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The Standards Initiative: Joint report of the Chairpersons of the Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association

Purpose of the document

In follow-up to the request by the Governing Body at its 323rd Session, this document invites the Governing Body to: (a) receive the joint report of the Chairperson of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the Chairperson of the Committee on Freedom of Association (CFA) on the interrelationship, functioning and possible improvement of the various supervisory procedures related to articles 22, 23, 24 and 26 of the ILO Constitution and the complaints mechanism on freedom of association; and (b) request the Director-General to undertake further consultations on issues related to the joint report with a view to formulating recommendations for consideration by the Governing Body (see the draft decision in paragraph 3).

Relevant strategic objective: All the objectives.

Policy implications: Depends on the outcome of the discussion of the Governing Body.

Legal implications: Depends on the outcome of the discussion of the Governing Body.

Financial implications: Depends on the outcome of the discussion of the Governing Body.

Follow-up action required: Depends on the outcome of the discussion of the Governing Body.

Author unit: International Labour Standards Department (NORMES).

Related documents: GB.323/PV (paras 51–84); GB.323/INS/5.

1. At its 323rd Session (March 2015), and in relation to the Standards Initiative, the Governing Body requested the Chairperson of the Committee of Experts on the Application of Conventions and Recommendations (CEACR), Judge Abdul Koroma (Sierra Leone), and the Chairperson of the Committee on Freedom of Association (CFA), Professor Paul van der Heijden (Netherlands), to jointly prepare a report, to be presented to the 326th Session of the Governing Body (March 2016), on the interrelationship, functioning and possible improvement of the various supervisory procedures related to articles 22, 23, 24 and 26 of the ILO Constitution and the complaints mechanism on freedom of association.¹
2. The report prepared pursuant to that request by the Governing Body is attached to the present document. It includes findings and recommendations following an intensive consultative process in which the views of the tripartite constituents were first sought between June and September 2015. The subsequent draft report was then the subject of further consultations between October and December 2015.

Draft decision

3. The Governing Body is invited to:

- (a) *receive the joint report of the Chairperson of the Committee of Experts on the Application of Conventions and Recommendations and the Chairperson of the Committee on Freedom of Association on the interrelationship, functioning and possible improvement of the various supervisory procedures related to articles 22, 23, 24 and 26 of the ILO Constitution and the complaints mechanism on freedom of association; and*
- (b) *request the Director-General to undertake further consultations on issues related to the joint report with a view to formulating recommendations for consideration by the Governing Body.*

¹ GB.323/PV, para. 84.

INTERNATIONAL LABOUR ORGANIZATION

**REVIEW OF ILO
SUPERVISORY MECHANISM**

Authors:

A.G. Koroma

P.F. van der Heijden

Preface

For almost a century, the International Labour Organization (ILO) has contributed to the advancement of social justice across the globe. In doing so, the Organization utilizes a decision-making process which is unique among its peers within the arena of international governance. The concept of “tripartism” which lies at the heart of the ILO is widely praised, and recognized to be indispensable for the Organization’s unparalleled impact on the implementation of international rights at work.

While the adoption of labour standards is the first step towards effectuating international legal protection of workers and employers, the supervision of the application of these standards is of equal importance. The supervisory mechanism of the ILO is multifaceted and anchored in the Organization’s standards and principles. Many different monitoring mechanisms exist in the context of international and regional organizations and the ILO’s diverse system of promoting compliance with labour standards is regarded as very successful among them. Nevertheless, the changing social, geopolitical and economic dynamics within the ILO and on the ground have brought about challenges pertaining to the efficiency of the system and means of enhancing the Organization’s distinct tripartite model.

It is in this light that roughly a year ago, the Governing Body of the ILO, its executive arm, requested us to undertake an assessment of the supervisory mechanism of the Organization, identify opportunities for improvement and suggest means of implementing these. While very conscious of the internal intricacies associated with tripartism and the potential effect of these on the review, we were determined from the outset to engage the ILO constituents in the process and to attain their perspectives and suggestions for enhancing the system. We are very thankful to all the constituents for their support for our mandate and their substantive contribution to the process. This being said, we would like to reiterate that this report and its conclusions are entirely based on our independent and objective assessment of the ILO supervisory mechanism.

