, the reform discussion has gained further momentum:

“If the ILO is to ensure its continued relevance in this field and reassert the usefulness of international standards, it will need to reinvigorate its efforts and experiment with new approaches. ... This debate should be extended and deepened.”

Decent work, Report of the Director-General, International Labour Conference, 87th Session, Geneva, 1999, p. 15.

- At its annual meeting in May 2000, the General Council of the IOE adopted a position paper on standards reform (see Appendix 8) and the employers' group of the ILC submitted a draft resolution on this subject to the ILC in June 2000.
- In November 2000, an Office proposal for an “integrated approach” to ILS activities was discussed and approved by the GB. This new approach, which takes up many elements from the above IOE position paper, aims at better integrating ILS with one another and with other means of ILO action (*see box entitled “The integrated approach” on the following page*).
- Also in November 2000, employers and workers in the GB agreed on a “Basis for common understanding” regarding future ILS activities which could open the door to more consensual standard-setting.
- The Joint Maritime Commission of the ILO at its meeting in January 2001 decided to embark on a comprehensive overhaul of all existing ILO maritime labour standards (*see box entitled “The maritime approach to standards reform” on the following page*).

The “integrated approach”

The “integrated approach” (see GB.279/4, Geneva, November 2000; GB 280/2, March 2001) is a method aimed at increasing the coherence, relevance and impact of ILS and related activities in different areas by developing common plans of action to guide these activities. It will be tested with ILO standards-related activities in the area of occupational safety and health at the ILC in 2003. Consensus-building will be a main feature throughout all phases of the “integrated approach”:

- First phase: *In-depth analyses by subject-matter* of ILO objectives, existing ILS and related activities, including promotional activities and technical co-operation.
- Second phase: *Discussion and adoption of plans of action by the ILC*. The plans of action will identify proposals for standard-setting, for other standards-related activities (revision, consolidation, adoption of other instruments) as well as for the promotion of existing ILS (dissemination of information, awareness raising, technical cooperation, research).
- Third phase: *Decisions by the GB* based on the plan of action.

The maritime approach to standards reform

The envisaged reform of ILO maritime standards, as agreed by the Joint Maritime Commission in January 2001 and approved by the GB in March 2001, is based on the consolidation of all existing maritime Conventions, as far as possible, in one framework Convention:

- this framework Convention will consist of several thematic parts;
- each thematic part will assemble the valid key principles of existing maritime Conventions and will be complemented by annexes containing detailed requirements;
- whereas the thematic parts can be ratified only altogether, there will be choice of ratification for the annexes;
- ratification of the Convention and annexes will automatically involve denunciation of the existing Conventions thematically covered by the annexes;
- there will be a facilitated revision mechanism for the annexes.

The reform process will extend over several years and involve annual meetings of a high-level tripartite maritime working group (2001-2003), a preparatory maritime meeting (2004) and a maritime session of the ILC for the final adoption of the proposed new Convention (2005).

- At its session in March 2001, the GB has started examining the need for changes to the ILS supervisory system. It was decided to focus, as a first priority, on the functioning of the reporting system.

Employers' views on ILS reform

The employers have welcomed the recent initiatives and decisions to reform ILS activities, in particular the “integrated approach” which, in their view, goes in the right direction. However, they also realize that further analyses of the problems involved are needed and concrete steps to translate the “integrated approach” into practicable solutions still have to be taken. Moreover, in the employers' view, the adaptation of ILS and respective procedures to changing needs should be seen as a constant task and process.

The detailed views and proposals of the employers regarding the present ILS reform are contained in the above-mentioned IOE position paper (see Appendix 8). A reading of this position paper is strongly recommended.

The following more general questions and issues may be raised in the continuing reform discussions:

- *Re-evaluation of objectives and functions of ILS*

In view of the fundamental changes in economic and social structures that have occurred since the ILS system came into being, a detailed re-evaluation of the objectives and functions of ILS seems justified. In this context, the “value added” of labour regulation at international level, i.e. its concrete benefits to economic and social development at the national level, should be studied. Particular attention should be given in this regard to the impact of ILS on economic efficiency, competitiveness and the ability of enterprises to create jobs and income.

- *Comprehensiveness of the ILS system*

Given the limited institutional capacity of many member States regarding ratification and implementation of ILS, it could be worthwhile to examine how comprehensive an “ideal” system of ILS, i.e. a system which will have the best possible effect, should be.

- *Indicators/goals as part of ILS*

Specific time-bound steps to implement an ILS and some basic indicators/goals to measure achievements might be included in new ILS. This could make implementation more reliable, simplify supervision and provide valuable feedback.

- *Diversification of standards-related action/complementary action*

As alternatives or supplements to ILS, other standards-related action, such as declarations, technical guidelines, codes of practice and benchmarking/best practices should be considered more systematically. In addition, in order to facilitate the implementation of ILS, more targeted use should be made of complementary action, such as manuals, action plans and public campaigns.

- *Coordination of ILS with action in other disciplines*

Major obstacles to ILS implementation in many developing countries include a general lack of institutional capacity and low productivity levels. In order to ensure that the necessary framework conditions for ILS implementation are provided and thus to facilitate their implementation, it might be useful if the ILO

coordinated its standards-related action in the social and labour field more closely with normative and promotional action by international agencies in other disciplines dealing with the problems mentioned.

For more detail, see:

- IOE: *Position paper on ILO standards-related activities*, adopted by the IOE General Council on 9 June 2000 (Appendix 8).
- ILO: *More targeted standards for a greater impact*, Excerpt from the Report of the Director-General, International Labour Conference, 85th Session, Geneva, 1997 (Appendix 6).
- ILO: *Renewing work on labour standards*, Excerpt from the Report of the Director-General, International Labour Conference, 87th Session, Geneva, 1999 (Appendix 7).
- ILO: *Possible improvements in ILO standards-related activities*, GB.279.4 (Geneva, Nov. 2000) and GB.280/LILS/3 (Geneva, Mar. 2001).

X. Looking ahead – Challenges and opportunities for ILS

General remarks

As suggested in the preceding chapter, a process of continuous adaptation to changing needs is necessary, in the employers' perception, for ILS to remain meaningful tools in international social policy. The objective of this adaptation must be to keep ILS focused on their essential task of guiding worldwide labour rules reflecting an appropriate balance between workers' needs for protection and employers' needs for competitiveness.

The most significant challenge for ILS in the coming years will probably concern their ability to address social questions arising from globalization. This requires, for one thing, *flexible instruments* allowing member States to react swiftly to rapid changes in the economic and social environment. In addition, the ILO will increasingly be required to give *accompanying guidance* on the implementation of ILS, tailor-made to the needs of individual member States. For the ILO supervisory system, this may also involve a major shift from the present rather static legal examination towards a more long-term and promotional approach.

In connection with globalization, further challenges and opportunities respectively for ILS may arise from labour standards-related activities by regional organizations, attempts to set up enforcement mechanisms for ILS in other international organizations and private actors claiming competence in social and labour questions. Some major examples of such developments are described below.

Regional standard-setting

A relatively recent development is the setting of labour standards at regional level, particularly in the European Union (EU). As a result of the gradual extension of its legislative competence in the 1980s and 1990s, the EU has adopted a significant number of legal instruments on labour and social issues. These instruments take the form of Regulations and Directives, both of which, unlike ILS, are binding on EU Member States once they have been adopted. Whereas *Regulations* are directly applicable, *Directives* first have to be translated into national law and practice.

Because of their "automatic" legal force, the significance of EU instruments relative to ILS has increased for EU Member States. With the continuation of EU labour

standard-setting, the relevance of EU standards for EU member countries will continue to rise and the interest of ILS for these countries will fall relatively.

Moreover, there is a risk that representatives from EU countries may feel inclined to “project” their (generally higher) standards onto new ILS. This could severely impair the usefulness and acceptance of ILS in other parts of the world. Given the political weight of the EU member countries in the ILO – which is likely to increase with the planned extension of EU membership – this is certainly not an abstract possibility.

Finally, as stated in a joint Memorandum by the employers and workers in 1987, the involvement of EU institutions – instead of individual EU member States – in ILO standard-setting could weaken the principle of tripartism which at EU level is not as far-reaching as at EU member country level. At the beginning of the 1990s, this danger became critical when the EU Commission claimed the competence to “conclude” the Chemicals Convention, 1990 (No. 170) on behalf of its members States. The Commission justified its engagement on the basis of case law built up by the Court of Justice of the European Communities (CJEC). According to the CJEC, each time the Community adopted provisions laying down common rules in a given field, member States no longer had the individual right to assume international obligations which touched upon that field. Subsequently, however, in an advisory opinion of 1993 on the above Convention, the CJEC observed that the Community could not “itself conclude an ILO Convention”, rather that this fell “within the joint competence of the Member States and the Community”.

Over and above direct interference with ILS procedures, in the employers’ view, EU organs (and possibly other regional organizations) should exercise self-restraint in making recommendations to member States in this regard. For instance, the employers did not consider it appropriate that the EU Commission, in recent years, called upon EU Member States to ratify the Home Work Convention, 1996 (No. 177), without consulting the employers at EU level and thus ignoring the (particularly critical) employers’ position on this instrument. Recommendations like this, in the employers’ view, have the potential to disrupt the spirit of tripartism in ILS procedures.

Regional labour standards systems are developing also in other parts of the world apart from the EU. Mercosur and SADC (South African Development Community) have both recently made progress in this regard through the elaboration of a Social and Labour Declaration and a Social Charter respectively, affirming a number of labour principles and providing for monitoring of their implementation. Although these instruments do not as yet constitute enforceable regional norms comparable to those of the EU, they may eventually lead to them in the long term.

For more detail, see:

- ILO: *Advisory opinion of the Court of Justice of the European Communities on ratification of the Chemicals Convention, 1990 (No. 170)*, GB.256/SC/1/3 (Geneva, May 1993).

Trade and labour standards

In the run-up to the Ministerial Meeting of the World Trade Organisation (WTO) in Singapore in December 1996, trade unions and other non-governmental organizations (NGOs), mainly from industrialized countries, called for a “social clause” which should provide for the enforcement of basic labour standards by means of trade sanctions within the WTO system. The supporters of the “social clause” claimed that labour standards did not receive adequate attention in the globalization process. In particular, the ILS system was not functioning satisfactorily as it had “no teeth”. Therefore, in their view, a more effective means of enforcement was needed, such as trade sanctions.

These claims met with the determined opposition of the majority of WTO members, in particular the developing countries, who suspected (hidden) protectionist motives behind the calls for a “social clause”. As a result, the Singapore meeting concluded on a compromise emphasizing the competence of the ILO in labour standards matters while allowing for some cooperation between ILO and WTO (*see box below*).

“We renew our commitment to the observance of internationally recognized core labour standards. The International Labour Organization (ILO) is the competent body to set and deal with these standards, and we affirm our support for its work in promoting them. We believe that economic growth and development fostered by increased trade and further trade liberalization contribute to the promotion of these standards. We reject the use of labour standards for protectionist purposes, and agree that the comparative advantage of countries, particularly low-wage developing countries, must in no way be put into question. In this regard, we note that the WTO and ILO Secretariats will continue their existing collaboration”.

Final Document, WTO Ministerial Conference, Singapore, December 1996.

On the occasion of the WTO Ministerial Meeting in Seattle, November/December 1999, it was proposed to establish a stronger social dimension within the WTO in the form of a WTO Working Group on Trade and Labour (USA) or a joint ILO/WTO Standing Working Forum on trade globalization and labour issues (EU). Trade unions and NGOs from developed countries repeated their demand to enforce labour standards through the WTO system. Again, these demands were opposed by the developing countries. As a result, no Ministerial Declaration was adopted and no further steps towards liberalizing world trade were taken either (a new opportunity to do this may be provided by the next WTO ministerial meeting in Dohu, Qatar, in November 2001). Against the background of these failed attempts to establish a link between trade and labour standards in the WTO trade regime, there has been a tendency to incorporate “social clauses” into bilateral trade agreements. Trade agreements proposed by the US or the EU to smaller developing countries link special trade preferences to the observance of basic labour standards.

The employers in the ILO have made it clear that they oppose a linkage between trade and labour standards in the form of a “social clause”, especially within the WTO, for the following reasons:

- It is more than doubtful that social policy objectives could be achieved by means of trade sanctions or the threat of sanctions.
- Introducing trade sanctions would disturb the balanced ILO approach in promoting ILS and could, as a result, weaken the impact of ILS.
- A “social clause” in the WTO rules could reinforce existing protectionist tendencies and thus damage the world trade regime. As a consequence, economic growth, which is the basis for social progress, would be impaired.
- There is no need for a “social clause”, as the ILO has taken important steps in recent years to make its means of action more efficient and relevant. A case in point is the adoption of the “Declaration on Fundamental Principles and Rights at Work and its Follow-up”. In addition, the GB has set up a Working Party to examine and propose research on the social dimension of *trade*, including the relationship between trade and labour standards (since March 2000 the Working Party’s mandate has been extended to cover the social dimension of *globalization*). Finally, the ILO has recently embarked on a substantial review of its ILS system with a view to making it more effective (see Chapter IX).

For more detail, see:

- IOE: *Statement on trade and labour standards for the WTO Ministerial Meeting, Seattle, 30 Nov. - 3 Dec. 1999.*
- OECD: *International trade and core labour standards* (Paris, 2000).

“Private” standard-setting initiatives

Challenges and opportunities for ILS also arise from the development of “private” standard-setting initiatives in recent years. More and more internationally active enterprises or sectors of industry are adopting policies and rules on labour standards which sometimes take the form of codes of conduct. Some companies have formulated and implemented their own standards, whereas others have cooperated with NGOs or trade unions in this regard. Yet others have relied on the help of commercial agencies offering model codes of conduct, including control and certification.

At the very origin of these “private” standard-setting activities has been the belief, voiced in particular by NGOs, that, in the process of globalization, governments have lost some of their power to set and enforce labour regulations and have left a vacuum in this respect. NGOs claim that, as a consequence of this vacuum, labour standards are not observed in many countries, particularly in developing nations. As a remedy, they have called upon internationally active enterprises to ensure the application and effective control of labour standards, in their own operations as well as in the operations of their suppliers, contractors and licencees. In order to give weight to their demands, NGOs have encouraged consumers in developed countries to boycott goods which, in their view, have been produced under unacceptable conditions.

The employers in the ILO have acknowledged that enterprises are, of course, obliged to respect and apply national labour laws. They have stated that, in addition,

the ILO Declaration of 1998, highlighting fundamental principles incorporated in ILS, was an important orientation for enterprises in their worldwide operations. The employers have also engaged in the “Global Compact”, an initiative launched by the UN Secretary-General in 1999 for a global partnership between the UN and the business community. The “Global Compact” aims at promoting the implementation of universal values in the area of human rights, environment and labour.

At the same time, the employers have drawn attention to difficult and contentious issues arising in the context of “private” standard-setting initiatives, such as the relationship between “private” standards and government regulation or the question of whether enterprises are responsible for the working conditions of their commercial partners. In the employers’ view, governments cannot relinquish to private enterprises their responsibility to implement ratified ILS or to enforce national labour law. If there are problems with law enforcement in certain countries, the solution can only be to seek to remove these problems and to strengthen the government’s capacities in law enforcement.

Quite another question, in the employers’ view, is whether enterprises – voluntarily – take social initiatives which go beyond what the law requires. One element of such initiatives can, for instance, be cooperation with suppliers in order to help them meet legal requirements in the field of occupational safety and health or other labour conditions. The employers have emphasized, however, that, as far as these voluntary activities are concerned, it is for the individual enterprise to decide on the contents, implementation and possible control. They have consequently opposed the imposition of model standards/procedures on enterprises or claims for any internationally standardized code of conduct or control mechanism.

In this context, the employers feel that the already existing important contributions made by internationally active enterprises to the improvement of living and working conditions in developing countries and thus the facilitation of ILS implementation have not been adequately recognized so far by the public in developed countries. When these enterprises invest in local production facilities in developing countries or buy goods and products from local firms, they contribute substantially to the creation and preservation of jobs, the financing of social institutions, the improvement of job qualifications, the increase of productivity levels and structural change, in short, to social and economic development.

For more detail, see:

- IOE: *Codes of Conduct – Position paper of the International Organisation of Employers, adopted by the IOE General Council*, (Geneva, 11 June 1999).
- IOE and ACT/EMP: *Employers’ handbook on child labour – A guide for taking action*, (Geneva, 1998).
- ILO: *Overview of global developments and Office activities concerning codes of conduct, social labelling and other private sector initiatives addressing labour issues*, GB.273/WP/SDL/1, (Geneva, Nov. 1998).
- Wild, A.: *Social citizenship – what’s going on ... and why? A review of corporate citizenship and social initiatives, Enterprise and Cooperative Development Department*, ILO (Geneva, 1998).

Appendices

Appendix I

Official titles of ILO Conventions

Official titles of the Conventions adopted by the International Labour Conference 1919-2001, presented in chronological order:

First Session (Washington, DC) 1919

- C. 1 Hours of Work (Industry) Convention, 1919
- C. 2 Unemployment Convention, 1919
- C. 3 Maternity Protection Convention, 1919
- C. 4 Night Work (Women) Convention, 1919
- C. 5 Minimum Age (Industry) Convention, 1919
- C. 6 Night Work of Young Persons (Industry) Convention, 1919

Second Session (Genoa) 1920

- C. 7 Minimum Age (Sea) Convention, 1920
- C. 8 Unemployment Indemnity (Shipwreck) Convention, 1920
- C. 9 Placing of Seamen Convention, 1920

Third Session (Geneva) 1921

- C. 10 Minimum Age (Agriculture) Convention, 1921
- C. 11 Right of Association (Agriculture) Convention, 1921
- C. 12 Workmen's Compensation (Agriculture) Convention, 1921
- C. 13 White Lead (Painting) Convention, 1921
- C. 14 Weekly Rest (Industry) Convention, 1921
- C. 15 Minimum Age (Trimmers and Stokers) Convention, 1921
- C. 16 Medical Examination of Young Persons (Sea) Convention, 1921

Seventh Session (Geneva) 1925

- C. 17 Workmen's Compensation (Accidents) Convention, 1925
- C. 18 Workmen's Compensation (Occupational Diseases) Convention, 1925
- C. 19 Equality of Treatment (Accident Compensation) Convention, 1925
- C. 20 Night Work (Bakeries) Convention, 1925

Eighth Session (Geneva) 1926

- C. 21 Inspection of Emigrants Convention, 1926

Ninth Session (Geneva) 1926

- C. 22 Seamen's Articles of Agreement Convention, 1926
- C. 23 Repatriation of Seamen Convention, 1926

Tenth Session (Geneva) 1927

- C. 24 Sickness Insurance (Industry) Convention, 1927
- C. 25 Sickness Insurance (Agriculture) Convention, 1927

Eleventh Session (Geneva) 1928

- C. 26 Minimum Wage-Fixing Machinery Convention, 1928

Twelfth Session (Geneva) 1929

- C. 27 Marking of Weight (Packages Transported by Vessels) Convention, 1929
- C. 28 Protection against Accidents (Dockers) Convention, 1929

Fourteenth Session (Geneva) 1930

- C. 29 Forced Labour Convention, 1930
- C. 30 Hours of Work (Commerce and Offices) Convention, 1930

Fifteenth Session (Geneva) 1931

- C. 31 Hours of Work (Coal Mines) Convention, 1931

Sixteenth Session (Geneva) 1932

- C. 32 Protection against Accidents (Dockers) Convention, 1933
- C. 33 Minimum Age (Non-Industrial Employment) Convention, 1932

Seventeenth Session (Geneva) 1933

- C. 34 Fee-Charging Employment Agencies Convention, 1933
- C. 35 Old-Age Insurance (Industry, etc.) Convention, 1933
- C. 36 Old-Age Insurance (Agriculture) Convention, 1933
- C. 37 Invalidity Insurance (Industry, etc.) Convention, 1933
- C. 38 Invalidity Insurance (Agriculture) Convention, 1933
- C. 39 Survivors' Insurance (Industry, etc.) Convention, 1933
- C. 40 Survivors' Insurance (Agriculture) Convention, 1933

Eighteenth Session (Geneva) 1934

- C. 41 Night Work (Women) Convention (Revised), 1934
- C. 42 Workmen's Compensation (Occupational Diseases) Convention (Revised), 1934
- C. 43 Sheet-Glass Works Convention, 1934
- C. 44 Unemployment Provision Convention, 1934