We would like to thank Dr Bas Rombouts of the Department of Labour Law and Social Policy of Tilburg University for his extensive research contributions to the report drafting process. Furthermore, we would like to acknowledge with much appreciation the important role of The Hague Institute for Global Justice and its staff, in particular Ms Manuella Appiah, in the course of the development of the report. We would also like to thank the International Labour Office for providing us with facts and figures when requested. Last but not least, we thank all others who through direct and indirect contributions made it possible for this report to come about.

This report has been prepared with a view to responding to the request of the Governing Body. We hope that the findings and recommendations shall contribute to the continuous process of enhancing the supervisory system of the ILO, and to strengthening the conciliatory spirit of cooperation between the ILO’s tripartite constituents.

The Hague, January 2016

Judge Abdul G. Koroma
Chairperson

Professor Paul F. van der Heijden
Chairperson

Committee of Experts on the Application of
Conventions and Recommendations (CEACR)

Committee on Freedom of
Association (CFA)

Contents

	<i>Page</i>
Preface.....	iii
Executive summary	vii
List of abbreviations.....	ix
I. Introduction, mandate and approach.....	1
(a) The ILO supervisory system.....	1
(b) Governing Body request	2
(c) Developments leading to the report	2
(d) Approach and structure.....	5
II. Overview, development and procedural aspects of the supervisory mechanisms.....	5
(a) The regular and special supervisory procedures: A short introduction.....	5
Article 24 representations	7
Article 26 complaints.....	8
The complaints procedure before the Committee on Freedom of Association.....	9
Reporting obligations on unratified Conventions and on Recommendations.....	11
Technical assistance.....	12
(b) Establishment and development of the supervisory mechanisms	12
Development of the CAS and the CEACR.....	13
The special procedure on freedom of association.....	18
Article 24 representations and Article 26 complaints.....	20
(c) Procedural aspects and contemporary supervisory architecture	21
III. Interrelationship, functioning and effectiveness of the supervisory mechanisms.....	28
(a) Interrelationship and coherence	29
(b) Functioning, impact and effectiveness.....	32
Article 24 representations	32
Article 26 complaints.....	33
The Committee of Experts on the Application of Conventions and Recommendations (CEACR).....	33
The Conference Committee on the Application of Standards (CAS).....	35
The Committee on Freedom of Association (CFA).....	37
(c) Concluding remarks.....	40
IV. Proposals and suggestions for improvement.....	41
(a) Issues of transparency, visibility and coherence.....	41
(b) Supervisory mandates and the interpretation of Conventions	43
(c) Workload, efficiency and effectiveness.....	45
V. Concluding remarks	47

Appendices

	<i>Page</i>
Appendix I. Human rights bodies' supervisory machinery outside the ILO	49
Introduction	49
I. Charter-based bodies	50
(a) The Human Rights Council procedures and Universal Periodic Review (UPR)	50
(b) The Universal Periodic Review (UPR)	50
(c) The Advisory Committee	50
The Complaint Procedure	51
The Special Procedures	51
II. Treaty-based bodies	52
(a) The Human Rights Committee (CCPR)	52
(b) The Committee on Economic, Social and Cultural Rights (CESCR)	53
(c) The Committee on the Elimination of Racial Discrimination (CERD)	54
(d) The Committee on the Elimination of Discrimination against Women (CEDAW)	56
(e) The Committee against Torture (CAT) and the Subcommittee on Prevention of Torture (SPT)	58
(f) The Committee on the Rights of the Child (CRC)	60
(g) The Committee on Migrant Workers (CMW)	62
(h) The Committee on the Rights of Persons with Disabilities (CRPD)	63
(i) The Committee on Enforced Disappearances (CED)	64
Concluding remarks	65
Appendix II. Statistics and figures	67

Executive summary

The present report was requested by the Governing Body of the International Labour Organization (ILO) at its 323rd Session in March 2015. The Governing Body requested the Chairperson of the Committee of Experts on the Application of Conventions and Recommendations (CEACR), Judge Abdul Koroma (Sierra Leone), and the Chairperson of the Committee on Freedom of Association (CFA), Professor Paul van der Heijden (Netherlands), to jointly prepare a report on the interrelationship, functioning and possible improvement of the various supervisory procedures related to articles 22, 23, 24 and 26 of the ILO Constitution and the complaints mechanism on freedom of association.¹ During the drafting process of this report, the authors received perspectives from the ILO's tripartite constituents. Where possible, these are reflected in the report.