Nineteenth Session (Geneva) 1935

- C. 45 Underground Work (Women) Convention, 1935
- C. 46 Hours of Work (Coal Mines) Convention (Revised), 1935
- C. 47 Forty-Hour Week Convention, 1935
- C. 48 Maintenance of Migrants' Pension Rights Convention, 1935
- C. 49 Reduction of Hours of Work (Glass-Bottle Works) Convention, 1935

Twentieth Session (Geneva) 1936

- C. 50 Recruiting of Indigenous Workers Convention, 1936
- C. 51 Reduction of Hours of Work (Public Works) Convention, 1936
- C. 52 Holidays with Pay Convention, 1936

Twenty-first Session (Geneva) 1936

- C. 53 Officers' Competency Certificates Convention, 1936
- C. 54 Holidays with Pay (Sea) Convention, 1936
- C. 55 Shipowners' Liability (Sick and Injured Seamen) Convention, 1936
- C. 56 Sickness Insurance (Sea) Convention, 1936
- C. 57 Hours of Work and Manning (Sea) Convention, 1936

Twenty-second Session (Geneva) 1936

- C. 58 Minimum Age (Sea) Convention (Revised), 1936

Twenty-third Session (Geneva) 1937

- C. 59 Minimum Age (Industry) Convention (Revised), 1937

- C. 60 Minimum Age (Non-Industrial Employment) Convention (Revised), 1937
- C. 61 Reduction of Hours of Work (Textiles) Convention, 1937
- C. 62 Safety Provisions (Building) Convention, 1937

Twenty-fourth Session (Geneva) 1938

- C. 63 Convention concerning Statistics of Wages and Hours of Work, 1938

Twenty-fifth Session (Geneva) 1939

- C. 64 Contracts of Employment (Indigenous Workers) Convention, 1939
- C. 65 Penal Sanctions (Indigenous Workers) Convention, 1939
- C. 66 Migration for Employment Convention, 1939
- C. 67 Hours of Work and Rest Periods (Road Transport) Convention, 1939

Twenty-eighth Session (Seattle) 1946

- C. 68 Food and Catering (Ships' Crews) Convention, 1946
- C. 69 Certification of Ships' Cooks Convention, 1946
- C. 70 Social Security (Seafarers) Convention, 1946
- C. 71 Seafarers' Pensions Convention, 1946
- C. 72 Paid Vacations (Seafarers) Convention, 1946
- C. 73 Medical Examination (Seafarers) Convention, 1946
- C. 74 Certification of Able Seamen Convention, 1946
- C. 75 Accommodation of Crews Convention, 1946
- C. 76 Wages, Hours of Work and Manning (Sea) Convention, 1946

Twenty-ninth Session (Montreal) 1946

- C. 77 Medical Examination of Young Persons (Industry) Convention, 1946
- C. 78 Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946
- C. 79 Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946
- C. 80 Final Articles Revision Convention, 1946

Thirtieth Session (Geneva) 1947

- C. 81 Labour Inspection Convention, 1947 [and Protocol, 1995]
- C. 82 Social Policy (Non-Metropolitan Territories) Convention, 1947
- C. 83 Labour Standards (Non-Metropolitan Territories) Convention, 1947
- C. 84 Right of Association (Non-Metropolitan Territories) Convention, 1947
- C. 85 Labour Inspectorates (Non-Metropolitan Territories) Convention, 1947
- C. 86 Contracts of Employment (Indigenous Workers) Convention, 1947

Thirty-first Session (San Francisco) 1948

- C. 87 Freedom of Association and Protection of the Right to Organise Convention, 1948
- C. 88 Employment Service Convention, 1948
- C. 89 Night Work (Women) Convention (Revised), 1948 [and Protocol, 1990]
- C. 90 Night Work of Young Persons (Industry) Convention (Revised), 1948

Thirty-second Session (Geneva) 1949

- C. 91 Paid Vacations (Seafarers) Convention (Revised), 1949
- C. 92 Accommodation of Crews Convention (Revised), 1949
- C. 93 Wages, Hours of Work and Manning (Sea) Convention (Revised), 1949
- C. 94 Labour Clauses (Public Contracts) Convention, 1949
- C. 95 Protection of Wages Convention, 1949¹
- C. 96 Fee-Charging Employment Agencies Convention (Revised), 1949
- C. 97 Migration for Employment Convention (Revised), 1949
- C. 98 Right to Organize and Collective Bargaining Convention, 1949

Thirty-fourth Session (Geneva) 1951

- C. 99 Minimum Wage Fixing Machinery (Agriculture) Convention, 1951
- C. 100 Equal Remuneration Convention, 1951

Thirty-fifth Session (Geneva) 1952

- C. 101 Holidays with Pay (Agriculture) Convention, 1952
- C. 102 Social Security (Minimum Standards) Convention, 1952
- C. 103 Maternity Protection Convention (Revised), 1952

Thirty-eighth Session (Geneva) 1955

- C. 104 Abolition of Penal Sanctions (Indigenous Workers) Convention, 1955

Fortieth Session (Geneva) 1957

- C. 105 Abolition of Forced Labour Convention, 1957
- C. 106 Weekly Rest (Commerce and Offices) Convention, 1957
- C. 107 Indigenous and Tribal Populations Convention, 1957

Forty-first Session (Geneva) 1958

- C. 108 Seafarers' Identity Documents Convention, 1958
- C. 109 Wages, Hours of Work and Manning (Sea) Convention (Revised), 1958

Forty-second Session (Geneva) 1958

- C. 110 Plantations Convention, 1958 [and Protocol, 1982]
- C. 111 Discrimination (Employment and Occupation) Convention, 1958

Forty-third Session (Geneva) 1959

- C. 112 Minimum Age (Fishermen) Convention, 1959
- C. 113 Medical Examination (Fishermen) Convention, 1959
- C. 114 Fishermen's Articles of Agreement Convention, 1959

Forty-fourth Session (Geneva) 1960

- C. 115 Radiation Protection Convention, 1960

Forty-fifth Session (Geneva) 1961

- C. 116 Final Articles Revision Convention, 1961

Forty-sixth Session (Geneva) 1962

- C. 117 Social Policy (Basic Aims and Standards) Convention, 1962
- C. 118 Equality of Treatment (Social Security) Convention, 1962

Forty-seventh Session (Geneva) 1963

- C. 119 Guarding of Machinery Convention, 1963

Forty-eighth Session (Geneva) 1964

- C. 120 Hygiene (Commerce and Offices) Convention, 1964
- C. 121 Employment Injury Benefits Convention, 1964 [Schedule I amended in 1980]
- C. 122 Employment Policy Convention, 1964

Forty-ninth Session (Geneva) 1965

- C. 123 Minimum Age (Underground Work) Convention, 1965
- C. 124 Medical Examination of Young Persons (Underground Work) Convention, 1965

Fiftieth Session (Geneva) 1966

- C. 125 Fishermen's Competency Certificates Convention, 1966
- C. 126 Accommodation of Crews (Fishermen) Convention, 1966

Fifty-first Session (Geneva) 1967

- C. 127 Maximum Weight Convention, 1967
- C. 128 Invalidity, Old-Age and Survivors' Benefits Convention, 1967

Fifty-third Session (Geneva) 1969

- C. 129 Labour Inspection (Agriculture) Convention, 1969
- C. 130 Medical Care and Sickness Benefits Convention, 1969

Fifty-fourth Session (Geneva) 1970

- C. 131 Minimum Wage Fixing Convention, 1970
- C. 132 Holidays with Pay Convention (Revised), 1970

Fifty-fifth Session (Geneva) 1970

- C. 133 Accommodation of Crews (Supplementary Provisions) Convention, 1970
- C. 134 Prevention of Accidents (Seafarers) Convention, 1970

Fifty-sixth Session (Geneva) 1971

- C. 135 Workers' Representatives Convention, 1971
- C. 136 Benzene Convention, 1971

Fifty-eighth Session (Geneva) 1973

- C. 137 Dock Work Convention, 1973
- C. 138 Minimum Age Convention, 1973

Fifty-ninth Session (Geneva) 1974

- C. 139 Occupational Cancer Convention, 1974
- C. 140 Paid Educational Leave Convention, 1974

Sixtieth Session (Geneva) 1975

- C. 141 Rural Workers' Organizations Convention, 1975
- C. 142 Human Resources Development Convention, 1975
- C. 143 Migrant Workers (Supplementary Provisions) Convention, 1975

Sixty-first Session (Geneva) 1976

- C. 144 Tripartite Consultation (International Labour Standards) Convention, 1976

Sixty-second Session (Geneva) 1976

- C. 145 Continuity of Employment (Seafarers) Convention, 1976
- C. 146 Seafarers' Annual Leave with Pay Convention, 1976
- C. 147 Merchant Shipping (Minimum Standards) Convention, 1976 [and Protocol, 1996]

Sixty-third Session (Geneva) 1977

- C. 148 Working Environment (Air Pollution, Noise and Vibration) Convention, 1977
- C. 149 Nursing Personnel Convention, 1977

Sixty-fourth Session (Geneva) 1978

- C. 150 Labour Administration Convention, 1978
- C. 151 Labour Relations (Public Service) Convention, 1978

Sixty-fifth Session (Geneva) 1979

- C. 152 Occupational Safety and Health (Dock Work) Convention, 1979
- C. 153 Hours of Work and Rest Periods (Road Transport) Convention, 1979

Sixty-seventh Session (Geneva) 1981

- C. 154 Collective Bargaining Convention, 1981

- C. 155 Occupational Safety and Health Convention, 1981
- C. 156 Workers with Family Responsibilities Convention, 1981

Sixty-eighth Session (Geneva) 1982

- C. 157 Maintenance of Social Security Rights Convention, 1982
- C. 158 Termination of Employment Convention, 1982

Sixty-ninth Session (Geneva) 1983

- C. 159 Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983

Seventy-first Session (Geneva) 1985

- C. 160 Labour Statistics Convention, 1985
- C. 161 Occupational Health Services Convention, 1985

Seventy-second Session (Geneva) 1986

- C. 162 Asbestos Convention, 1986

Seventy-fourth Session (Geneva) 1987

- C. 163 Seafarers' Welfare Convention, 1987
- C. 164 Health Protection and Medical Care (Seafarers) Convention, 1987
- C. 165 Social Security (Seafarers) Convention (Revised), 1987
- C. 166 Repatriation of Seafarers Convention (Revised), 1987

Seventy-fifth Session (Geneva) 1988

- C. 167 Safety and Health in Construction Convention, 1988
- C. 168 Employment Promotion and Protection against Unemployment Convention, 1988

Seventy-sixth Session (Geneva) 1989

- C. 169 Indigenous and Tribal Peoples Convention, 1989

Seventy-seventh Session (Geneva) 1990

- C. 170 Chemicals Convention, 1990
- C. 171 Night Work Convention, 1990

Seventy-eighth Session (Geneva) 1991

- C. 172 Working Conditions (Hotels and Restaurants) Convention, 1991

Seventy-ninth Session (Geneva) 1992

- C. 173 Protection of Workers' Claims (Employer's Insolvency) Convention, 1992

Eightieth Session (Geneva) 1993

- C. 174 Prevention of Major Industrial Accidents Convention, 1993

Eighty-first Session (Geneva) 1994

- C. 175 Part-Time Work Convention, 1994

Eighty-second Session (Geneva) 1995

- C. 176 Safety and Health in Mines Convention, 1995

Eighty-third Session (Geneva) 1996

- C. 177 Home Work Convention, 1996

Eighty-fourth Session (Geneva) 1996

- C. 178 Labour Inspection (Seafarers) Convention, 1996
- C. 179 Recruitment and Placement of Seafarers Convention, 1996
- C. 180 Seafarers' Hours of Work and the Manning of Ships Convention, 1996

Eighty-fifth Session (Geneva) 1997

- C. 181 Private Employment Agencies Convention, 1997

Eighty-sixth Session (Geneva) 1998

- No Conventions were adopted at this session

Eighty-seventh Session (Geneva) 1999

- C. 182 Worst Forms of Child Labour Convention, 1999

Eighty-eighth Session (Geneva) 2000

- C. 183 Maternity Protection Convention, 2000

Eighty-ninth Session (Geneva) 2001

- C. 184 Safety and Health in Agriculture Convention, 2001

Appendix 2

Summary table on decisions taken regarding International Labour Conventions and Recommendations (GB.280/LILS/WP/PRS/1/2) (by subject matter)

Subject matter	Up-to-date instruments	Instruments to be revised	Outdated instruments	Requests for information	Other instruments
Basic human rights					
Freedom of association	C. 87 (Freedom of Association) C. 98 (Right to Organise and Collective Bargaining) C. 135 and R. 143 (Workers' Representatives) C. 141 and R. 149 (Rural Workers) C. 151 and R. 159 (Public Service)			C. 84 (Non-metropolitan Territories) C. 135 (Workers' Representatives) C. 141 (Rural Workers) C. 151 (Public Service)	C. 11 (Agriculture)
Forced labour	C. 29 (Forced Labour) and R. 35 (Indirect Compulsion) C. 105 (Abolition of Forced Labour)		R. 36 (Regulation of Forced Labour)		
Equality of opportunity and treatment	C. 100 and R. 90 (Equal Remuneration of Men and Women) C. 111 and R. 111 (Discrimination in Employment and Occupation) C. 156 and R. 165 (Workers with Family Responsibilities)		R. 123 (Women with Family Responsibilities)		

Subject matter	Up-to-date instruments	Instruments to be revised	Outdated instruments	Requests for information	Other instruments
Child labour	C. 138 and R. 146 (Minimum Age) C. 182 and R. 190 Worst Forms of Child Labour)				
Employment					
Employment policy	C. 122 and R. 122, R. 169 (Employment Policy) R. 189 (Small and Medium-sized Enterprises)		R. 1 (Unemployment) R. 11 (Agriculture) R. 45 (Young Persons) R. 50, R. 51, R. 73 (Public Works) C. 34 and R. 42 (Employment Agencies) R. 72 (Employment Service)	R. 71 (Transition from War to Peace)	C. 2 (Unemployment) R. 136 (Youth Schemes)
Employment services and fee-charging employment agencies	C. 181 and R. 188 (Private Employment Agencies)				C. 88 and R. 83 (Employment Service) C. 96 (Fee-charging Employment agencies)
Vocational guidance and training	C. 142 (Human Resources Development)	R. 150 (Human Resources Development)	R. 15 (Agriculture) R. 56 (Building) R. 57 (Vocational Training) R. 60 (Apprenticeship) R. 87 (Vocational Guidance) R. 88 (Adults) R. 101 (Agriculture) R. 117 (Vocational Training)		
Rehabilitation and employment of disabled persons	R. 99 (Vocational Rehabilitation) C. 159 and R. 168 (Vocational Rehabilitation and Employment)				
Employment security			R. 119 (Termination of Employment)	C. 158 (Termination of Employment)	

Subject matter	Up-to-date instruments	Instruments to be revised	Outdated instruments	Requests for information	Other instruments
Social policy		R. 127 (Cooperatives)		C. 82 (Non-metropolitan Territories)	C. 117 (Basic Aims and Standards)
Labour administration					
General	C. 150 and R. 158 (Labour Administration)				
Labour inspection	C. 81 and R. 81 (Industry and Commerce) R.82 (Mining and Transport) P. 81 (Non-commercial Services)	R. 5 (Health Services) R. 54 (Building) R. 59 (Indigenous Workers)		C. 85 (Non-metropolitan Territories)	R. 20 (Inspection)
Statistics	C. 129 and R. 133 (Agriculture)		C. 63 (Statistics of Wages and Hours of Work)	R. 19 (Migration Statistics)	
Tripartite consultation	C. 144 and R. 152 (Tripartite Consultation)				
Industrial relations					
	R. 91 (Collective Agreements) C. 154 and R. 163 (Collective Bargaining) R. 113 (Consultation)			C. 154 (Collective Bargaining) R. 92 (Voluntary Conciliation) R. 94 (Cooperation at the Level of the Undertaking) R. 129 (Communication) R. 130 (Grievances)	

Subject matter	Up-to-date instruments	Instruments to be revised	Outdated instruments	Requests for information	Other instruments
Conditions of work					
Wages	C. 131 and R. 135 (Minimum Wage Fixing) C. 95 and R. 85 (Protection of Wages) C. 173 and R. 180 (Employers' Insolvency) C. 94 and R. 84 (Labour Clauses, Public Contracts)	C. 43 (Sheet-glass Works) C. 49 (Glass-bottle Works) C. 153 and R. 161 (Road Transport)	C. 31 (Coal Mines) C. 43 (Sheet-glass Works) C. 46 (Coal Mines) C. 49 (Glass-bottle Works) C. 51 (Public Works) C. 61 (Textiles) C. 67, R. 63, R. 64, R. 65, R. 66 (Road Transport) R. 37 (Hotels, etc.) R. 38 (Theatres, etc.) R. 39 (Hospitals, etc.) C. 20 (Bakeries) R. 18 (Commerce)	C. 131 (Minimum Wage Fixing)	C. 26 and R. 30 (Minimum Wage-Fixing Machinery, Industry and Commerce) C. 99 and R. 89 (Minimum Wage-Fixing Machinery, Agriculture)
Hours of work	R. 116 (Reduction of Hours of Work)			C. 1 (Industry) C. 30 (Commerce and Offices)	C. 47 (Forty-Hour Week)
Night work	C. 171 and R. 178 (Night Work)				
Weekly rest	C. 14 (Industry) C. 106 and R. 103 (Commerce and Offices)				
Paid leave	C. 140 (Paid Educational Leave)		C. 52 and R. 47 (Industry and Commerce) C. 101 and R. 93 (Agriculture)	C. 140 (Paid Educational Leave)	C. 132 (Holidays with Pay) R. 98 (Holidays with Pay)

Subject matter	Up-to-date instruments	Instruments to be revised	Outdated instruments	Requests for information	Other instruments
Part-time work	C. 175 and R. 182 (Part-time Work)				
Home work	C. 177 and R. 184 (Home Work)				
Occupational safety and health					
General	C. 155 and R. 164 (Occupational Safety and Health) C. 161 and R. 171 (Occupational Health Services) C. 174 and R. 181 (Major Industrial Accidents) C. 176 and R. 183 (Mines) R. 97 (Protection of Health)		R. 112 (Occupational Health Services)	C. 155 (Occupational Safety and Health)	R. 31 (Prevention of Industrial Accidents)
Toxic substances and agents	C. 115 and R. 114 (Radiation) C. 139 and R. 147 (Occupational Cancer) C. 162 and R. 172 (Asbestos) C. 170 and R. 177 (Chemicals)	C. 13 (White Lead) C. 136 and R. 144 (Benzene) R. 3 (Anthrax) R. 4 (Lead poisoning) R. 6 (White phosphorus)		C. 115 (Radiation) C. 139 (Occupational Cancer)	
Machinery		C. 119 and R. 118 (Guarding of machinery)	R. 32 (Power-Driven Machinery)		
Maximum weight		C. 127 and R. 128 (Maximum weight)			

Subject matter	Up-to-date instruments	Instruments to be revised	Outdated instruments	Requests for information	Other instruments
Air pollution, noise and vibration	C. 148 and R. 156 (Air Pollution Noise and Vibration)			C. 148 (Air Pollution Noise and Vibration)	
Building industry	C. 167 and R. 175 (Construction)		C. 62 and R. 53 (Safety Provisions) R. 55 (Accident Prevention)		
Commerce and offices	C. 120 and R. 120 (Hygiene)				
Social services, housing and leisure	R. 102 (Welfare) R. 115 (Housing)		R. 16 (Living-in Conditions, Agriculture) R. 21 (Spare Time)		
Social security					
Comprehensive standards	C. 102 (Minimum Standards) C. 118 (Equality of Treatment) C. 157 and R. 167 (Maintenance of Rights) R. 67 (Income Security)			C. 102 (Minimum Standards) C. 118 (Equality of Treatment) C. 157 and R. 167 (Maintenance of Rights)	C. 19 (Equality of Treatment, Accident Compensation) R. 17 (Social Insurance, Agriculture) R. 68 (Armed Forces)
Medical care and sickness benefits	C. 130 and R. 134 (Medical Care and Sickness Benefits)		C. 24 (Industry) C. 25 (Agriculture) R. 29 (Sickness Insurance)	C. 130 and R. 134 (Medical Care and Sickness Benefits)	R. 69 (Medical Care)
Old-age, invalidity and survivors' benefits	C. 128 and R. 131 (Invalidity Old-Age and Survivors' Benefits)		C. 35, C. 36 (Old-age Insurance) C. 37, C. 38 (Invalidity Insurance) C. 39, C. 40 (Survivors Insurance)	C. 128 and R. 131 (Invalidity, Old-Age and Survivors' Benefits)	