The different supervisory procedures of the ILO serve a common purpose: the effective observance of international labour standards, particularly in relation to ratified Conventions. The existing connections between the supervisory mechanisms therefore operate in respect of obligations freely assumed by the Organization's member States through the ratification of Conventions. Nevertheless, obligations in respect of unratified instruments are also an important area of attention for the supervisory bodies.

The supervisory mechanism has developed over time to meet changing societal realities and challenges. The current system of supervision is one of the oldest and one of the most sophisticated international monitoring mechanisms in existence. An analysis of and comparison with (other) United Nations (UN) Human Rights monitoring mechanisms did not reveal specific shortcomings of the ILO system.²

The ILO supervisory procedures are complementary. The effective functioning of the supervisory system as a whole is based on the links and interactions between the different elements. Tripartism is vital for the effective functioning of the supervisory bodies and for preventing unnecessary duplication.

Many cases of progress illustrate the significant impact the different supervisory bodies have in promoting compliance with international labour standards. A combination of supervisory tools, such as reporting obligations, technical assistance and on-site missions contributes to the effectiveness of the system.

While the system functions adequately, it is necessary to evaluate and enhance it on a continuous basis. In this report, various recommendations are put forward in this respect. These suggestions are related to: (a) transparency, visibility and coherence; (b) mandates and the interpretation of Conventions; and (c) workload, efficiency and effectiveness.

It is critical that mechanisms are put in place to improve upon the transparency of the supervisory mechanism. Clarity with respect to the procedures and committees within the system could be enhanced by strengthening the avenues for dialogue between the different supervisory bodies. Furthermore, transparency can be achieved by utilizing more "user-friendly" and "visible" methods for delineating the different supervisory tasks of the different supervisory bodies using available modern technology. In relation to questions

¹ GB.323/INS/5, para. 1(5)(b).

² See Appendix I.

about the interpretation of Conventions, the ILO Constitution offers two distinct options under article 37(1)–(2).

Reducing the workload of the various bodies could be achieved by increasing the capacity of the different bodies, but also by exploring meticulously the use of independent and impartial national mechanisms for conflict settlement that precede recourse to the ILO's bodies.

Improved coordination of supervision and technical assistance will also lead to more effective compliance with international labour standards. It is generally recognized that the ILO's supervisory system succeeds in promoting the application of labour standards. Bolstering the transparency, accessibility, awareness and coherence of the system nevertheless demands unceasing attention. Moreover, measuring the impact of international labour standards is essential for the continuous efforts to strengthen the ILO supervisory system. The present report contributes to these ongoing efforts.

List of abbreviations

CAS	Conference Committee on the Application of Standards
CAT	Committee Against Torture
CCPR	United Nations Human Rights Committee
CEACR	Committee of Experts on the Application of Conventions and Recommendations
CED	Committee on Enforced Disappearances
CEDAW	Committee on the Elimination of Discrimination against Women
CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
CETCOIT	Comité Especial de Tratamiento de Conflictos ante la OIT
CFA	Committee on Freedom of Association
CMW	Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families (Committee on Migrant Workers)
CRC	Convention on the Rights of the Child
CRPD	Committee on the Rights of Persons with Disabilities
ECOSOC	United Nations Economic and Social Council
FFCC	Fact-Finding and Conciliation Commission on Freedom of Association
HRC	Human Rights Council
ICCPR	International Covenant on Civil and Political Rights
ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICJ	International Court of Justice
ILC	International Labour Conference
ILO	International Labour Organization
NORMLEX	Information System on International Labour Standards
NPM	National Preventive Mechanism
OHCHR	Office of the United Nations High Commissioner for Human Rights
OPCAT	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
SPT	Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
UPR	Universal Periodic Review