Subject matter	Up-to-date instruments	Instruments to be revised	Outdated instruments	Requests for information	Other instruments
Old-age, invalidity and survivors' benefits			R. 43 (Invalidity, Old-Age and Survivors' Insurance) C. 48 (Maintenance of Migrants' Pension Rights)		
Employment injury benefit	C. 121 and R. 121 (Employment Injury Benefits)		C. 17 (Workmen's Compensation Accidents) R. 22 (Workmen's Compensation, Minimum Scale) R. 23 (Workmen's Compensation, Jurisdiction) C. 18, C. 42 (Workmen's Compensation, Occupational Diseases) R. 24 (Occupational Diseases) C. 44 and R. 44 (Unemployment)	C. 121 (Employment Injury Benefits)	C. 12 (Workmen's compensation, Agriculture) R. 25 (Equality of Treatment, Accident Compensation)
Unemployment benefits	C. 168 and R. 176 (Employment Promotion and Protection Against Unemployment)				
Maternity benefit	C. 183 and R. 191 (Maternity Protection)		R. 12 (Agriculture)		C. 3, C. 103 and R. 95 (Maternity Protection)
Employment of women Night work				C. 4, C. 41, C. 89, P. 89 (Night Work, Women) R. 13 (Agriculture)	
Underground work					C. 45 (Underground Work, Women)

Subject matter	Up-to-date instruments	Instruments to be revised	Outdated instruments	Requests for information	Other instruments
Employment of children and young persons					
Minimum age			C. 5 and C. 59 (Industry) C. 10 (Agriculture) C. 33, C. 60 (Non-industrial Employment) C. 123 and R. 124 (Underground Work) R. 96 (Coal Mines)		R. 41 (Non-Industrial Employment) R. 52 (Family Undertakings)
Night work		C. 6, C. 90 (Industry) C. 79 and R. 80 (Non-industrial Occupations) R. 14 (Agriculture)			
Medical examination	C. 77 (Industry) C. 78 (Non-Industrial Occupations) R. 79 (Young Persons) C. 124 (Underground Work) R. 125 (Conditions of Employment of Young Persons, Underground Work)			C. 77 (Industry) C. 78 (Non-Industrial Occupations) R. 79 (Young Persons) C. 124 (Underground Work) R. 125 (Conditions of Employment of Young Persons, Underground Work)	
Older workers					R. 162 (Older Workers)
Migrant workers			C. 21 (Inspection of Emigrants on Board Ships) C. 66 and R. 61 (Migration for Employment)		C. 97 and R. 86, C. 143 and R. 151 (Migrant Workers) R. 100 (Underdeveloped Countries)

Subject matter	Up-to-date instruments	Instruments to be revised	Outdated instruments	Requests for information	Other instruments
Migrant workers (<i>continued</i>)			R. 62 (Cooperation between States) R. 2 (Reciprocity) R. 26 (Protection of Females)		
Indigenous and tribal peoples, indigenous workers in non-metropolitan territories			C. 50 and R. 46 (Recruitment) C. 64 and R. 58, C. 86 (Contracts of Employment) C. 65, C. 104 (Penal Sanctions)	C. 83 (Labour Standards)	
Workers in non-metropolitan territories					
Indigenous and tribal peoples	C. 169 (Indigenous and Tribal Peoples) R. 104 (Indigenous and Tribal Populations)		R. 70 and R. 74 (Social Policy) C. 107 (Indigenous and Tribal Populations)		
Seafarers					
General	C. 108 (Identity Documents) C. 145 and R. 154 (Continuity of Employment) C. 147, P. 147 and R. 155 (Minimum Standards)			C. 145 (Continuity of Employment) R. 139 (Employment, Technical Developments)	R. 9 (National Seamen's Codes) R. 107 (Seafarers' engagement – Foreign Vessels) R. 108 (Social Conditions and Safety)

Subject matter	Up-to-date instruments	Instruments to be revised	Outdated instruments	Requests for information	Other instruments
Training and entry into employment	C. 179 and R. 186 (Recruitment and Placement)	C. 22 (Articles of Agreement)	C. 9 (Placing) R. 77 (Vocational Training)	R. 137 (Vocational Training)	
Conditions for admission to employment		C. 16 (Medical Examination of Young Persons) C. 73 (Medical Examination, Seafarers)	C. 7 (Minimum age, Sea) C. 15 (Minimum Age, Trimmers and Stokers)		C. 58 (Minimum Age, Sea)
Certificate of competency		C. 69 (Ships' Cooks) C. 74 (Certification of Able Seamen)			C. 53 (Officers)
General conditions of employment	C. 146 (Annual Leave with Pay) R. 153 (Young Seafarers) C. 166 and R. 174 (Repatriation) C. 180 (Hours of Work and Manning) R. 187 (Wages, Hours of Work and Manning)		C. 23, R. 27 (Repatriation) C. 54, C. 72, C. 91 (Holidays with Pay) C. 57 and R. 49 (Hours of Work and Manning) C. 76, C. 93, C. 109 and R. 109 (Wages, Hours of Work and Manning)	C. 146 (Annual Leave with Pay)	
Safety, health and welfare	C. 163 and R. 173 (Welfare) C. 164 (Health Protection and Medical Care)	C. 68 (Food and Catering) C. 134 (Prevention of Accidents)	C. 75 (Accommodation) R. 48 (Welfare in Ports) R. 105 (Medicine Chests) R. 106 (Medical Advice) R. 138 (Welfare)	R. 78 (Bedding, Mess Utensils) R. 142 (Prevention of Accidents)	C. 92 and C. 133 (Accommodation) R. 140, R. 141 (Accommodation)
Social security	C. 165 (Social security – Seafarers)				
Labour inspection	C. 178 and R. 185 (Inspection of Working and Living Conditions)		R. 28 (General Principles)		

Subject matter	Up-to-date instruments	Instruments to be revised	Outdated instruments	Requests for information	Other instruments
Fishermen		<p>C. 113 (Medical Examination)</p> <p>C. 114 (Articles of Agreement)</p> <p>C. 125 (Competency Certificates)</p> <p>R. 126 (Vocational Training)</p>	C. 112 (Minimum Age)	C. 126 (Accommodation)	R. 7 (Hours of Work)
Inland navigation				R. 8 (Hours of Work)	
Dockworkers	C. 152 and R. 160 (Occupational Safety and Health)	C. 27 (Marking of Weight)	C. 28 (Protection against Accidents), R. 33 (Reciprocity) and R. 34 (Consultation of Organizations)	C. 137 and R. 145 (Dock Work)	C. 137 and R. 145 (Dock Work)
Plantations	C. 110, P. 110 and R. 110 (Plantations)				
Tenants and sharecroppers	R. 132 (Tenants and Sharecroppers)				
Nursing personnel	C. 149 and R. 157 (Nursing Personnel)			C. 149 and R. 157 (Nursing Personnel)	

Subject matter	Up-to-date instruments	Instruments to be revised	Outdated instruments	Requests for information	Other instruments
Hotels and restaurants					
	C. 172 and R. 179 (Working Conditions)				
Total	70 Conventions, 3 Protocols, 70 Recommendations	21 Conventions, 12 Recommendations	55 Conventions, 67 Recommendations	34 Conventions, 1 Protocol, 19 Recommendations	21 Conventions, 25 Recommendations

Appendix 3

Substantive provisions of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)

Date of adoption: 21:06:1976
Date of coming into force: 16:05:1978

The General Conference of the International Labour Organisation,
Having been convened at Geneva by the Governing Body of the International Labour Office,
and having met in its Sixty-first Session on 2 June 1976, and
Recalling the terms of existing international labour Conventions and Recommendations – in
particular the Freedom of Association and Protection of the Right to Organise Convention,
1948, the Right to Organise and Collective Bargaining Convention, 1949, and the Consul-
tation (Industrial and National Levels) Recommendation, 1960 – which affirm the right of
employers and workers to establish free and independent organisations and call for mea-
sures to promote effective consultation at the national level between public authorities and
employers’ and workers’ organisations, as well as the provisions of numerous international
labour Conventions and Recommendations which provide for the consultation of employ-
ers’ and workers’ organisations on measures to give effect thereto, and
Having considered the fourth item on the agenda of the session which is entitled “Establish-
ment of tripartite machinery to promote the implementation of international labour stan-
dards”, and having decided upon the adoption of certain proposals concerning tripartite
consultation to promote the implementation of international labour standards, and
Having determined that these proposals shall take the form of an international Convention,
adopts the twenty-first day of June of the year one thousand nine hundred and seventy-six, the
following Convention, which may be cited as the Tripartite Consultation (International
Labour Standards) Convention, 1976:

Article 1

In this Convention the term “representative organisations” means the most representative
organisations of employers and workers enjoying the right of freedom of association.

Article 2

1. Each Member of the International Labour Organisation which ratifies this Con-
vention undertakes to operate procedures which ensure effective consultations, with respect
to the matters concerning the activities of the International Labour Organisation set out in
Article 5, paragraph 1, below, between representatives of the government, of employers and
of workers.

2. The nature and form of the procedures provided for in paragraph 1 of this Article shall
be determined in each country in accordance with national practice, after consultation with the

representative organisations, where such organisations exist and such procedures have not yet been established.

Article 3

1. The representatives of employers and workers for the purposes of the procedures provided for in this Convention shall be freely chosen by their representative organisations, where such organisations exist.

2. Employers and workers shall be represented on an equal footing on any bodies through which consultations are undertaken.

Article 4

1. The competent authority shall assume responsibility for the administrative support of the procedures provided for in this Convention.

2. Appropriate arrangements shall be made between the competent authority and the representative organisations, where such organisations exist, for the financing of any necessary training of participants in these procedures.

Article 5

1. The purpose of the procedures provided for in this Convention shall be consultations on –

- (a) government replies to questionnaires concerning items on the agenda of the International Labour Conference and government comments on proposed texts to be discussed by the Conference;
- (b) the proposals to be made to the competent authority or authorities in connection with the submission of Conventions and Recommendations pursuant to article 19 of the Constitution of the International Labour Organisation;
- (c) the re-examination at appropriate intervals of unratified Conventions and of Recommendations to which effect has not yet been given, to consider what measures might be taken to promote their implementation and ratification as appropriate;
- (d) questions arising out of reports to be made to the International Labour Office under article 22 of the Constitution of the International Labour Organisation;
- (e) proposals for the denunciation of ratified Conventions.

2. In order to ensure adequate consideration of the matters referred to in paragraph 1 of this Article, consultation shall be undertaken at appropriate intervals fixed by agreement, but at least once a year.

Article 6

When this is considered appropriate after consultation with the representative organisations, where such organisations exist, the competent authority shall issue an annual report on the working of the procedures provided for in this Convention.

...

Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152)

Date of adoption: 21.06.1976

The General Conference of the International Labour Organisation, Having been convened at Geneva by the Governing Body of the International Labour Office, and having met in its Sixty-first Session on 2 June 1976, and

Recalling the terms of existing international labour Conventions and Recommendations – in particular the Freedom of Association and Protection of the Right to Organise Convention, 1948, the Right to Organise and Collective Bargaining Convention, 1949, and the Consultation (Industrial and National Levels) Recommendation, 1960 – which affirm the right of employers and workers to establish free and independent organisations and call for measures to promote effective consultation at the national level between public authorities and employers' and workers' organisations, as well as the provisions of numerous international labour Conventions and Recommendations which provide for the consultation of employers' and workers' organisations on measures to give effect thereto, and

Having considered the fourth item on the agenda of the session which is entitled "Establishment of tripartite machinery to promote the implementation of international labour standards, and having decided upon the adoption of certain proposals concerning tripartite consultations to promote the implementation of international labour standards and national action relating to the activities of the International Labour Organisation, and

Having determined that these proposals shall take the form of a Recommendation, adopts this twenty-first day of June of the year one thousand nine hundred seventy-six, the following Recommendation, which may be cited as the Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976:

1. In this Recommendation the term "representative organisations" means the most representative organisations of employers and workers enjoying the right of freedom of association.

2. (1) Each Member of the International Labour Organisation should operate procedures which ensure effective consultations with respect to matters concerning the activities of the International Labour Organisation, in accordance with Paragraphs 5 to 7 of this Recommendation, between representatives of the government, of employers and of workers.

(2) The nature and form of the procedures provided for in subparagraph (1) of this Paragraph should be determined in each country in accordance with national practice, after consultation with the representative organisations where such procedures have not yet been established.

(3) For instance, consultations may be undertaken –

- (a) through a committee specifically constituted for questions concerning the activities of the International Labour Organisation;
- (b) through a body with general competence in the economic, social or labour field;
- (c) through a number of bodies with special responsibility for particular subject areas; or
- (d) through written communications, where those involved in the consultative procedures are agreed that such communications are appropriate and sufficient.

3. (1) The representatives of employers and workers for the purposes of the procedures provided for in this Recommendation should be freely chosen by their representative organisations.

(2) Employers and workers should be represented on an equal footing on any bodies through which consultations are undertaken.

(3) Measures should be taken, in co-operation with the employers' and workers' organisations concerned, to make available appropriate training to enable participants in the procedures to perform their functions effectively.

4. The competent authority should assume responsibility for the administrative support and financing of the procedures provided for in this Recommendation, including the financing of training programmes where necessary.

5. The purpose of the procedures provided for in this Recommendation should be consultations –

- (a) on government replies to questionnaires concerning items on the agenda of the International Labour Conference and government comments on proposed texts to be discussed by the Conference;
- (b) on the proposals to be made to the competent authority or authorities in connection with the submission of Conventions and Recommendations pursuant to article 19 of the Constitution of the International Labour Organisation;
- (c) subject to national practice, on the preparation and implementation of legislative or other measures to give effect to international labour Conventions and Recommendations, in particular to ratified Conventions (including measures for the implementation of provisions concerning the consultation or collaboration of employers' and workers' representatives);
- (d) on the re-examination at appropriate intervals of unratified Conventions and of Recommendations to which effect has not yet been given, to consider what measures might be taken to promote their implementation and ratification as appropriate;
- (e) on questions arising out of reports to be made to the International Labour Office under articles 19 and 22 of the Constitution of the International Labour Organisation;
- (f) on proposals for the denunciation of ratified Conventions.

6. The competent authority, after consultation with the representative organisations, should determine the extent to which these procedures should be used for the purpose of consultations on other matters of mutual concern, such as –

- (a) the preparation, implementation and evaluation of technical co-operation activities in which the International Labour Organisation participates;
- (b) the action to be taken in respect of resolutions and other conclusions adopted by the International Labour Conference, regional conferences, industrial committees and other meetings convened by the International Labour Organisation;
- (c) the promotion of a better knowledge of the activities of the International Labour Organisation as an element for use in economic and social policies and programmes.

7. In order to ensure adequate consideration of the matters referred to in the preceding Paragraphs, consultations should be undertaken at appropriate intervals fixed by agreement, but at least once a year.

8. Measures appropriate to national conditions and practice should be taken to ensure co-ordination between the procedures provided for in this Recommendation and the activities of national bodies dealing with analogous questions.

9. When this is considered appropriate after consultation with the representative organisations, the competent authority should issue an annual report on the working of the procedures provided for in this Recommendation.

Appendix 4

ILS-related rules/regulations of particular relevance to employers' and workers' organizations

ILO Constitution

Article 3

1. The meetings of the General Conference of representatives of the Members shall be held from time to time as occasion may require, and at least once in every year. It shall be composed of four representatives of each of the Members, of whom two shall be Government delegates and the two others shall be delegates representing respectively the employers and the workpeople of each of the Members.

...

5. The Members undertake to nominate non-Government delegates and advisers chosen in agreement with the industrial organizations, if such organizations exist, which are most representative of employers or workpeople, as the case may be, in their respective countries. ...

Article 14

1. The agenda for all meetings of the Conference will be settled by the Governing Body, which shall consider any suggestion as to the agenda that may be made by the government of any of the Members or by any representative organization recognized for the purpose of article 3, or by any public international organization.

...

Article 23

...

2. Each Member shall communicate to the representative organizations recognized for the purpose of article 3 copies of the information and reports communicated to the Director-General in pursuance of articles 19 and 22.

Article 24

In the event of any representation being made to the International Labour Office by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party, the Governing Body may communicate this representation to the government against which it is made, and may invite that government to make such statement on the subject as it may think fit.

Standing Orders of the International Labour Conference

ARTICLE 39

Preparatory stages of double-discussion procedure

1. When a question is governed by the double-discussion procedure, the International Labour Office shall prepare as soon as possible a preliminary report setting out the law and practice in the different countries and any other useful information, together with a questionnaire. The report and the questionnaire requesting the governments to consult the most representative organisations of employers and workers before finalizing their replies and to give reasons for their replies shall be communicated by the Office to the governments so as to reach them not less than 18 months before the opening of the session of the Conference at which the question is to be discussed. ...

6. On the basis of the replies received to the questionnaire referred to in paragraph 1 and on the basis of the first discussion by the Conference, the Office may prepare one or more Conventions or Recommendations and communicate them to the governments so as to reach them not later than two months from the closing of the session of the Conference, asking them to state within three months, after consulting the most representative organisations of employers and workers, whether they have any amendments to suggest or comments to make.

Appendix 5

Sample of the letter sent yearly by the Office to the national employers' and workers' organizations regarding their role in the implementation of ILS

March,

Dear Madam/Sir,

As a Member of the International Labour Organization, your country is required under the Constitution of the ILO to fulfil certain obligations relating to Conventions, Recommendations and Protocols adopted by the International Labour Conference.

In this context, within a period of 12 or exceptionally 18 months from the end of each session of the Conference, your Government has to submit the instruments adopted at that session to the authority or authorities within whose competence the matter covered by these instruments lies, for the enactment of legislation or other action. It must inform the International Labour Office of the measures taken to this end.

In addition, your Government is called upon to supply regular reports to the ILO on the application of ILO Conventions ratified by your country. Member States also have to report to the ILO each year on national legislation and practice relating to matters dealt with in certain Conventions and Protocols that may not have been ratified and in Recommendations, as designated by the Governing Body of the ILO. The reports requested this year in this respect concern the _____ Convention (No. —) and _____ Recommendation (No. —), — (year of adoption). Your Government should, therefore, supply a report on these instruments by 30 April (of the following year), at the latest.

The ILO Constitution further requires the governments of member States to communicate copies of the information and reports described above to the representative organizations of employers and workers in their countries. The organizations of employers and workers concerned may make observations on the subject-matter of these reports and on compliance with the various obligations relating to ILO Conventions. Thus, national employers' and workers' organizations participate actively in the implementation of international labour standards. Organizations usually address their observations directly to the Government so that it may communicate them to the ILO with any comments it wishes to make. Such observations may also be sent directly to the ILO, in which case the Office communicates them to the Government concerned for comment.

The Committee of Experts on the Application of Conventions and Recommendations in November/December (of the same year) will examine the reports and information supplied by governments, together with any observations on them received by the ILO from organizations of employers and workers. The tripartite Conference Committee on the Application of Standards will itself examine the report of that Committee at the session of the International Labour Conference in June (of the the following year).

In order to give effect to suggestions, particularly those made by the tripartite Conference Committee on the Application of Standards, the Office has taken various measures to foster the participation of employers' and workers' organizations in the implementation of ILO standards. In accordance with such measures, I am now sending:

- a list of Conventions ratified by your country on which detailed or simplified reports should be supplied by your Government to the ILO between 1 June and 1 September (of the same year), together with any comments made by the Committee of Experts which require a reply from your Government (**Appendices I, II, III and IV**);
- a request form to be filled out should you wish to receive a copy of the report form for any Convention on which a report has been requested this year (**Appendix V**); these forms are also available on the ILO website: www.ilo.org/public/english/standards/norm/sources/reptforms/index.htm
- an extract from the report of the latest session of the Committee of Experts on the Application of Conventions and Recommendations regarding the role of employers' and workers' organizations in the supervisory process and the observations submitted by those organizations (**Appendix VI**);
- the report form concerning the —— Convention (No. ——) and —— Recommendation (No. ——), —— (year of adoption), on which the Governing Body has requested governments to supply a report this year under article 19 of the Constitution (**Appendix VII**);
- a second series of comments made by the Committee of Experts which were communicated to governments for information purposes only, and to enable them to consider any measures they deem appropriate; replies to these comments should only be sent when detailed reports are requested by the Office on the Conventions concerned (**Appendix VIII**).

I would be pleased to send any further information you may require concerning ILO standards, as well as additional copies of any documents you may wish. I hope that the enclosed documentation will be of interest and of use to your Organization.

Yours faithfully,
For the Director-General:

Director of the International
Labour Standards Department

Appendix 6

**“More targeted standards for a greater impact”,
excerpt from *The ILO, standard setting and
globalization*, Report of the Director-General,
International Labour Conference,
85th Session, Geneva 1997**

...

A. A MORE TARGETED CHOICE OF SUBJECTS

The ILO Constitution wisely provided, under article 14(2), that the Governing Body should undertake the necessary steps “to ensure thorough technical preparation and adequate consultation of the Members primarily concerned, by means of a preparatory conference or otherwise, prior to the adoption of a Convention or Recommendation by the Conference”.

The aim of this provision was that future standards should be commensurate with real needs so as to have real impact. Today, now that the ILO membership has grown so much and the Organization is involved in so many areas, this task is just as indispensable but has become increasingly difficult to fulfil. Recent experience has shown that the difficulties and vicissitudes inherent in the subject have not always been gauged before embarking irreversibly upon the drafting of standards. To try and overcome these difficulties and comply with the objective in the Constitution, we should examine three possible additional approaches: extending the range of choices; applying more strictly the selection criteria to assess better the “added value” that a new standard might bring; and adopting a more rational procedure.

1. Extending the range of choices

Under article 10 of the Constitution, it is the Office’s task to examine the subjects which it is proposed to bring before the Conference with a view to the conclusion of international instruments.¹⁸ The Office’s Report, intended to allow the Governing Body to take a decision on the choice of subjects, must be based on the widest possible information concerning national law and practice. This information should also include the provisions adopted by regional institutions (NAFTA, MERCOSUR, European Union, etc.) in the areas under consideration, provided that they have an impact on the law or practice of their members.

At present, the studies of the Office are carried out on the basis of information available at headquarters. It may sometimes be necessary to call meetings of experts on the subject. For instance, the decision to include on the Conference agenda the issue of the protection of workers in the event of their employer’s insolvency was preceded by a meeting of experts, which produced a report allowing the Governing Body to take a decision in full knowledge of the issues involved. In the case of child labour, the information contained in the document submitted to the Governing Body was gathered from studies and research carried out by the competent

technical service or contained in reports sent by governments in application of United Nations instruments.

The fact remains, however, that the choice of new standards is usually centralized and carried out in a rather random way. A better solution would be to be able to mobilize more effectively all the constituents, so that we obtain wider information on what they feel to be their real needs. Although this institutional approach is supposed to exist, this is mostly in theory.¹⁹ A more viable solution might be to make more active use of the Office's decentralized structures and direct contacts with the tripartite constituents.

The external offices and the multidisciplinary teams should therefore make every effort to consult the people they normally deal with on the issues that might be included in the "portfolio" of future standards, whether or not these have been proposed by the technical services (including matters concerning the revision of older instruments). The regional offices might also, as appropriate, raise the question in pertinent regional bodies (meetings of ministers of labour, regional meetings, employers' and workers' organizations' congresses, etc.) and communicate the reactions and proposals voiced. All this information would help the Governing Body have greater insight into the issues involved and a clearer idea on the impact an instrument might have in the area under consideration, or the ratification prospects of a possible Convention.

Many of the preceding ideas have already been examined by the Committee on Legal Issues and International Labour Standards of the Governing Body, as part of a proposal to establish a regularly updated "portfolio" of proposals. This would allow the Governing Body to have a wider overall view of possibilities of action when called upon to select agenda items for the Conference submitted with a view to the adoption of standards. It would enable the Governing Body to make strategic choices rather than opting for a subject which is neither ready nor acceptable to anyone – a situation bound to lead to disagreement and frustrations during discussions at the Conference and disappointment at the ratification stage.

2. Applying selection criteria more strictly: Looking for standards with the highest "added value"

In the past, it was asked whether it might not be better to proceed in a more systematic way and to choose subjects in the light of a number of objective criteria. In the course of the first in-depth review on standards, it was suggested to select several criteria to guide the choice of items, such as the number of workers affected, the extent to which the subject would affect workers in the lower economic stratum, and the severity of the problem.²⁰ These criteria are obviously useful and the Office suggests using them to establish a "portfolio" as just mentioned; but they also have their limits and some useful instruments would perhaps never have seen the light of day if these criteria had been mechanically applied. They therefore need to be given different weights, but such a system might be to the detriment of their apparently straightforward application.

In fact, there is a more general criterion which could be universally applied. This would consist of evaluating, in the case of each subject envisaged for standard setting, the extent to which a new standard might add a lasting *qualitative input* to the instruments already existing both inside and outside the Organization and gauging whether the subject really lends itself to standards worthy of this name. To illustrate the problems that need to be addressed in the elaboration of new standards, I shall refer to three fundamental sets of alternatives: the suitability of a particular area to become the subject of obligations, rather than of mere guidelines of a political or moral nature; the added value of having overlapping instruments or a whole series of them in the same area, as opposed to that of consolidating those instruments; and the added value obtained from an accumulation of protective provisions as compared with provisions that rely on general principles of responsibility.

(a) Subjects that lend themselves to standard setting

As its standard-setting activities are quite rightly considered to be the pride of the ILO, there is a great temptation to draft a standard on any subject which seems at a given moment to call for action from the Organization. This approach would imply that as soon as any labour issue gains any international significance whatsoever, it should be made the object of a standard so as to acknowledge its importance. There is a tendency to confuse law and principles of good conduct. This attitude is even more surprising in that the idea of supplementing the formal standard-setting process by use of a sort of “soft law” has met with strong resistance. However, it is not by including in traditional instruments provisions which merely state noble principles, which few would contest, that these instruments assume the mantle of true legal standards – in other words precise stipulations whose application in practice lends itself to being monitored. Indeed, provisions of the first kind cannot be the object of specific legal texts or regulations; they can be merely reflected in policies or statements and, consequently, their impact is difficult to assess. Of course, this particularly holds true for Conventions concerning economic and social policy.²¹ But it might also start applying to more traditional fields of action, such as living and working conditions. Confronted with the myriad existing situations and solutions, the temptation is great indeed to prescribe merely the adoption of “national policies” as a means to meet goals defined in such a general way that they leave scope for complete freedom of action – or create confusion about how they may be accomplished. This obviously does not imply that ILO instruments must refrain from giving general policy guidelines. It only means that such guidelines, especially when they are intended for Conventions, should be drafted in sufficiently specific terms to be able to give rise to rights and obligations worthy of the name. Failing this, they should be included in Recommendations – accompanied by a follow-up mechanism to which I shall refer later – or in other non-binding instruments.

In a similar vein, the increasingly rapid changes in the world of work and the emergence of atypical trends raises the whole problem of deciding, for the purposes of standard setting, when these trends stop becoming atypical and require regulation that has a reasonable chance of being effective. Trying to strike a strategic balance must take into account the inevitable interaction between regulations and the ingenuity of the social actors to get around them. Standard setting should not exhaust itself uselessly by pursuing subjects of a more or less ephemeral nature. It is better to wait until there has been a reasonable opportunity to understand the many diverse forms such subjects may take so that the regulations may be sufficiently global, lasting and effective. Here too, it would be more prudent, when dealing with these trends, to opt first for the solution of Recommendations.

(b) Overlapping or consolidation of instruments?

Anyone casually reading through the index of the compendium of Conventions and Recommendations could not fail to have the impression that there is a proliferation of subjects and many variations on the same theme. The same subject may be treated within a particular sector or on a more general level. This situation may be attributed to the very nature of the standard-setting system and historic circumstances which have meant that sometimes it was necessary: to deal with a specific problem when it arose before drafting an instrument of a more general scope; at times to circumvent obstacles created by a general instrument by means of sectoral instruments; and at other times to supplement a general instrument by more specific standards. Taking the area of occupational safety and health as an example, it may be seen that since the beginning of the 1960s the ILO has adopted standards concerning specific hazards (radiation in 1960, benzene in 1971, occupational cancer in 1974), a general instrument on the working environment (air pollution, noise and vibration in 1977) and an even more general instrument on occupational safety and health in 1981, before turning once again to specific subjects (asbestos in 1986, construction in 1988, chemicals in 1990 and mines in 1995). All these instruments

respond to specific needs and also require specific provisions. It is obvious, however, that they all have a common approach and contain a large number of provisions which are similar if not identical.

Apart from the fact that this fragmentation accounts for the low rate of ratification of each of these instruments (although, there is a relatively regular flow of ratifications for the occupational safety and health sector as a whole) an overlapping of this nature runs a double risk: that of more or less accidental differences or even contradictions, and a dilution of the impact of the provisions that are common to all the instruments. Similar problems arise in the case of instruments devoted to special categories of workers who are not covered by legal instruments – or only inadequately. In a well-intentioned attempt to provide these categories of workers with overall protection when they are not already covered by general instruments, provisions are reformulated at the risk of curtailing or even denying the entitlements that they do have. Although the Office's task is, at various stages during the preparation of the text, to draw attention to links with other instruments, there is unfortunately no absolute guarantee that the final result will be consistent.

Putting this state of affairs to rights is obviously not easy. Whenever there is already an instrument of general scope, as in the case of occupational safety and health, it might be better, rather than drafting a completely new Convention, to adopt a protocol which would refer to the relevant provisions of the main Convention and be open to ratification even to those countries not having ratified the main Convention itself. A "standard formula" should also be drawn up to define the relationship between specific instruments and the general instruments covering the same sector or the same workers. I shall return to this later in the annex when referring to my proposal for establishing a "code of good drafting practices". These improvements would not, however, resolve the problem arising from the overlapping of already existing instruments. The consolidation of existing instruments is an extremely complex undertaking and has been raised during discussions of the Working Party on Policy regarding the Revision of Standards;²² but it goes beyond the scope of this Report.

In view of the difficulties involved in making any official consolidation of standards and the time required to do so, we could perhaps adopt another solution which, although ambitious, could be very useful and much quicker to implement. This would be to embark once again – but in a different and more concise way – upon the unofficial "codification" started by the Office under its sole responsibility just before the Second World War, and which bore fruit in 1951 in the *International Labour Code*. Without affecting in any way existing instruments or obligations ensuing from these instruments, such a code could give a more coherent summary, by distinguishing between general principles applicable to all workers and standards truly specific to certain sectors or categories of workers. An exercise of this nature would no doubt require considerable resources; but it would allow the ILO, and its standard-setting machinery, to make a dazzling entrance into the third millennium. Depending upon the quality of the result, nothing would prevent the Conference from making it more official by "promulgating" it as a sort of recommendation of general scope.

(c) *Accumulation of protective provisions or referral to regulations relying on principles of responsibility?*

The decision of whether to accumulate standards or to consolidate them is further complicated by having to decide between the accumulation of protective provisions and reliance on principles of responsibility. In order to cope with the new hazards arising from technology in particular, there is a tendency, especially in the area of occupational safety and health, to amass detailed regulations on preventive provisions or the safety of equipment. But this means being caught up in a constant struggle to try and identify new hazards as they emerge and yet being often unable to do more than have provisions of a very general nature. Such provisions may be to have well-designed tools or equipment, replace hazardous substances by those which are less

so, and ensure that ladders (where these are necessary if work cannot be safely done on or from the ground, as specified in the Safety and Health in Construction Convention, 1988 (No. 167)) are properly secured against inadvertent movement, etc. Instead of amassing details which are often of very little practical use, it might be more effective to establish general rules of responsibility, application of which could be assessed by reference to safety precaution standards, the state of the art or other practices in a particular trade or occupation. These could appear in codes of practice which might be referred to in legislation, collective agreements or court decisions. This very complex question certainly warrants deeper reflection than is possible within the content and scope of this Report.

Another more traditional approach would be to incorporate these more detailed regulations in an annex to the instrument which could be revised and updated in accordance with a different and more simplified procedure than that applying to the Convention itself. In cases in which regulations are by their very nature relatively transitory (because they might for instance be linked to a specific level of technology or knowledge), it might be preferable to restrict the instruments to objectives and leave the actual details of implementation to the annexes to ensure greater flexibility. As the Director-General already pointed out in his Report in 1964: "certain Conventions contain provisions of a technical nature, necessary for their proper application, which do not involve matters of general policy in the same sense as the basic obligations of the Convention and are more liable than the provisions of a more general nature to call for periodical amendment to adapt them to changing needs and circumstances. ... The provisions in question are, however, an integral part of the Convention and, unlike regulations giving effect to a statute in national law and practice, cannot, as matters now stand, be amended without revision of the Convention itself."²³ The Report went on to state that it had not been uncommon for international conventions to permit the amendment of annexes, schedules and other provisions of a technical nature by simplified procedures specified by the Conference (in other words not necessarily involving ratification) "without infringing the principle that the obligations of States should not be extended without their consent".²⁴

3. Should the procedure for selecting standards be less definitive?

My preceding remarks in no way offer a ready-made solution to the problem of choosing the most appropriate subject for standard setting in every case. They rather suggest that the inclusion of an item on the agenda with a view to standard setting should be the final outcome of a process during which any subject which does not seem ripe for standard setting – which therefore would only make an inconsequential or ephemeral contribution to the body of standards – should be eliminated. The present procedure for selecting items rarely enters into a discussion in the Governing Body of the possible content of the instrument. The result often reflects an overall compromise which also deals with agenda items for a general discussion. Indeed, subjects for standards are often chosen on the basis of the lowest common denominator – in other words, because there is nothing better on offer.

To encourage a more rational selection procedure, ways should be seriously examined to separate items included with a view to standard setting from those for a general discussion. In short, to permit items up for general discussion to be more in touch with topical concerns, it should be possible to include them in the agenda at a later date than items for standard setting.

Above all, it should be possible, when finally including an item on the agenda, to have a clearer view of the possible content of the instrument under consideration compared with that of existing instruments – including those outside the Organization. According to the present procedure, however, the Governing Body makes its choice on the basis of a comparative analysis and very general indications as to objectives, without entering into any detail on each subject. Here again, a "portfolio" could improve the situation by helping, after a number of successive examinations, to define the outline of the instrument on the subject envisaged.

Whenever the subjects under consideration raise complex technical or political issues on which the Office does not have enough information and the Governing Body itself is unable to provide the necessary guidelines, it might be envisaged to go even further and resort more systematically to a solution which has a potential that has perhaps not been adequately used: that of having a discussion in the International Labour Conference to assess the viability of the subject intended for the new instrument and to give specific guidelines on the drafting of the questionnaire. Only once the preliminary discussion was over would the Conference confirm the final inclusion of the item on the agenda. In the present context, this solution would appear to be more economic and more universal in approach than that of meetings of experts and preparatory technical conferences. I shall return to this subject in more detail in the questionnaire in the annex.

B. CHOOSING THE FORM OF THE INSTRUMENT: A GREATER RECOURSE TO RECOMMENDATIONS

Amongst all the issues discussed in the successive Reports of the Director-General, this is undoubtedly the one that seems to come up with the greatest insistence; indeed, it is of fundamental importance. On this matter, I shall merely refer to the very explicit comments made in the 1964 Report, to the effect that “there is no inherent virtue in a Convention as such as compared with the Recommendation ...”. Although a Convention creates obligations, in certain fields “a standard which can be widely accepted as such may well be more effective in practice than obligations which are unlikely to be equally widely assumed”. It concludes that the Recommendation should no longer be considered as “a poor relation of the Convention”.²⁵

This subject was taken up again in the 1984 Report (to which I also referred in 1994) in which the Director-General did not hesitate to write that “one of the basic questions for the future is therefore whether greater use should not again be made of non-mandatory instruments, reserving Conventions for important issues capable of precise definition and action”.²⁶

Despite these concurring remarks and successive and urgent recommendations, the situation still has hardly changed. Out of the 17 Recommendations adopted by the Conference between 1985 and 1996, not one of the Recommendations was an autonomous instrument unrelated to a Convention. This confirms the decline of autonomous Recommendations, which accounted for 55 per cent of the Recommendations adopted in the period from 1951 to 1970 and 7 per cent in the period from 1971 to 1983. This seems even more regrettable given the fact that the drop-off in the rate of ratifications (due to excessive workload in parliaments, the limitations of federal States and now, to a certain extent, of Member States of the European Union, which, if it expands further, might result in a gradual drying up of ratifications in Europe, which until now has been a champion in this area) should be encouraging the ILO to make better use of the range of instruments at its disposal. Rather than repeating the same reproaches, I feel it important to analyse the reasons for this situation and to try and find a solution. Two factors, which moreover are closely linked, seem to be decisive in this respect: the attitude of governments and that of workers.

The ease with which the Conference opts to adopt instruments in the form of a Convention may be primarily attributed to the fact that many governments are prepared to vote for a Convention without seriously envisaging pressing for its ratification by the competent authorities. This attitude is, it should be stressed, not in keeping with the initial intentions of the founders of our Organization. Although they had to bend to reality and give up the revolutionary idea of giving the International Labour Conference a legislative power which was directly binding on States (in particular to ensure that legislative progress did not become hostage to a reactionary minority), it remained clear in their minds that a government, by voting in favour of the adop-

tion of a Convention, undertook the moral commitment to bring about its ratification.²⁷ Only this can explain the presence – which today seems so incongruous (*c*) of special provisions aimed at certain countries expressly mentioned in a number of the first Conventions.²⁸ It is in this context, that one can also understand better the conviction, so widely shared before the Second World War, that international labour legislation should contribute effectively towards equalizing conditions for competition (and *a contrario* the criticisms of the Office made by the British employers at the beginning of the 1930s that it had not succeeded in adequately promoting ratifications more than ten years after the creation of the Organization).²⁹ It might admittedly be conceded that a government could in all good faith and in full knowledge of its responsibilities vote for a text knowing well that it would be impossible to ratify it for the time being, provided that it felt that this instrument might further the cause of international labour legislation and that it envisaged ratifying it in the longer term. This reasoning cannot, however, be carried too far because it might all too well create a situation – unfortunately far too common today – in which the Convention would become obsolete before having received enough ratifications – and even sometimes before entering into effect! Interestingly, there has been a certain change of attitude at the Conference; some member States have abstained or voted against a text, explaining that they took this stand because they did not want their intentions to be misconstrued.

One way of dealing with this inconsistency has, although in an entirely different context, been examined by successive working parties examining the revision of standards. They have proposed, for instance, increasing the number of ratifications required for Conventions to enter into force. But even supposing that this idea was accepted and that the number of ratifications also increased, it would only take care of the consequences rather than the causes. Yet it should not be too difficult to return to the causes themselves, merely by using more systematically the procedure provided for under the Constitution to confront certain governments with their inconsistencies. Indeed, under article 19(5)(b)³⁰ of the Constitution, Members are obliged to bring the Convention before the competent authority and, subsequently, under article 19(5)(c), give account of the measures they have taken. In so far as the intention of the constitutional provisions is perfectly clear, it would be logical that governments having voted in favour of the Convention should be called upon to give account either, in the first case, of the recommendation they made to the competent authority or, in the second case, of the reasons why ratification has not occurred. This very moderate requirement should not discourage member States from voting for a text that they consider as a sound basis for legislation even if they are unable to ratify it at once; it should merely encourage them to be more consistent in their attitude, both with regard to their recommendation to the competent authorities and with their subsequent action.

The Workers have been unremitting in their preference for the adoption of Conventions, despite the low level of ratifications; they have argued, without being contradicted by the Employers, that even unratified Conventions can have an influence on national law and practice. In itself, this statement is difficult to deny, as the Director-General already noted (with regret) in his Report to the 27th Session (1945!) of the Conference: “it may well be ... that at certain periods in the history of the Organization, the form of the Convention acquired an undue symbolical importance, as the result of which it came to be used in cases in which a Recommendation would have been more appropriate”.³¹ But this approach does not stand up to close scrutiny and brings damaging repercussions for the efficiency and credibility of standard-setting activities as a whole in its wake. As pointed out more than 50 years ago, “it tends to discredit the Convention technique by resulting in widespread failure to ratify, and it equally tends to discredit the Recommendation by gratuitously implying that because a Recommendation is not an instrument for the creation of obligations it is therefore ineffective as an instrument designed to influence policy and legislation by the definition of an international standard”.³² I believe it is important to explain briefly why.

The aim of Conventions, as indeed that of Recommendations, is to ensure that the law and practice of ILO member States comply with the provisions contained in the standards. The advantage that Conventions have over Recommendations is obviously that they express the desired progress in terms of legally binding obligations. This has two consequences:

- it makes the whole procedure relatively irreversible by the “blocking mechanism” provided by conditions for denunciation;
- it contributes at the same time towards a levelling of the conditions for international competition, as provisions of Conventions are recognized as being true international obligations.³³

The argument that a Convention can have an influence on the practice of States even if it has not been ratified is therefore irrelevant because, by definition, this is the role of a Recommendation. Furthermore, if it is not ratified, a Convention is neither subject to the “blocking mechanism” nor able to contribute to the levelling of conditions for competition. This distorted view with respect to the influence and prestige of Conventions can be in part accounted for and excused by aberration in a practice which, by overlooking the required follow-up, has obscured the fact that Recommendations are instruments in their own right. Like Conventions, they are supposed to be followed up to measure their impact; and to be updated to retain their relevance. And now we come to the crux of the problem: *if Recommendations are to regain their rightful place, they should once again become autonomous instruments unrelated to a Convention; they should then, and this of paramount importance, be followed up on a regular basis as provided for by the Constitution, to verify both their application and their relevance. Only those which meet with present-day needs should be retained. I shall now turn to each of these points.*

1. Restoring the autonomous nature of Recommendations

Even a cursory reading of the compendium of Conventions and Recommendations is enough to see that Recommendations do not enjoy much prestige. As already pointed out, most of them are not autonomous. What is more, they often merely reiterate certain provisions of the Convention, adding details which cannot be contained in a Convention or which have been rejected by the technical committee during discussions on the draft Convention. Some of their provisions may at times more resemble resolutions rather than texts to serve as a guide and model for the ILO constituents' future action.

The few autonomous Recommendations are often obsolete or have been long forgotten. However, they still involve the ILO's legal and moral credibility. It could even be argued that their obsolescence might affect the Organization's credibility even more than in the case of Conventions (which are indirectly shelved when they fail to enter into effect or, depending upon the case, are denounced). Fortunately, the work carried out and the proposals for reform put forward by the Working Party on Policy Regarding the Revision of Standards, as approved by the Governing Body, provide a very clear way out of this situation. During the discussions of this group, it was acknowledged that although the abrogation of international labour Conventions required an amendment to the Constitution — which is now before this Conference for examination — nothing prevented the Conference from withdrawing any Recommendation considered as obsolete by means of an *acte contraire* (i.e. an instrument to undo what it has done), adopted in accordance with the same procedures and majority requirements as those that applied to the Recommendation in question.³⁴ This opens up a whole new area of activity before us, as we do not have to wait for the entry into effect of this constitutional amendment.

2. Restoring a procedure of regular follow-up for Recommendations

The second condition for restoring the status of Recommendations concerns their impact and follow-up. This is easy to fulfil, at least in theory, since it merely requires more effective

implementation of the provisions of article 19(6)(d) of the Constitution. This provision places on all Members the obligation to “report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of the law and practice in their country in regard to the matters dealt with in the Recommendation, showing the extent to which effect has been given, or is proposed to be given, to the provisions of the Recommendation and such modifications of these provisions as it has been found or may be found necessary to make in adopting or applying them”.

It is worth recalling in this respect that this provision, as also the parallel provision under article 19(5)(e) concerning unratified Conventions, was introduced after the Second World War following a proposal made by the Delegation on Constitutional Questions – after yet another discussion on whether it was appropriate or feasible to empower the Organization to take decisions that would be binding on its Members.³⁵ In 1919, a proposal on these lines, although not accepted, led to the introduction, in article 19, of the obligation for all Members, whether or not they had ratified an instrument, to submit it to their legislative authorities within a period of one year, or no later than 18 months, from its adoption “for the enactment of legislation or other action”.³⁶ In 1946, the same concern led to the extension of the follow-up obligation to all instruments.

One thing, however, is sure; after this reform there was no longer any reason whatsoever to consider Recommendations as the poor relations of Conventions. Even though Recommendations obviously did not themselves create obligations, member States were nevertheless under an obligation to submit a report on them at the request of the Governing Body. Consequently, Recommendations were intended to “exercise in the future an even more far-reaching influence on policy and legislation than they have done in the past”, as pointed out in the report of the Delegation on Constitutional Questions.³⁷ The problem is that this intention is not – or is no longer – really being put into practice. A change in approach of reports under article 19 (“general surveys” of the Committee of Experts) has meant that Recommendations are not followed up on their own; this has in turn perpetuated the imbalance in favour of Conventions. Since 1975, the Governing Body has not selected any autonomous Recommendation for reports under article 19, paragraphs 6(d) and 7(b)(v), of the Constitution, although the examination of such instruments has been proposed. The general surveys carried out on Conventions and their accompanying Recommendations by the Committee of Experts rarely refer to the provisions of Recommendations (they do not create substantive legal obligations) or to their implementation by governments (which rarely refer to them in their law and practice reports). Whenever any references are made – and these are few and far between – they concern the interpretation of the provisions in the Convention covered by the general survey, in the light of those contained in the Recommendation; this only accentuates the latter’s secondary role. If we are to return to the practice provided for under the Constitution for the follow-up of Recommendations, we shall also have to re-examine the implementation of article 19(5)(c) of the Constitution.

C. THE CONTENT OF STANDARDS

As already pointed out in the 1964 Report: “A Convention should deal with essentials; it should not contain rigid requirements in regard to matters in respect of which national practice may reasonably vary widely; it should not enter into too much administrative detail”.³⁸

The same Report also warned the Conference against constantly striving for perfection: “A Convention is not an opportunity to secure a victory for the winning team but a contribution to the common law of the world, the value of which depends on the measure of general assent which it commands”.³⁹

The 1984 Report pointed out that the situation was not improved by the amendments procedure. The Conference was obliged to discuss “large numbers of amendments in the limited

time available” and this “inevitably reflected on the quality of the instruments adopted”. It stressed that: “Any difficulties resulting from amendments adopted in the course of a first discussion can be eliminated but this is not so with amendments adopted in a second discussion ...”. It went on to say that the texts adopted could have differences in meaning between the languages as a result of pressure on the translators and the drafting committee, which was weighted down by amendments and called upon to solve questions of substance and not merely of drafting. They performed a major task “sitting on average for six or seven hours, at a stage in the Conference when the strain of two weeks’ meetings is beginning to be felt, but the Conference timetable does not permit of any delay in the completion of their task”.⁴⁰

None of these statements has unfortunately lost any of its validity over the years. The drastic cutting down of the Conference schedule has, on the contrary, only added to the difficulties, including the time required by the drafting committees, which should on the contrary have more time. The various suggestions made, of which some seemed at first to be fairly sound, such as for example that of trying to obtain amendments in advance, have not encountered much success – although the reduction in the time available for the work of the committee would have made these suggestions more useful. The only way of really improving the drafting process would seem to be to tackle the problem directly, i.e. at the institutional level and in its rules. I therefore felt it would be useful to have an annex containing a fairly detailed description of some of the aspects of the standard-setting procedure which are of direct concern to the Conference and its functioning – and which, I believe, might, if they were re-examined or reviewed, contribute in a limited but effective way to improving the quality of the content and wording of standards. The annex first deals with the need to review the way in which the questionnaire is drafted; this questionnaire serves as a basis for preparing instruments and often fixes their structure and even their content at far too early a stage, before the Office has enough information at its disposal. It then looks at the amendments procedure in the technical committees which does not lend itself to finding solutions likely to meet with the widest approval. Finally, the annex discusses the difficulty of maintaining uniformity and consistency in the drafting principles and techniques in the technical committees and in the instruments. It points out the need to clarify and facilitate the role of drafting committees in this respect.

In addition to the various approaches and reforms which have just been suggested to improve the selection of instruments, their form and content, I believe it indispensable that standard setting should have a more general self-correcting mechanism so that it can respond more effectively to the objectives it sets. In other words, there should be an efficient system whereby the bodies which produce the standards should be able to evaluate them in order to ascertain the impact of these standards and their relevance, thus drawing lessons for the future.

D. THE NEED FOR AN OVERALL EVALUATION AFTER THE FACT

An objective and systematic evaluation of a product is an integral part of any modern system of production. And there is no reason why the product of standard setting should be an exception. It might be thought that the Organization has already embarked on such an evaluation by setting up successive working parties on the revision of standards, the most recent one being that set up by the Governing Body following discussions at the Conference in 1994; this group has carried out extremely valuable work, to which I have already referred. There is, however, a world of difference between an overall “clean up” operation carried out every 25 years or more which results, much later, in the realization that an instrument has become irreparably obsolete, and an evaluation which allows the body that gave birth to the instrument to re-examine it within a fairly short time so as to be able to draw conclusions, not only about the instrument in question, but in a more general way about the choice of subject-matter and content of future standard setting.

This need to carry out a systematic and objective evaluation of instruments seems to me even more vital today because it probably provides the only way of settling once and for all, and in a plausible way, the false debate on “flexibility”. And by evaluation, I mean an overall evaluation of the impact of instruments in terms of legal, economic and social effects, which would attempt not only to measure the success achieved in fulfilling the specific objective set forth in the Convention or Recommendation, but also to identify any possible indirect or adverse repercussions there might be with respect to other ILO objectives — for example that of employment. This is truly a multidisciplinary task requiring an analytical framework, a body and a procedure for evaluation that are appropriate.

The basis for such a system already exists in the Constitution and only requires — once again — the necessary practical adjustments. This is contained under article 19(5)(e), concerning Members’ obligations as regards the follow-up of Conventions they have not ratified, and under article 19(6)(d) — mentioned earlier in the text — concerning the follow-up of Recommendations. As explicitly mentioned during the preparatory work of the Conference Delegation on Constitutional Questions, these provisions have a dual complementary objective: to assess the impact of these instruments on national law and practice; and to evaluate the flaws in the instruments, which might explain why they have fallen short of their goal (low number of ratifications in the case of Conventions, limited impact on law and practice or policies in the case of Recommendations). In the early days of the ILO, a critical evaluation of this kind, even if not carried out in accordance with these provisions, was not considered in any way to be out of place. We only need to see how quickly the Conference corrected the flaws in its first instruments: Conventions on night work of women in 1919 and revised in 1934; on workmen’s compensation in the case of occupational diseases adopted in 1925 and revised in 1934; on protection against accidents of dockers adopted in 1929 and revised in 1932; on hours of work in coal mines adopted in 1931 and revised (without much more success) in 1935, etc.

For various reasons, and in particular for practical reasons (the growing volume of work resulting from the supervision of an increasing number of instruments), this article was not implemented in the way it was originally intended. It was entrusted to the Committee of Experts for the Application of Conventions and Recommendations, which did not accept this additional burden without misgivings. And these misgivings are not hard to understand. After all, the Committee of Experts fulfils a quasi-judicial role of evaluating the way in which member States fulfil their obligations; it is not really expected to pronounce on the shortcomings of the Organization’s own legislative work. Be that as it may, it has carried out the task conferred upon it by conducting “general surveys”, which already existed. As may be inferred from their title, these are mainly comparative surveys which, although highly interesting, are not intended to measure the legal, political and economic impact of standards or, as the case may be, to identify the shortcomings or flaws responsible for their limited impact.⁴¹ Any evaluation on the impact, as has been proposed, would obviously require far greater resources than those at present earmarked for general surveys; it would also imply close involvement with the decentralized teams and a more active and substantive participation on the part of employers’ and workers’ organizations. The stakes now seem high enough to warrant such efforts, however.

Assuming that we agree to widen the scope of reports and general surveys, we would then have to envisage the appropriate body and procedure for carrying out a critical and multidisciplinary examination of the findings. At present, general surveys are examined by the Committee on the Application of Standards at the Conference; they are only submitted to the Governing Body as a formality. However, the Committee on the Application of Standards, although it manages to devote a few sittings to the general survey, is far too busy fulfilling its mandate of supervising application to be able to spend enough time critically examining the instruments and their impact. Furthermore, its mandate is specifically defined by the Standing Orders of the Conference and is therefore somewhat removed from the multidisciplinary approach to which I am referring. Once again, I am not saying anything new. This observation has

been made – from a similar but much narrower perspective – since at least the 1960s. The Director-General's Report in 1964 stressed that a “defect [of the present system] is that neither the Conference nor the Governing Body has a standing revision committee which can undertake over a period of years a continuing task of systematically revising existing instruments on the basis of a widely agreed general policy. The Governing Body Committee on Standing Orders and the Application of Conventions and Recommendations and the Conference Committee on the Application of Conventions and Recommendations are well qualified to draw attention to cases in which revision may be desirable, but the negotiation of the precise terms of revision goes somewhat beyond their scope.”¹⁸

At the time, these ideas were well received and even resulted in some groundwork being laid. However, they did not result in a lasting and thorough reform and this may perhaps be attributed to the fact that they failed to raise the problem from the wider perspective of effectively evaluating adopted standards. To ensure that a systematic evaluation of standards develops on an institutional basis, it must first return to the objectives of the surveys provided for under article 19 of the Constitution. It must then opt for the most appropriate approach, which might, depending on the case, group together instruments dealing with the same subject-matter so as to draw lessons from them of a much wider scope. Finally, it must be able to depend upon a body which ensures a certain continuity in its outlook and action to carry out this evaluation in a consistent and systematic way. This body should, in the first instance, be the Governing Body itself; as it is responsible for determining the agenda, it would be led to evaluate the outcome of its own choices. But this body could also be a standing committee of the Conference. This is undoubtedly not the place to develop in detail the possible ways of putting these principles into practice. Depending on the level of support received for these ideas, I shall submit more specific proposals to the Governing Body.

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¹⁸ Article 10 refers only to “international Conventions”.

¹⁹ The Conference, as a universal body, has absolute authority over the agenda drawn up with a view to adopting instruments and can express an opinion on the subject (or, in any case, express its disagreement by deleting an item from the agenda). But it is fairly obvious that the present schedule for determining the agenda, which extends from November to the following March, does not allow much scope for useful intervention on its part; furthermore, it is difficult to see how it would be possible to organize a coherent discussion on this matter, unless this were to take place as part of a preliminary discussion on a specific proposal.

²⁰ ILO: Report of the Director-General, Part I: *International Labour Standards*, International Labour Conference, 70th Session, Geneva, 1984, p. 17.

²¹ By way of example, see Paragraph 26 of the Workers' Housing Recommendation, 1961 (No. 115), or Part V of the Utilisation of Spare Time Recommendation, 1924 (No. 21). This observation also holds true for a Convention rightly considered to be priority, such as Convention No. 122 (which calls upon States having ratified it to declare and pursue “an active policy designed to promote full, productive and freely chosen employment”). Given the wide variety of theories and schools of thought on the causes of unemployment, the content of this obligation can only but remain extremely vague from a legal standpoint. In these circumstances, how is it possible to measure the impact that the Convention might have as regards the attainment of its goal, namely the disappearance of unemployment? It is enough to consider the varying results obtained in their employment policies by countries having ratified this Convention to understand that its directives are clearly not a factor that can explain the differences. A Convention of this nature might be more practical if, in line with the spirit of the Declaration of Philadelphia, it called upon the States ratifying it to adopt a consistent attitude in international organizations which determined the conditions under which it would be possible to apply an active employment policy.

²² The Working Party on Policy regarding the Revision of Standards of the Committee on Legal Issues and International Labour Standards was set up by the Governing Body at its 262nd Session (March 1995) following discussions at the 1994 Session of the Conference on international labour standards. To date, it

has held four meetings at the 264th Session (November 1995), 265th Session (March 1996), 267th Session (November 1996) and 268th Session (March 1997) of the Governing Body.

²³ ILO: Report of the Director-General, *Programme and structure of the ILO*, International Labour Conference, 48th Session, Geneva, 1964, pp. 156-157.

²⁴ *ibid.*, p. 15.

²⁵ ILO, *ibid.*, p. 117.

²⁶ Report of the Director-General, 1984, *op. cit.*, p. 16.

²⁷ This is the meaning *a contrario* of a speech given by Albert Thomas to the Third Session of the International Labour Conference, 1921, *Record of Proceedings*, Vol. 1, p. 219.

²⁸ See, for example, Conventions Nos. 1, 4, 5 and 6.

²⁹ ILO: *Record of Proceedings*, 15th Session of the International Labour Conference, Geneva, 1931, Vol. II, pp. 3-5.

³⁰ This procedure creates an institutional link between the Conference, the body entrusted with standard setting, and national parliaments, upon which the binding effect of these instruments in the countries concerned is contingent. The aim of bringing the instrument before the competent authorities is obviously to allow parliaments to pronounce, in full knowledge of the facts, on the follow-up to be given to the instruments adopted by the ILO and to reach a decision, whatever the nature of this decision. Supervision of the obligation to submit instruments to the competent authorities has, over the years, become merely a formal exercise with very few exceptions. This constitutional obligation should assume once again the character that it had at the beginning: to encourage member States to ratify or implement the instruments they have adopted; to provide assistance to parliaments; to provide for a wider distribution of statements or proposals accompanying the submission, etc. This mechanism does not work for the early Conventions. This is one of the reasons why, following the Social Summit in Copenhagen, I asked those member States who had not done so to communicate their intentions to ratify the seven core Conventions. I do not, however, believe that this solution should extend to other instruments. It must remain exceptional and be reserved for core Conventions; if not it will cease to be effective.

³¹ ILO: Report of the Director-General, International Labour Conference, 27th Session, Paris, 1945, p. 155.

³² *loc. cit.*

³³ It is for this reason that the Conference Delegation on Constitutional Questions tried in 1946 (without much success) to counter the undue competitive advantage enjoyed by federal countries.

³⁴ See GB.267/LILS/WP/PRS/1 as well as draft article 45bis to be included in the Standing Orders of the Conference, which the Conference is called upon to examine this year in the context of the proposed constitutional amendment.

³⁵ ILO: *Constitutional Questions*, Part I: Reports of the Delegation on Constitutional Questions, 29th Session of the International Labour Conference, Montreal, 1946, paras. 43 and 58.

³⁶ This mechanism, which has no equivalent in other international organizations, informed decision-makers of the follow-up to be given to the instruments to be adopted by the Conference. It is possible that, over time or with the prospect of a change in the functions of parliaments which are the "natural" competent authorities, the obligation to bring the matter before the authorities was considered a formal obligation. However, paragraphs 5(c) and 6(c) of article 19 provide that the Office should be informed of measures taken. It would be timely to examine means of breathing new life into this obligation on the lines of the memorandum adopted by the Governing Body, so that it might once again be fully meaningful.

³⁷ ILO: *Constitutional Questions*, *op. cit.*, para. 74.

³⁸ Report of the Director-General, 1964, *op. cit.*, p. 169.

³⁹ *ibid.*, p. 170.

⁴⁰ Report of the Director-General, 1984, *op. cit.*, p. 20.

⁴¹ ILO: Report of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 33rd Session, Geneva, 1950, Report III (Part IV), pp. 2 and 3; and *idem*, 53rd Session, 1969, Report III (Part IV), p. 186.

⁴² Report of the Director-General, 1964, *op. cit.*, p. 157.

Appendix 7

“Renewing work on labour standards”, excerpt from *Decent work*, Report of the Director-General, International Labour Conference, 87th Session, Geneva 1999

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RENEWING WORK ON LABOUR STANDARDS

Most ILO standards are not well known

ILO Conventions and Recommendations are a vital source of protection for working people all over the world. However, except for a handful of Conventions, most ILO standards are not well known. Ratification is also a growing problem because of treaty congestion. Of the 23 Conventions and two Protocols adopted in the 15 years from 1983 to 1998, only three have received at least 20 ratifications. Even when ratified, many Conventions are only weakly implemented.

The need to reinvigorate international labour standards

If the ILO is to ensure its continued relevance in this field and reassert the usefulness of international standards, it will need to reinvigorate its efforts and experiment with new approaches. Fortunately, the Constitution of the ILO offers a wide range of action and provides the necessary tools. This work is already under way, having started at the 1994 session of the Conference and continued at subsequent sessions and within the Governing Body, especially as concerns the revision of standards. This debate should be extended and deepened.

How to enhance ILO work on standards

A number of actions are necessary to raise the profile and increase the relevance of the ILO's work on standards:

- preparing the ground for new standards more thoroughly;
- exploring new methods of standard setting;
- engaging in deeper analysis of existing standards, their synergy, lacunae, and impact on various groups;
- accelerating the revision of outdated instruments to build on progress already made and promoting priority standards as problem-solving tools;
- stepping up efforts to help countries implement ILO standards;
- enhancing the impact of the supervision of standards; and
- reasserting the role of ILO standards in the broader world context.

Re-evaluating standard setting

The process of *standard setting* itself needs to be re-examined. This requires closer consultations with ILO constituents, taking the concerns of all regions into account and making full use of developments in communications technology. But it will also require more broadly based technical work that analyses proposed standards in terms of their potential impact on economic and social policy, including gender concerns, and their complementarity with other international instruments.

Choice of suitable subjects for standards

At the outset, there is the question of choosing suitable subjects. International labour Conventions create binding obligations on countries that ratify them. They are powerful instruments. But not every problem can best be resolved by a legal response, so when considering potential new standards the Organization should also explore other ways of addressing problems.

Reassessing existing Conventions

Potential new standards must of course be considered in relation to existing instruments, whether in the ILO or elsewhere. Thus, long-standing ILO Conventions need to be reassessed to see how they cope with contemporary developments, such as the expansion of the informal economy and the trend towards more precarious forms of employment. New standards may then supplement them where warranted.

The example of social security

Changes in the labour market and in family life are posing a challenge to many ILO standards. An important case in point concerns the numerous instruments on social security. The Social Security (Minimum Standards) Convention, 1952 (No. 102), was adopted when most workers in industrial economies were in regular, full-time employment and there were fewer divorces, separations and single parents. Schemes based on this model continue to penalize women, who have often not been as long in continuous employment as men. With the increased precarity of jobs, such schemes also afford protection to fewer men. The challenge will be to find solutions that increase protection and embrace respect for the basic principles of social security.

Supplementing the framework Conventions

One approach to standard setting that deserves more thorough investigation is that of framework Conventions. These Conventions cover a subject's essential and unchanging principles. However, to deal with new circumstances such as changes in labour markets, demography, technology or work organization, framework Conventions can be supplemented with more specific instruments that can be updated more frequently. For instance, the guiding precepts in the Occupational Health and Safety Convention, 1981 (No. 155), are supplemented by consensus codes of practice specific to each sector. This approach could also take into account regional differences; experts from each region could identify universal elements that should be part of a framework Convention, while highlighting others that reflect regional traditions and should be embodied in supplementary non-binding instruments.

Flexibility

Other opportunities for flexibility, which the Organization might pursue in greater depth, are provided by the Constitution. Ideas outlined by the Director-General's Reports to the Con-

ferences in 1994 and 1997 also merit careful attention. And the ILO might gain further inspiration for innovation from the standard-setting techniques used by other bodies.

Reconsidering the process for adopting standards

The ILO could also reconsider the process for *adopting standards*. At present this is highly stylized, often using procedures that are not conducive to compromise. In this case the Organization could draw on its experience of designing approaches to the prevention or resolution of labour disputes, using methods that respond to the divergent and convergent interests of stakeholders. The Night Work Convention, 1990 (No. 171), illustrated this potential, arriving at a compromise that took into account constituents' concerns for both gender equality and worker protection. A similar approach could be extended to other topics that have so far defied consensus, such as the revision of ILO instruments on working time.

The wider context of international law

New standards need to be considered in the wider context of international law, since many other organizations and international conferences have produced treaties on related issues such as the environment and human rights. The proposed new Convention on the worst forms of child labour, for example, has been developed in this way – taking into account not just ILO Conventions but also other instruments. A similar approach has been taken in the report on migrant workers submitted to this session of the Conference, as well as with respect to the proposed revision of some ILO Conventions relating to chemicals and hazardous substances.

Reinvigorating promotional efforts

Setting standards is of course only the start. The ILO needs to reinvigorate its *promotional efforts* to see that standards are ratified and applied. This means ensuring that Conventions and Recommendations are well understood, by producing clear and effective publications and by reaching out beyond labour ministries, employers' organizations and trade unions to other groups, including parliamentarians, law reform commissions, judges, business leaders, NGOs, women's groups, students, academics and the unemployed. It is especially important that governments understand that ILO Conventions have built-in mechanisms for flexibility – a potential that few of them explore.

Concentrating attention on high-impact standards

One major problem for ratification is that parliaments all over the world often have a long list of items awaiting attention – not just ILO standards but also many other bilateral and multilateral instruments. In this competitive environment it is important that the ILO concentrate its attention on high-impact standards to make them stand out from the pack. The Declaration on Fundamental Principles and Rights at Work and its Follow-up has performed an important role here by highlighting core labour standards. The Governing Body has further identified as priorities a handful of institutional standards, including those on tripartite consultation, on labour inspection and on employment policy. The social partners may wish to single out others for special attention, and the InFocus programmes may also be of assistance.

Assisting governments to implement Conventions

The ILO needs to be more proactive when it comes to *implementation*, assisting governments in giving effect to the Conventions they have chosen to ratify. At the formal level this could mean helping governments revise their labour legislation and improve their

inspectories. A key way to promote implementation is to ensure that everyone appreciates the value and use of standards. They should, for instance, understand that health and safety standards not only save lives but also increase productivity. When people realize that standards are not burdens but tools, they will be more willing to put them into practice and embed them in national development strategies.

Labour standards as part of a policy package

Standards shown to play a useful role in the labour market can be taken into account as part of a policy package that incorporates broad social concerns as natural complements to economic measures.

This message is reinforced when Conventions are seen to support successful solutions to problems – bringing parties together to achieve a shared goal. They can even inspire peacemaking efforts. In 1996, for example, the social partners rallied support for the United Nations peace negotiations in Guatemala on the basis of the Indigenous and Tribal Peoples Convention, 1989 (No. 169). An earlier example of conciliation was the successful use of the ILO's good offices with the Governments of Egypt, Libya and Tunisia in relation to the application of several Conventions to migrant workers. Now that the Organization has stronger field representation it should have further opportunities for this kind of conciliation.

Helping to implement non-ILO standards

In addition, the ILO should continue to help implement non-ILO standards. The ILO regularly contributes to work done under a wide range of instruments, including the Convention on the Elimination of All Forms of Discrimination Against Women, the United Nations Convention on the Rights of the Child and the International Covenant on Economic, Social and Cultural Rights. It has also provided valuable technical inputs in the labour aspects of trade arrangements such as MERCOSUR.

Enhancing supervision

Beyond promoting standards, one of the ILO's most important functions is to *supervise* them. Both inside and outside the Organization, the various supervisory mechanisms are generally perceived as independent, objective and impartial, but the system as a whole is increasingly bogged down under its own weight. Reporting under article 22 of the Constitution, for example, should be streamlined to make it easier for governments to handle, though without eroding its usefulness to employers' and workers' organizations. At times, the system is also too undifferentiated, giving equal weight to very serious issues and to those which are essentially matters of detail. The supervisory system would also be more valuable if it were able to move beyond an examination of legal texts.

Improving reporting

The presentation of reports could be further developed. The reports of the supervisory bodies would be even more helpful if they also reviewed the status of the standards situation in general, perhaps by region or by subject area. They would offer greater encouragement if they, and the supervisory system as a whole, highlighted more success stories and genuine efforts to improve.

Linking supervision with ILO technical cooperation and research

There should be greater opportunities to link supervision with other aspects of the ILO's work, particularly technical cooperation. Thus, well-substantiated representations and com-

plaints under articles 24 and 26 of the Constitution, as well as serious violations found by the Committee on Freedom of Association, should prompt the Organization to reorient technical assistance to the problem areas, not in the sense of introducing conditionality but of offering better targeted support. The work of supervisory bodies would also have greater visibility and impact if it could be fed into readily accessible databases for use not just in technical cooperation but also in research. It could then be part of a general process of disseminating the work of the ILO's supervisory bodies to a wider public.

Codes of conduct

An important but distinct issue is the proliferation of “codes of conduct”, voluntary initiatives that usually operate at the enterprise or sectoral level. These can complement, but do not replace, enforcement of national legislation and international standards. Voluntary codes could use ILO standards as points of reference and as sources of inspiration. This could include developing manuals for use with such codes, incorporating information on various Conventions, on the 1998 Declaration and on the 1977 Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy. Voluntary codes could then become complementary opportunities for the ILO to disseminate its principles and values.

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Appendix 8

ILO Standards – related activities

IOE Position Paper (As adopted by the IOE General Council on 9 June 2000)

OBJECTIVES OF STANDARD SETTING

1. Today, the increasing complexity of labour and social issues demands a diverse and flexible approach. It is clear that, unless the ILO can place itself in the eyes of the world as the organisation which addresses the social and labour dimension of globalisation, its ability to remain relevant and credible will be lost. International labour standards remain one, but not the only, means of action at the ILO's disposal.
2. International labour standards, and in particular Conventions, should be high-impact Standards that seek to address fundamental workplace issues on which there can be a broad consensus on applicable policies or principles. An example is the Convention on the Elimination of the Worst Forms of Child Labour (No. 182). Experience has proven that over-detailed Conventions do not enjoy high levels of ratification, impact or credibility.
3. Therefore, the legal form of Conventions should be reserved for issues on which there exists a broad consensus that regulation at international level is necessary. The contents of Conventions should be confined particularly to regulating essential and unchanging principles and minimum standards. Although the aim of the IOE is not to reduce the number of Conventions produced by the ILO, it goes without saying that, if they concentrate on unchanging principles, they will be used in a more restricted way in the future.
4. The present practice of adopting both a Convention and an accompanying Recommendation on a given subject has contributed to the proliferation of Conventions which remain increasingly unratified and at the same time it has weakened the status of Recommendations which often have become "dustbins" for all of the difficult issues raised in Convention debates.
5. As a consequence, the adoption of guidance in the form of autonomous Recommendations may be a way forward for the ILO. However, Recommendations should be namely that, and not merely aspirational "good practice statements". Recommendations, which are more easily revised, updated, or replaced, could be more suited to an international social environment increasingly characterised by rapid change and the consequent need for flexibility together with the demand to provide "decent work". Furthermore, in order to strengthen the status of autonomous Recommendations, a reporting mechanism of a promotional nature based on Article 19 of the Constitution could be devised along the lines of the follow-up procedures of the Declaration on Fundamental Principles and Rights at Work.

6. The ILO should consider the important complementary role of non-binding instruments such as Declarations, Guidelines and Codes of Practice. Declarations should be reserved for exceptional occasions to highlight important principles or policies covered by international labour standards (such as the Declaration on Fundamental Principles and Rights at Work of 1998). Guidelines and Codes of Practice could complement international labour standards by offering concrete guidance on technical and/or sectoral issues.

IDENTIFICATION OF POSSIBLE STANDARD-SETTING ITEMS

7. A catalogue of selection criteria, which should be simultaneously fulfilled, should be established to assess whether standard setting would be the most appropriate answer to a given problem. Possible criteria could include:
 - (a) Suitability of the topic for legal requirements;
 - (b) Prospects of ratification;
 - (c) Utility as a benchmark;
 - (d) Extent of coverage;
 - (e) Is the issue of a nature that addresses a significant workplace problem?
 - (f) Factual understanding concerning the proposed Standard;
8. To achieve the balance between business realities and providing worker protection, indicators should be established to measure whether the above mentioned criteria are met, e.g. as regards “utility”, expectation of positive effects for the protection of workers to be achieved, absence of negative effects on the competitiveness of enterprises (in particular their ability to sustain and create employment), etc. In sending out ILO questionnaires, respondents should be asked specifically to address these issues and how they can be balanced against the perceived need for a new standard. Agreement of the broad majority of ILO constituents, including representatives from both developed and developing countries, should be required regarding the fulfilment of the criteria indicated above.

PREPARATION OF STANDARDS

9. The “Portfolio” approach has been a step in the right direction in that it has broadened the selection basis and has begun to help in eliminating unsuitable subjects. However, what is missing is a mechanism to help identify selection criteria which would give ILO constituents a general overview of subjects and enable them to identify or reject more systematically items for standard setting and also to identify existing standards needing abrogation, withdrawal or revision.
10. If there is no particular topic that requires urgent and appropriate attention, no hasty selection should be made. There is a concern that the selection of topics might in some instances be undertaken solely for the purpose of compiling the Conference agenda. The mere existence of structures for the development of standards is an insufficient reason to justify the selection of new standards.
11. In order to give the Office and constituents the fullest possible information about a subject, a Conference pre-discussion should be held before formal moves towards assessing suitability for standard setting are made. Such pre-discussions could create a better understanding of the differences and practical problems in various countries and regions and, on a topic by topic basis, consideration may have to be given as to whether the pre-discussions

should be on a global or regional basis. Pre-discussions could also crystallise agreement on core fundamentals that would be essential for an intended standard; and they could pave the way for a better understanding during the tripartite debate on a given standard-setting issue at the annual Conference.

12. If, following a pre-discussion, the Conference believes that an item is of interest, it should adopt a Resolution recommending the item to the Governing Body for possible inclusion in a future Conference agenda. By starting with a pre-discussion, items that are not ripe for standard setting will not advance in the process. If the issue of contract labour had been addressed in a Conference pre-discussion (much wider than the meeting of experts which was held) the loss of more than two years of Office and Conference time and credibility would have been avoided. The forthcoming General Discussion in 2001 on the difficult issue on social protection will provide, we hope, a good example of the usefulness of pre-discussions.
13. Shortlisting of items in the Portfolio should reflect better the wishes of the Governing Body rather than the state of preparation of a particular issue within the Office. Before any pre-discussions take place, the existing Governing Body committees could also provide an advisory role to the Office and Governing Body in discussing issues for standard setting as standard setting should not take place in a policy vacuum. The Governing Body discussion on a potential standard should be near the end, not the beginning, of the process.
14. ILO questionnaires need to be more than a collection of affirmative and negative responses to the questions posed. The Office needs to take into account the detailed responses to the questions and tailor the draft proposal for a standard to fit responses received. The questionnaires should deal with broad policies and principles and avoid micromanaging the issue in the national context. The Office could use two types of questionnaires: a general, broad questionnaire to be used before the pre-discussion and a questionnaire tailored to the conclusions of the Conference pre-discussion. A number of the ILO's constituents go to considerable trouble to respond to questionnaires, but by no means enough. This sometimes leads to an imbalance in the interpretations of the responses received. Ways should be explored to balance the need for better-quality representative information from constituents to be at the disposal of the Office, with the reality that for many organisations, responding to ILO questionnaires represents a real administrative and technical burden. Questionnaires should be cleared through the Governing Body.

REVISION OF STANDARDS

15. In terms of the revision of Standards, the ILO should make further use of the General Surveys. The use of existing simplified and more targeted revision methods as suggested in the document submitted to the Governing Body Working Party on the Policy regarding the Revision of Standards (LILS/WP/PRS2, Nov 1999) seems appropriate.
16. Revision of a standard does not necessarily mean revision upwards and it should be done with the purpose to facilitate the ratification and applicability of Conventions. As far as possible, revision should be combined with the consolidation of standards to contribute to the consistency of the ILO's standard-setting system. The 1997 Constitutional amendment has yet to enter into force. This amendment would permit the withdrawal and abrogation of instruments, subject to a two-thirds majority vote of the delegates at any given Conference. To date, ratification of the amendment has been insufficient. The Office should launch a campaign for the ratification of this amendment. Abrogation/withdrawal and revision exercises should also be guided by the principle of continued relevance of a particular standard.

THE NEGOTIATING PROCESS

17. A lot of time is wasted during Conference discussions due to the late arrival of “key players” at the meetings. This is not always as a result of behind-the-scenes discussions to progress the formal debates. Chairpersons of committees need to be fully briefed prior to the first meeting, regarding ILO protocol, rules, etc. This should not be done during the course of the time allotted for the committee to meet. A further time-saving measure would be for the ILO Secretariat to make use of PCs to put the proposed wording of amendments, etc. under discussion on a screen instead of painstakingly repeating the whole text for the slowest writers to copy the words.
18. At the Conference, there is still a tendency to resolve differences of opinion by means of voting. A more consensus-based approach needs to be developed. (It goes without saying that this would be easier done if a consensus exists on the need for a particular Standard in the first place.)
19. There is also a discrepancy between the mostly positive reactions and votes of governments in the creation of new Conventions and their behaviour as regards subsequent ratification of the Instruments. Ways to promote a more coherent and responsible attitude of governments in the procedures/votes preceding the adoption of Conventions should be explored. It is odd that the system allows for a situation whereby governments that vote in favour of the adoption of a Convention (after having participated positively and actively in its formulation) sometimes state publicly that they are in no position to ratify. Greater realism might be introduced in the debates at Conference if each government that voted in favour of the adoption of a given Convention were obliged to explain, say within the two years of its adoption, why it has not ratified. This would come on top of the existing constitutional reporting requirements on non-ratified Conventions.
20. Flexibility devices are already contained in the ILO Constitution in Article 19, paragraph 3 and are being further developed by the Conference. However, there is a need to use these flexibility devices more systematically. The ILO Secretariat should provide better information on flexibility devices to the constituents and make more suggestions for their use. The relatively new experience of using time-bound commitments, as used in Convention No. 182, should also continue to be used.

RATIFICATION, ENTRY INTO FORCE, DENUNCIATION

21. Obstacles to the ratification of Conventions include:
 - The adoption of instruments by narrow majorities at Conference – wide ratification cannot flow from a weakly supported instrument;
 - A “one-size-fits-all” approach;
 - Lack of relevance of the standard;
 - Too much direction on what a government must do to implement and enforce the standard.
22. The required number of ratifications for entry into force of a Convention is too low. The number may have been appropriate when the ILO was established in 1919, but now the ILO has grown to 174 member countries and the required number should increase proportionately as a percentage of membership. The required number for entry into force should be no less than ten. Other international treaties provide for higher numbers of ratifications (e.g. Council of Europe).

23. The period before entry into force of a Convention should therefore be within one year of the tenth ratification.
24. A ten-year denunciation procedure is too rigid. Rigidity deters member States from ratifying. In an ideal situation, a country denouncing a Convention should be able to deposit its intention to denounce a given Convention at any time. However, it is reasonable that a country ratifying a Convention remains bound by its provisions for a minimum period of time.

The Supervisory System

25. Employers do not have strong views on either the frequency of reporting requirements or their content, but would restate support for government obligations to consult the social partners on draft reports. However, the system should at least balance what governments are capable of producing, what the Office realistically can handle and also, more importantly, what is relevant information for the Office and the constituents.

Application of Standards

26. The terms of office of the members of the Committee of Experts on Application of Conventions and Recommendations should be limited to two terms of five years. There should also be transparency of selection procedures.
27. The Committee of Experts should acknowledge better that it plays a preparatory role for the Conference and that the observations contained in its report therefore are not final. In certain instances, the Committee of Experts has accorded interpretations to standards that were not contemplated at the time they were adopted. These create obligations not always directly discernible from the texts. A case in point is the over-extensive interpretations of Convention No. 87 on Freedom of Association. This is not only in contradiction with the provisions of the Vienna Convention of the Law of Treaties, but also an over-extensive interpretation of a particular Convention can almost be considered as creating a new standard. Only the International Labour Conference, and no other body, has the power to create new standards. This uncertainty has no doubt contributed to a reluctance to ratify Conventions – the obligations imposed on member States can be open-ended in the sense that they are subject to re-definition and extension in an interpretative process that does not permit for any direct influence by the member concerned.
28. Instead of criticising minor deviations from obligations under ratified Conventions, the experts should focus on the application of essential principles and clearly defined provisions. This would involve giving less extensive explanations on the contents of provisions of ratified Conventions and accepting the fact that ILO Conventions are not “set in stone” and are not the solution to all the problems of the world of work. There should also be more emphasis on “cases of progress” in the Committee of Experts’ work.
29. The general discussion at the Conference provides a useful opportunity to address general developments on standards supervision. The discussion of the General Survey is also a chance for constituents to comment on the instruments covered by the survey (e.g. as regards obstacles to ratification or the need for revision of outdated articles). However, the Committee’s procedures require revision not only to ensure that the more “serious” cases are dealt with, but also that they are accorded the time necessary to do them justice. Too often, less important domestic political issues are allowed to dominate the agenda. The system of selection of individual cases for discussion should be revised to permit more discussion on matters concerning alleged breaches of fundamental rights. The time limits on speeches should be enforced more strictly. The current procedure permits endless interventions – few of which add anything to the debate.

Committee on Freedom of Association

30. Complaints made to the Committee on Freedom of Association relate to governments. However, in many instances employer organisations have specific information about cases, and recommendations made by the Committee may have a direct impact on enterprises. The ILO should therefore adopt new procedures to ensure that national employers' organisations are consulted on cases concerning their country and, if they so desire, are able to present their views directly to the Committee.
31. There are differences between the freedom of association rights considered by the Committee on Freedom of Association and the obligations strictly derived from Conventions 87 and 98. The Committee should therefore focus on the enforcement of these basic principles rather than continuing to build up an extensive "jurisprudence" which has no legal basis and erodes the authority of the Committee's findings. It is true that there is a general lack of understanding of the Committee's procedures and working methods. This contributes no doubt to the repeated requests by constituents for transparency.

Other Procedures

32. Articles 24 and 26 of the ILO Constitution are sometimes abused in that conflicts are brought to an international forum for publicity reasons. Means to limit this practice, perhaps by limiting the receivability criteria or introducing a filter mechanism, should be considered to prevent automatic discussion of a receivable complaint. The way in which Articles 24 and 26 procedures complement the regular supervisory machinery should also be considered in order to prevent overlapping and provide more coherence.

THE PROMOTION OF STANDARDS

33. Linking the delivery of technical co-operation to the ratification of standards should not be accepted. In general, technical co-operation to promote standards should only be considered if the standard in question is realistic, practical and flexible. A better understanding of what a standard seeks to achieve together with a greater degree of consensus on the desirability of achieving the goal could lead to an approach of co-ownership. This could increase prospects for ratification and better application of the Standard. The preparation phase and pre-Conference consultations and discussions could contribute significantly to establishing a more coherent approach.
34. There should be coherence between supervisory and promotional procedures. Nevertheless the basic legal difference between the supervisory procedures and promotion of the ILO Declaration must be observed and respected.

EVALUATION OF STANDARDS-RELATED ACTIVITIES AGAINST THEIR OBJECTIVES

35. A continuous overall evaluation mechanism should be devised to assess the impact of instruments in terms of their legal, economic and social effects. Such mechanism should be able to measure success achieved in fulfilling the specific objectives set forth in a Convention or Recommendation and identify any possible indirect or adverse repercussions there might be with respect to other main ILO objectives – for example that of promoting and sustaining employment.

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Appendix 9

Discussion of the General Survey on Freedom of association and collective bargaining regarding the “right to strike” at the Conference Committee on the Application of Conventions and Recommendations, International Labour Conference, 81st Session, Geneva 1994

...

115. On the principle of the right to strike, a broad consensus was expressed in the Standards Committee. The Employers’ members nevertheless specified that, according to them, the text of Conventions Nos. 87 and 98 did not include the right to strike and expressed their disagreement with the scope given to this right by the Committee of Experts. Some Government members expressed some reservations with respect to the public service.

116. The Employers’ members made detailed comments on this question, clearly stressing on a number of occasions that they did not challenge the principle of the freedom to strike and lock-out, but they absolutely could not accept that the Committee of Experts deduced from the text of the Convention a right so universal, explicit and detailed, as it had done in this part of the survey.

117. Almost all the chapters began with a relevant passage of the Convention. This could not however be the case on this point since strike was not mentioned either in Convention No. 87 or in Convention No. 98. Furthermore, the survey placed a great deal of emphasis this year on the historical aspects of these instruments; this historical method of interpretation however was only of secondary importance since, in the first place, must come the text, the purpose and the meaning of the provisions themselves. There were no concrete provisions and it was not helpful to quote the standards contained in the instruments of other organizations where strikes and collective action were sometimes mentioned in another context and in a very general or only indirect manner.

118. The beginning of the chapter rightly indicated that the right to strike was mentioned during the preparatory work, but adds in paragraph 142 that “... during discussions at the Conference in 1947 and 1948, no amendment expressly establishing or denying the right to strike was adopted or even submitted.” The Employers’ members however quoted the following passage: “Several Governments, while giving their approval to the formula, have nevertheless emphasized, justifiably it would appear, that the proposed Convention relates only to the freedom of association and not to the right to strike, a question which will be considered in connection with Item VIII (conciliation and arbitration) on the agenda of the Conference. In these circumstances, it has appeared to the Office to be preferable not to include a provision on this point in the proposed Convention concerning freedom of association.” (31st Conference, 1948,

Report VII, page 87.) A similar conclusion was made in the plenary sitting: "The Chairman stated that the Convention was not intended to be a 'code of regulations' for the right to organize, but rather a concise statement of certain fundamental principles." (31st Conference, 1948, *Record of Proceedings*, Appendix X, page 477.) Later, Recommendation No. 92 on voluntary conciliation and arbitration dealt with this issue in a neutral manner without regulating the contents. During the plenary sitting, the famous Workers' spokesperson, Léon Jouhaux, bitterly complained of the unsatisfactory result of the discussion; he did not explicitly mention the absence of the right to strike, but other delegates did. Moreover, during the adoption of Convention No. 98, two requests presented by Workers' delegates with the aim of including a guarantee of the right to strike were rejected on the basis that it was not covered by the proposed text and that this question should be dealt with at a later stage. (32nd Conference, 1949, *Record of Proceedings*, Appendix VII, pages 468 and 470; see also ILO, *Industry and Labour*, Vol. II, July-December 1949, pages 147, et suite.) Shortly afterwards, a Government delegate made the same request which the chairman declared unreceivable for the same reasons.

119. Under these circumstances, it was incomprehensible to the Employers that the supervisory bodies could take a stand on the exact scope and content of the right to strike in the absence of explicit and concrete provisions on the subject, and that this absence seemed precisely to be the justification for their position, as is suggested in paragraph 145. The Committee of Experts had put into practice here what was called in mathematics an axiom and in Catholic theology a dogma: that is complete, unconditional acceptance of a certain and exact truth from which everything else was derived.

120. Article 3 of Convention No. 87 which confers to organizations the right "to organize their administration and activities and to formulate their activities" did not mean, according to the Employers' members, the right to intervene in the rights of others. In paragraph 136, the Experts rightly stated that "the exercise of this right inevitably affects third parties who sometimes feel that they are the victims in disputes in which they have no part". This assertion of the Committee's had been increasingly confirmed with respect to all labour disputes. In any event, strikes were clearly not an internal and autonomous matter of a trade union; they were above all directed against employers and, in today's world with its division of labour, the effects of a strike which were regularly and deliberately calculated increasingly touched third parties and the general public who had nothing to do with this conflict. Sympathy strikes, by their very nature, were aimed at people who were not directly involved in the conflict. The interpretation of the Committee, which was creating and developing law, did not allow for the conclusion that the right to strike was an intrinsic corollary of the right to organize, as asserted in paragraph 151 of the survey.

121. The Employers' members also felt it important to note that they were not so much criticizing the fact that the Committee of Experts wanted to recognize the right to strike in principle, but rather that it took as a point of departure a comprehensive and unlimited right to strike. The views of the Committee of Experts on the various forms of strike and their scope were obviously based on erroneous premises. The Committee did not generally examine whether strikes were permissible, nor the question of how far a strike can go. Beginning with the erroneous premise of an unlimited right to strike, the Committee considered rather whether limitations on the right to strike were permissible. According to the Committee, any limitation on the right to strike required a specific justification, which could be seen in the treatment of all the important cases. Two examples could be given in this respect: the public service and political strikes.

122. According to the Employers' members, the Committee of Experts considered that restrictions on strikes in the public service were only allowable if the strike affected the essential services, an expression which the Experts later defined in the strict sense of the term. Con-

sequently, the Committee came to accept restrictions on the right to strike only in cases where the strike might endanger the life, personal safety or health of whole or part of the population. The Employers' members had already responded in this respect that a State could not accept that its duty to protect the welfare of its citizens be restricted to the values of life and health. It can be seen that, in paragraphs 158 and 159, the Committee of Experts had applied a different approach by adopting a very cautious formula. The Committee considered that some restrictions on the right to strike might be permissible under certain circumstances, while leaving the question open. One might discern the sign of a new approach but, looking at the specific application of this approach to concrete examples concerning some countries, one quickly realized that the Committee had fallen back on its old formula, hurrying to forget its weak attempt at revision.

123. Still according to the Employers' members, the position of the Committee of Experts with respect to political strikes had also been influenced by the above-mentioned principle of unlimited strike. For a long time, the Committee only admitted the possibility of limitations for "purely" political strikes. However, the number of cases where the Committee applied this approach demonstrated that purely political strikes virtually did not exist since it had often assimilated political strikes to a protest against government policy, a form of strike which it had always considered acceptable. The Employers' members expressed their concern for the fact that, from this point of view, consideration was never given to the fact of a democratically elected parliament and yet, the social partners were not above the law. Regrettably, the Committee of Experts often considered that some strikes were a protest against the government, while in reality, these strikes were against decisions of a freely elected parliament. In these circumstances, it would seem more reasonable and in greater conformity with democratic rules to submit the question of strike and lock-out to the legislator of the ILO, i.e. the International Labour Conference, where, after sufficient preparation and an open debate, this area, which was still open, could be made the subject of a specific regulation.

124. In their final remarks on the right to strike, the Employers' members, in response to some comments from the Workers' members, recalled that they were not simply set on denying the right to strike, but had, to the contrary, put forward numerous and well-founded arguments for their position. First, the Employers' members had made recourse to historic arguments, the basis of which was disputed by some workers, precisely because the survey itself placed a great deal of emphasis on this. Basing themselves on these texts, the Employers could thus demonstrate that the right to strike had not been provided for in Conventions Nos. 87 and 98. This argument was all the more convincing by the fact that the right to strike had not been forgotten during the elaboration of these instruments: attempts had been made to incorporate this right into the Conventions but had been rejected in the absence of a majority in favour. Secondly, several speakers simply asserted that there was a comprehensive right to strike because there had to be, as without the right to strike, there could be no freedom of association. It was impossible to seriously argue against this type of preemptory statement which likened the right to strike to a sacred workers' right. Thirdly, numerous speakers cited other regional or international instruments dealing with the right to strike, lock-out, etc., but these were not relevant to the interpretation of ILO instruments. An extensive right to strike did indeed exist in some countries, but elsewhere the situation was entirely different. This was a matter for national law, but in no way was it a right established by ILO instruments or derived from them.

125. As regards the statement of the Workers' member of Poland that Conventions should be interpreted in a dynamic and functional manner, the Employers' members saw in this an admission that there was no legal basis for the right to strike in ILO instruments. There were rules of interpretation in international law provided for by Articles 31 and 32 of the Vienna Convention on the Law of Treaties which the Experts themselves used in their interpretations.

Two objections were raised in this regard. First, the Vienna Convention dated back to 1969 and banned retroactivity. In Article 4 of this Convention, however, it is said that this ban on retroactivity did not apply to general rules of international law, and the rules of interpretation in Articles 31 and 32 of the Convention were such rules. Secondly, Article 5 of the Vienna Convention provided that it “applies to any treaty which is the constituent instrument of an international organization and to any treaty adopted within an international organization, without prejudice to any relevant rules of the organization.” There were no rules of interpretation in the constituent instrument of the ILO and article 37 of the Constitution only indicated the competent body without establishing authentic rules of interpretation.

126. Finally, with respect to the statement made by the Workers’ member of the United Kingdom according to whom even if the standards did not contain detailed provisions on the right to strike, this right was generally and implicitly recognized, the Employers’ members stated that this argument was not enough as no rule of international law could be derived from it upon which the situation in every member State could be examined and, if necessary, criticized. There must be more precise provisions in order to conclude the existence of a right. Nevertheless, the Experts have gradually and systematically elaborated not a general principle on the right to strike – as they should have done – but rather an almost unlimited right to strike, accepting less and less any restrictions on this right. If the views of the Committee of Experts were generally accepted, then workers should no longer have any objection to placing this matter on the agenda of the Conference, thus clarifying the question. The Employers’ members, however, were quite certain that the final result would not be the type of right to strike elaborated by the Committee of Experts.

127. Supporting the comments of the Employers’ spokesperson, the Employers’ member of the United States observed that, considering the legislative history of these Conventions and the observations of the Experts in the 1950s, no one could have anticipated the extremely explicit and detailed interpretation now made by the Committee of Experts. The speaker recalled that, in the 1953 survey on Convention No. 87, the Committee stated that: “The object of this Convention is to define as concisely as possible the principles governing freedom of association, whilst refraining from prescribing any code or model regulations.” (ILC, 36th Session, 1953, Report III, Part IV of the Committee of Experts on the Application of Conventions and Recommendations (articles 19 and 22 of the Constitution), page 57.) The Committee asserted however in paragraph 13 of the 1994 survey that all of the principles which it applies constitute “a veritable international law of freedom of association”. This flew in the face not only of the 1953 statement but also of what it rightly stated in paragraph 20 of the 1994 General Report: “... ILO instruments, whether new or revised, set minimum standards (article 19, paragraph 8, of the Constitution). As a matter of principle, Conventions should set a general framework.”

128. The speaker recalled that, in making observations regarding the application of ratified Conventions, the Committee of Experts normally based itself on the text of the Convention and its legislative history. With respect to Conventions Nos. 87 and 98, however, the Committee had moved away from this practice and also applied the principles of the Committee on Freedom of Association. By endorsing the conclusions of the Committee on the meaning of these Conventions, the Committee of Experts has subverted the supervisory machinery. No less an authority than Mr. Nicolas Valticos had pointed out that the conclusions of the Committee on Freedom of Association were not limited to determining the meaning of the freedom of association Conventions and that, not being bound by the terms of these Conventions but more generally inspired by the principles of freedom of association, the Committee was led to formulate the principles which on various points extended the express provisions of the Convention. This reliance on decisions of the Committee on Freedom of Association, decisions which went beyond anything contemplated by the provisions and legislative history of these Conventions,

undercut the credibility of the Committee of Experts, a credibility which remained vital to the effectiveness of the Conference Committee on the Application of Standards.

129. The speaker noted that, when the right to strike was discussed in the Standards Committee of the Conference, a confusion arose between two distinct questions which it was worth distinguishing. The first is whether trade unions have the right to strike; on this point, there is a general unanimity, although the right to strike was not without limits. The second question, more relevant to this Committee, is the following: do Conventions Nos. 87 and 98 include the right to strike and, if so, to what extent? Everyone would agree that the right to strike was not explicitly provided for in these instruments. The Committee of Experts indicated in paragraph 142 of the survey that the right to strike "... seemed to have been taken for granted in the report prepared for the first discussion of Convention No. 87 ..." and that "during discussions at the Conference in 1947 and 1948, no amendment expressly *establishing or denying* the right to strike was adopted or even submitted." Even if correct, these were quite slim reeds for the Experts to rely on as a basis for its extensive regulation of the ability of governments to place limits on the right to strike given the fundamental nature of such a right. Besides the fact that this document was prepared by the Office, the legislative history of Convention No. 87 was unequivocally clear that "the proposed Convention relates only to freedom of association and not to the right to strike". Furthermore, as was emphasized by the Employers' spokesperson, during the final discussions of Convention No. 98 in 1949, the Conference Chairman declared unreceivable the two amendments aimed at incorporating a guarantee for the right to strike as they were not within the scope of the Convention. The speaker thus expressed the opinion that the passage in question constituted a factual error with respect to the historical basis of the right to strike being fundamentally inherent to these Conventions.

130. The speaker recalled that the Committee of Experts mentioned the right to strike for the first time in its third General Survey on the subject in 1959, in only one paragraph and only with respect to the public service. In the following surveys, the Committee gradually expanded its views on the matter to seven paragraphs in 1973, then 25 in 1983 and finally arriving in 1994 with a separate chapter of no less than 44 paragraphs, including a number of new subjects.

131. Underlining that the Experts stated in paragraph 145 that: "In the absence of an express provision on the right to strike in the basic text, the ILO supervisory bodies have had to determine the exact scope and meaning of the Conventions on this subject", the speaker stated that the Committee of Experts' function was to interpret existing provisions and not to substitute for legislators; it is not up to the Experts to create requirements with respect to questions upon which the technical committee could not agree. To base oneself on the part of Article 3 which states "Workers' and Employers' organizations shall have the right ... to organize their ... activities and to formulate their programmes" is a very indirect and subjective method for concluding the existence of the right to strike in Convention No. 87. It was also a surprising method, as it concerned a right as fundamental as the right to strike which one would have expected to find as an express provision in the text of the Convention itself.

132. The speaker stated that, given the silence of the two Conventions on the right to strike, it would be better to substitute a more pragmatic approach for the optimal approach taken by the Experts whereby the Conventions would only be concerned with general prohibitions to the right to strike rather than the finer details of whether the strike involved essential or non-essential services or whether public servants exercised authority in the name of the State. Noting that the Experts seemed to have chosen a more pragmatic approach in paragraph 160 on the question of strikes in essential services, in response to the wishes expressed for several years by the Employers' members, they considered that this determination was made on a case-by-case basis and not according to the almost uniform approach mentioned in the 1983 survey (paragraph 214, footnote 3) frequently used in the past.

133. Moreover, the speaker remarked that this year, for the first time, the Committee of Experts has addressed the issue of replacing strikers. The speaker indicated his concern that the Committee make such an observation in the abstract, particularly when it was based on two decisions of the Committee on Freedom of Association, the conclusions and recommendations of which were less strict than the observation of the Experts in paragraph 175 since the former only found that there was risk of a derogation of the right to strike. This observation of the Committee of Experts, which might be raised within the framework of the controversial, political debate taking place in the United States, was not appropriate, especially if one considered that it involved only a small aspect of a balanced and complex system of industrial relations.

134. In reply to criticisms of the attitude attributed to the Employers' members concerning the ILO, standards and the support given to the supervisory bodies, an attitude which had allegedly radically changed according to some Workers' members, the speaker, supporting the general comments made by the Employers in this regard, recalled that it was not the Employers who had tried to destroy the ILO system but rather some countries. The Employers, to the contrary, had always supported the system and muted their concerns in the general interest.

135. The Employers' member of Nicaragua added that the right to strike should only be exercised after all other recourse foreseen for resolving conflicts had been exhausted. According to the Employers' member of Romania, the Committee of Experts sometimes made interpretations which contradicted provisions of other standards adopted by the ILO and the exercise of the right to strike could interfere with other rights just as fundamental.

136. The Workers' members stated that the right to strike was an indispensable corollary of the right to organize protected by Convention No. 87 and by the principles enunciated in the ILO Constitution. Without the right to strike, freedom of association would be deprived of its substance. It was enough to go through the preparatory works of Convention No. 87, the multiple conclusions and recommendations of the Committee on Freedom of Association and the successive general surveys elaborated by the Committee of Experts on this subject to be convinced of this. In its 1994 survey, the Committee of Experts formally and unambiguously confirmed this relationship by dedicating a separate chapter to the principles and modalities of the right to strike which it placed in the current context: growing interdependence, globalization of the economy, fragmentation of enterprises and the obsession of competitiveness. The Experts also established current and operational orientations, not only for this Committee, but also for all governments and all workers' and employers' organizations.

137. The Workers' members pointed out that, as indicated in paragraph 165 of the survey, strike objectives could not be limited only to the conflict linked to the workplace or the enterprise, particularly given the phenomena of enterprise fragmentation and internationalization. This was the logical consequence of the fact that trade union activities should not be limited to strictly occupational questions. Moreover, this enterprise fragmentation was partly due to the social policy of many governments to provide various advantages to small and medium enterprises; there was a danger in this weakening of collective rights if certain precautions were not taken, as mentioned in paragraph 335. This was the reason why sympathy strikes should be possible, as well as strikes at the sectoral level, the national and the international level.

138. The Workers' members also stressed that account had to be taken of all of this context when considering the question of modalities for carrying out strikes, such as picketing or occupation of the workplace. Often called upon to make this judgement, the judiciary power had a tendency to suppress these forms of strike, whereas it should do everything possible, if the judicial system in the country permitted, to ensure respect for international obligations and the ILO Constitution. The Workers' members also invited the Governments to verify whether the legislation, practice and jurisprudence of their countries were in conformity with the principles

enunciated in paragraph 174 and, if not, to take the necessary corrective measures. As indicated in paragraph 137, detailed and restrictive legislation would not stop wildcat strikes and unorganized actions. By considerably limiting the scope of action of trade unions by legal or administrative restrictions, governments and employers might find themselves increasingly faced with spontaneous actions.

139. According to the Workers' members, possible restrictions on the right to strike in essential services and for certain categories of public servants should be restrictively defined given that they are exceptions to a general rule concerning a fundamental right. The Workers' members strongly hoped that the nuanced position thus expressed by the Experts would put an end to the controversy which sometimes hindered the work of this Committee. In paragraphs 161 and 254, et suite, the Experts rightly emphasized the need to give full priority to negotiated solutions.

140. In their final observations concerning the right to strike, the Workers' members reiterated their general agreement with respect to the approach adopted by the Committee of Experts and commented upon the observations made by some speakers. First of all, they noted that the Government and the Employers' members accepted the principle of the right to strike. The reservations expressed concerned not the right to strike but rather the modalities and the extent to which national conditions should be taken into account. Secondly, most of the reservations expressed by the governments only concerned the right to strike in the public service, considered to be a restrictive interpretation. Thirdly, expressing their surprise at the fact that the Employers' members relied on a declaration of a Workers' delegate to the 1949 Conference, the Workers' members expressed their preference for the method used in the General Survey and the examination, in particular, of legislation and practice in order to evaluate the real situation in the field. Fourthly, they stated that a new discussion at the Conference, as suggested by the Employers, of an essential aspect of a fundamental Convention dealing with human rights as Convention No. 87 did, was not a good idea. Such a discussion might paralyse tripartism and the ILO just at the time when the ILO should be developing dynamic action. As concerned the suggestion of the Employers' members to entrust to the legislators of the ILO, i.e. the Conference, the care to set the modalities of the right to strike, the Workers' members recalled that a draft resolution on this point had been introduced at an earlier session of the Conference by the Government of Colombia, a country which was experiencing very serious problems with respect to the application of Conventions Nos. 87 and 98, including before this Committee. On the other hand, the Committee of Experts unanimously, all the Workers' members and a large majority of the Government members were of the opinion that effective protection of freedom of association necessarily implied operational rules and principles concerning the modalities of the right to strike.

141. The Workers' members also rejected the position of the Employers' member of the United States according to whom the inclusion of Convention No. 87 as such in a social clause would not be opportune. They emphasized that the Employers' members really only criticized the substance of one of the ten chapters, expressing only some reservations on certain aspects of the rest of the survey. The simplifying of the freedom of association Convention into one single sentence in a social clause would not, therefore, make much sense.

142. As concerned the observations of the Employers' members and, in particular those of the Employers' member of the United States, on the changes occurring in the world and the need to adapt to them, the Workers' members were fully aware of this but they could not accept that these changes would weaken workers' organizations and the collective bargaining systems put into place over the years. On a related point on the discussion concerning the relationship between individual rights and collective rights, the Workers' members indicated that they did not dispute the practical importance of individual rights for workers, but nevertheless stressed

that collective bargaining and collective rights in general were a very important source of rights for the promotion of the development of individual rights. If on the one hand they were in favour of a strengthening of certain individual rights, for example equality of opportunity, occupational training, family leave, etc., they were opposed, on the other to an individual approach which would tend to weaken collective bargaining.

143. Numerous Workers' members spoke to support the general observations, to emphasize specific aspects of this part of the General Survey or to draw the Committee's attention to the situation prevailing in some countries. All endorsed without reservation the approach adopted by the Experts concerning the interpretation of Article 3 on the right to strike. Thus, the Workers' member of Poland underlined that the Committee had only applied well-established principles, Convention No. 87 calling for a dynamic and functional interpretation. According to the Workers' member of Germany, if the Employers recognized the principle of the right to strike, it was not logical that they contest the means used by the Committee to interpret this principle. The Workers' members of the Netherlands and the United Kingdom stated that the Experts had developed their views on this question in a very cautious, gradual and balanced manner, with the support of a majority of the Conference Committee; it was preferable that the general consensus established in this regard not be shaken up. Recalling that strikes were an essential means of defending the economic, social and occupational interests of workers, the Workers' member of France particularly called into question the position of the Employers on sympathy strikes, emphasizing that there were problems of solidarity generally and that trade union structure was often interoccupational. Furthermore, he criticized the use made by the Employers of the declarations on strikes made by a Workers' member in 1948 and the exaggerated dramatization of the consequences of strikes. The real solution was not to give any reason for going on strike. Several other Workers' members also pointed out various forms of attack on the right to strike, for example: provisions making strikes a criminal offence, frequent limitations imposed on public servants, abuses with respect to the determination of minimum services.

144. Several Government members, including Finland, Germany and Venezuela, expressed general agreement with the Committee of Experts' position on strikes as an indispensable corollary of freedom of association and emphasized moreover that the Committee had explained that this was not an absolute right. According to the Government member of Venezuela, the Committee of Experts had only adopted the modern rules of interpretation of general legal standards by preferring a more flexible and dynamic interpretation to a literal and dogmatic one, taking into account not only the text, but also its precedents, in the context of its adoption and the changes which had occurred. It would have been surprising if a right so broadly accepted had been rejected by the ILO for a restrictive interpretation. For the Government member of Germany, if the authors of the Convention had not considered that the right to strike was a part of freedom of association, why would they have considered it necessary to specify that the recognition of trade union rights for public agents did not prejudice the question of their right to strike? (See 30th International Labour Conference, 1947, Report VII, page 109.)

145. Several Government members, in particular the Government member of Germany, stressed that the problems in this respect often related to the public service, since in that case the employer was the government.

146. The Government member of Belarus, recalling that Conventions Nos. 87 and 98 did not expressly cover the right to strike, stated that this right was always exercised even if it did not appear in national legislation. The legitimacy of this right had to be appraised with respect to the consequences that its exercise might have for society, limiting these consequences as much as possible. A legal framework had to exist therefore, strike being only one of the means

for resolving conflicts, and its exercise should be limited to such circumstances. In cases where the consequences of strikes had effects beyond the enterprise, the government might have to take measures and prohibition of the strike in such cases was conceivable.

147. Agreeing that the right to strike was truly an essential corollary to the right to organize, the Government member of Portugal expressed, however, some doubts about certain developments in the survey concerning for example: the exercise of the right to strike in the public service, the maintenance of employment relations, sympathy strikes or strikes protesting against social and economic policy, procedures for strikes, lawful forms of strike action, sanctions in the case of illegal strikes and minimum services. In order to consider the principles put forward by the Committee of Experts as rules of international law, the Conference would have to adopt them according to the principle of tripartism. If a Convention were to be adopted, would all the rules elaborated by the Committee have to be included? Would States which had ratified Convention No. 87 adhere to the new standard?

148. The Government member of the United States indicated that the President of her country had stated that he would sign a law prohibiting the replacement of striking workers. The legislative amendments had been adopted by the House of Representatives and were presently under consideration by the Senate.

Appendix 10

Excerpt from the speech by Alfred Wisskirchen, Employer Vice-Chairperson of the Conference Committee on the Application of Conventions and Recommendations, on the presentation of the Committee's report to the International Labour Conference, 89th Session, Geneva 2001

“You have before you the comprehensive and full report of the Conference Committee on the Application of Standards. As our Reporter has explained, this Conference Committee was set up by the Conference 75 years ago, in 1926.

Such a long-standing institution, of course, has accumulated much wisdom. Nonetheless, since there is nothing in this world that is beyond improvement, a critical look at its work is only proper. We should first of all examine the entire body of international labour standards produced by our Organization.

Since 1995, these standards have been systematically reviewed and categorized into the following groups: standards appropriate for the demands of our times; those which can be revised; and those which are totally outdated. This work should soon draw to a close. We do not believe that it is appropriate to exclude from this revision all the standards adopted since 1985. The sometimes appallingly low ratification rates of the newer Conventions disproves the theory that any standard adopted in the past 15 or 16 years must necessarily be valuable and suitable for the present and the future.

It would be advisable to ensure the entry into force of the amendments to the ILO Constitution adopted four years ago, which would allow for outdated standards effectively to be scrapped. The ILO, which has campaigned successfully for ratification of certain instruments, could launch a ratification campaign for these amendments, especially considering the few ratifications they have so far attracted.

It is not worthwhile for our Committee to spend time and effort discussing whether a country should be urged to observe a Convention that the Governing Body considers to be totally outdated, and that is no longer open to ratification. In our Committee, this is precisely what happened in respect of the Old-Age Insurance (Industry, etc.) Convention, 1933 (No. 35). Yet as early as 1995, our Committee had stated in its conclusions that this Convention should be revised.

Modernizing labour standards is of even greater importance for the future. After much intensive discussion, we have taken some steps in the right direction. All we can do is hope that these good intentions will be followed up with acts. Instead of producing instruments for mass consumption, we can develop better and more valuable standards. Obviously, the supervisory system, including the Committee of Experts, must be included in this renewal process. The mandate of the Committee of Experts remains unchanged: to consider the reports of the member States in the light of international labour standards, prior to the session of the Conference. However, that body should not develop jurisprudence, and it should certainly not assume

responsibility for issuing binding interpretations of standards. Under article 37 of the ILO Constitution, that is a power reserved for the International Court of Justice. The report of the Committee of Experts should concentrate more on the comments of its members. This year's report was the longest in the history of the Committee. The "General Report" was twice as long as the previous year's.

The credibility of the Committee of Experts is diminished when it urgently calls on member States to ratify the Termination of Employment Convention, 1982 (No. 158), while the Governing Body, having discussed the topic, had already decided not to make such a recommendation. By issuing such a political statement in those circumstances, the experts have gone beyond their mandate.

The ILO has on its agenda the strengthening and streamlining of the supervisory machinery. Efforts should be intensified in this sense.

Before addressing the individual topics, I would like to speak of the special meeting we held to pay tribute to Mr. André Zenger, who passed away recently. He was a very competent member of this Organization, and a fair and friendly person whom we all got to know over many years, and we are saddened by his early passing. I am sure we will remember this honourable man for many years to come.

This being the 50th anniversary of the adoption of the Equal Remuneration Convention, 1951 (No. 100), our Committee considered the question of gender equality in remuneration. While the basic principle of equality and the prohibition of gender-based discrimination was not in dispute and was acknowledged quite simply as an obligation to respect human dignity, we believed it was unacceptable to consider differences in pay on the sole basis of statistical averages. The experts too recognized that these gaps very often resulted from differences in training and skill levels. This is a difficult question, precisely because there is no single recognized system for establishing a definition of equal work. That has been left up to evaluations and re-evaluations. Agreements on these points between the social partners would be decisive.

The Committee held a detailed discussion of the Forced Labour Convention, 1930 (No. 29), as the experts devoted nearly a third of the "General Report" to this Convention. This was particularly surprising since the experts on many occasions noted that very few reports had been received from member States and that they had thus often been unable to obtain a general picture of the national law and practice in this area.

This means that the experts made their comments without sufficient substantiation, producing a purely abstract, theoretical work. Essentially, the intention was to challenge the stance taken by the Employers in the past. In our report, we refer to the scope of the discussion, which reflected the basic elements of this debate. One facet on which all agree is that the main objective of the Convention – to halt and prohibit all forced labour – warrants unqualified support. In the discussion, the experts concentrated exclusively on old news, concerning the use by several member States of partially or totally privatized penitentiary services. The experts' statements do not always hold up to examination, though. Because this phenomenon did not exist in practice when the Convention was adopted in 1930, it is not covered in the instrument. The wording of the Convention is perfectly valid, even if it does not take this phenomenon into consideration.

The experts glossed over the fact that a State has the right to oblige an individual to carry out work as part of an imposed penalty. This is for the State alone to decide. Therefore, we cannot agree with the experts that work by prisoners in privatized institutions is acceptable only if it is done on a purely voluntary basis. The experts contend that the working conditions should be commensurate with those on the open labour market. In practice, this idealistic aim is not even achieved outside of penitentiaries. Outside of such institutions too, a refusal to accept work entails numerous disadvantages. The argument according to which competition must be fair is still less convincing. The purpose of Convention No. 29 is to protect individuals.

The report indicates, moreover, that competition is not undermined. If that were the case then enterprises would clamour to use exclusively this type of work, but experience has shown that not to be the case. There are very few companies which hire this kind of labour, as productivity among prisoners is too low and the cost and risks are too high.

In the Conference Committee, one point was beyond dispute. It was recognized by all that sensible employment of prisoners was decisive in rehabilitating them and finding them a place in society. Employing prisoners is thus in the interests of all society. And unquestionably, this sort of work can only be organized in close cooperation with private enterprise. In such circumstances, Convention No. 29 must be interpreted liberally, and the interpretation of the experts is open to scrutiny.

One of the subjects of the general discussion was the Employment Policy Convention, 1964 (No. 122). For years we have maintained that it is a tautology to say that no employment policy is successful in its own right, and that a successful employment policy must be formulated in harmony with numerous other policy lines. This year the experts have advocated social benefits to stabilize internal market demand by fuelling private consumption, thus mitigating job losses. This leaves aside too many other factors. In the developed economies, employers fund much of the social benefits. Higher social benefits would represent a burden on the investment capacities of enterprises. Investment is a precondition for growth and employment.

Our position concerning the details of this question is set out in the general part of the Conference Committee's report. This also applies to the discussion on social security. The experts have much praise for the Convention on social security, and consider that it is a very flexible instrument. They do not argue against the clear worldwide trend, under which the States' heretofore exclusive responsibilities in this field are being transferred to the private sector. Yet they hold fast to the organizational and management principles in the Convention, according to which the State must administer, and workers must take part in, social security schemes. We feel that this attitude is somewhat in contradiction with the market economy.

In the second part of the general discussion, we considered a study on three Conventions on the ban on night work for women in industry; the first of these Conventions dates from the year the ILO was founded, in 1919, and the most recent, from 1948. All three contain a complete ban on work by women at night.

In 1990, a protocol was adopted to Night Work (Women) Convention (Revised), 1948 (No. 89), which provides for a few exceptions. Above all, the overall study shows the historical background and reasons for these regulations. The most important point is that, at the time, the idea was accepted that night work was more damaging for women than it was for men, which is now refuted. Night work can be unhealthy for everybody, but many workers can do it without any particular problems.

An intelligent system of work in shifts can reduce the burden considerably, irrespective of gender. Night work in different degrees is generally recognized to be unavoidable. Apart from in providing traditional social services to the population, night work in the field of entertainment and the use of free time is becoming more and more important. Besides the medical considerations, we are getting a clear idea about the impact of the prohibition of night work for women in the labour market. Figures demonstrate that the ban is clearly detrimental to women.

From the legal point of view, it is contrary to many international and national instruments, such as those which prohibit discrimination on the basis of gender. In particular, I am thinking of the relevant Conventions of the United Nations and the European Community, which leave States no other choice than to remove their national bans on night work and, if necessary, to give notice of withdrawal from the ILO standards that are contrary to this. Therefore it will be necessary to abolish these three Conventions.

The double burden of work, including housework and raising children, cannot be applied to all women. It is based on old traditions and behavioural patterns which cannot be required by

law. Such definitions are inconsistent with legislation on discrimination and the right to equal treatment. Under these circumstances, the attempt to maintain simultaneously the special protection against night work for women, and the avoidance of discrimination is, in fact, impossible and intellectually unacceptable.

The ILO should, as quickly as possible, abolish all forms of discrimination against women. The longer it waits, the less credible it will be, from the point of view of these Conventions.

In part three of the general discussion, we dealt with the report of the Joint ILO/UNESCO Committee of Experts on the Application of the Recommendation concerning the Status of Teachers. We think that the teaching profession is of the utmost importance, and we understand fully the need for teachers to have an appropriate status in society. Working conditions have got to be appropriate; although they cannot be identical throughout the world, within each country, teachers should not be at the bottom end of the social ladder. It is equally clear to us that the training of teachers has got to be in accordance with what they have to perform, and this should inevitably lead to lifelong learning. Therefore, we have to provide for advanced training and continuous training, and this of course means that we can expect initiative on the part of the teachers themselves.

I will just say a few words now on the question of the right to strike, since Mr. Cortebeek will be talking about that later.

The right to fight and therefore the right to strike is something that exists in practically every country in the world, but it varies very considerably from one place to another. Thus, the International Covenant on Economic, Social and Cultural Rights recognizes the right to strike only, and I quote, "provided that it is exercised in conformity with the laws of the particular country". This distinction was the basis for this question not being considered in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). The right to strike was not forgotten, but during the preparation and later the adoption of Convention No. 87, it was expressly excluded from these regulations, which can be confirmed in a number of different documents. We referred to these documents on many an occasion this year when we were considering the case of Ethiopia, which can be seen in the report of our Committee. In a more thorough and detailed manner we dealt with the same matter in the Committee's report of 1994, *Provisional Record* No. 25, in which details can be read in paragraphs 115 to 134. That is why I will be relatively brief today.

Before we consider individual cases, I would like us to have a glance at the figures in the report of the Committee of Experts concerning the way in which reporting requirements have not always been fulfilled. Even if there have been some positive developments in individual cases, the general trend remains disappointing. There continue to be too many member States that fail to meet their reporting obligations year after year. In paragraph 193 of the report, in response to our request, a list is given of countries which systematically submit their reports between the end of the meeting of the Committee of Experts and the beginning of the Conference. This will be something we will be paying particular attention to in the next few years.

The main objective of our Committee is the study of individual cases, and we had 26 States this year on our list, of which we considered 24. In addition, at the request of last year's session of the Conference and on the basis of decisions taken by the Governing Body, we had a special meeting where we dealt with the resolution against Myanmar in connection with the Forced Labour Convention, 1930 (No. 29). This is a particularly serious instance of forced labour, which has been monitored for a long time, with the involvement of military and civil authorities. All the supervisory machinery of ILO, including a special mission of enquiry, are therefore demanding a radical change in the corresponding legislation, particularly the practical implementation of the prohibition of forced labour. As to whether the regulations adopted by Myanmar in the last two years are going to be sufficient, and whether in fact they are going to be put into effect, a high-level, independent team will be giving the matter consideration in

autumn this year. The Committee has drawn up a detailed list of conditions to be met in order for the high-level mission to be able to make an objective study, unhindered, throughout the country. The exhaustive discussion in our Committee, referred to in the general and third parts of our report, is recorded very precisely.

I will now draw your attention to other individual cases. There are positive and negative developments, for instance in the case of Colombia, which our Committee has referred to in a special paragraph in the general part of the report. There are special sections with critical remarks concerning Belarus, Myanmar, Ethiopia and Venezuela, with regard to the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) .

Myanmar appears in the list of countries with a long-term history of violations, which is also true of Sudan, with regard to the Forced Labour Convention, 1930 (No. 29). We recommend the entire report of the Committee for adoption, and we hope it will be given the attention it deserves. ...

Appendix II

Further basic documentation

- ILO: *Constitution of the International Labour Organisation* (Geneva, 1998).
- ILO: *International Labour Conventions and Recommendations, 1919 – 1995*, Volumes I, II and III (Geneva, 1996).
- ILO: *Governing Body “Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities”*, GB.212/SC/4/1, 212th Session, Feb. – Mar. 1980.
- ILO: *Handbook of procedures relating to international labour Conventions and Recommendations*, Rev. 2 (Geneva, 1998).
- ILO: *International labour standards, A workers’ educational manual* (Geneva, 4th revised edition, 1998).
- IOE: *The Committee on Freedom of Association, Note by the Employer Members of the Committee* (Geneva, Mar. 1996).
- ILO: *ILO law on freedom of association – standards and procedures* (Geneva, 1995).
- IOE: *The ILO Declaration on Fundamental Principles and Rights at Work – A guide for employers* (Geneva, 1999).
- *International Labour Review*, Special Issue: Labour Rights, Human Rights, Volume 137, No. 2 (ILO, Geneva, 1998).
- ILO Internet site: www.ilo.org/public/english/standards/norm/index.htm
- IOE Internet site: www.ioe-emp.org



Bureau for Employers' Activities
INTERNATIONAL LABOUR OFFICE
CH - 1211 Geneva 22
Switzerland

Fax: (41- 22) 799 8948
E-mail: actemp@ilo.org

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