I. Introduction, mandate and approach

(a) The ILO supervisory system

1. The supervisory mechanism of the ILO is widely viewed as being unique at the international level. Since its creation in 1919, the ILO has been mandated to adopt international labour standards. These may take the form of either binding Conventions or non-binding Recommendations, which provide guidance on the implementation of Conventions. The special nature of the labour standards is derived from the direct involvement of the social partners in ILO standard-setting activities. This method of work in practice of the ILO used in the adoption of binding treaties is a distinguishing democratic and participatory feature among international organizations.
2. The promotion of the ratification and application of labour standards as well as their accountable supervision is a fundamental means of achieving the Organization's objectives and principles of promoting decent work and social justice which can be found, inter alia, in the 1919 Constitution, the 1944 Declaration of Philadelphia, the 1998 Declaration on Fundamental Principles and Rights at Work and its Follow-up and the 2008 ILO Declaration on Social Justice for a Fair Globalization.¹
3. Articles 19 and 22 of the Constitution provide for a number of obligations for member States when the International Labour Conference (ILC) adopts international labour standards, including the obligation to report periodically on the measures taken to give effect to the provisions of ratified and unratified Conventions and Recommendations.² The ILO's supervisory system by which the Organization examines the standards-related obligations of member States derived from ratified Conventions is complex and has evolved over the years. Supervision takes place within the framework of: (1) a regular process; and (2) a number of special supervisory procedures. The regular system of supervision concerns the reporting duty of member States under article 22 of the Constitution to inform the ILO on the measures taken to give effect to ratified Conventions. Under article 23 of the Constitution a summary of these reports is presented to the ILC at its yearly session. The Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the Conference Committee on the Application of Standards (CAS) play a pivotal role in this regular supervisory process.

¹ Constitution of the International Labour Organisation, 1919, Annex: Declaration concerning the aims and purposes of the International Labour Organisation (Declaration of Philadelphia) 1944; ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its 86th Session, Geneva, 18 June 1998; ILO Declaration on Social Justice for a Fair Globalization, adopted by the International Labour Conference at its 97th Session, Geneva, 10 June 2008; also see: N. Valticos: "Once more about the ILO system of supervision: In what respect is it still a model?", in N. Blokker and S. Muller (ed.): "Towards more effective supervision by international organizations", in *Essays in Honour of Henry G. Schermers*, Vol. I, 1994.

² ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution)*, Third item on the agenda: Information and reports on the application of Conventions and Recommendations, Report III (Part 1A), ILC, 104th Session, Geneva, 2015, p. 1.

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4. Special supervisory procedures are based on the submission of a representation or complaint and are enshrined in articles 24, 25 and 26 of the Constitution. Article 24 grants industrial associations of workers or employers the right to present a representation to the Governing Body about a possible failure to respect obligations derived from ratified Conventions by a member State. By virtue of article 26, a member State may lodge a complaint against another member State for not complying with a Convention, provided that both have ratified the said Convention. This procedure may also be invoked by a Conference delegate or by the Governing Body on its own motion. Moreover, since 1951, a special procedure for complaints concerning violations related to the principles of freedom of association exists by which such complaints are referred to the Committee on Freedom of Association (CFA).
 5. The ILO's supervisory machinery is generally regarded as capable of relieving national tensions and building consensus about work-related issues by strengthening tripartism at the domestic level and providing technical assistance in a spirit of constructive dialogue.³ Nevertheless, this comprehensive system, perceived in light of an increasingly dynamic global economy, calls for a continuous examination and evaluation of its effectiveness and functioning. This report contributes to that process.

(b) Governing Body request

6. The present report was requested by the ILO Governing Body. At its 323rd Session in March 2015, the Governing Body invited us to jointly prepare a report, to be presented to the 326th Session of the Governing Body (March 2016) on the functioning of the ILO supervisory mechanisms. The Governing Body requested: "the Chairperson of the Committee of Experts on the Application of Conventions and Recommendations (CEACR), Judge Abdul Koroma (Sierra Leone), and the Chairperson of the Committee on Freedom of Association (CFA), Professor Paul van der Heijden (Netherlands), to jointly prepare a report on the interrelationship, functioning and possible improvement of the various supervisory procedures related to articles 22, 23, 24 and 26 of the ILO Constitution and the complaints mechanism on freedom of association".⁴ In drafting this report we took into consideration input received from the ILO's tripartite constituents.

(c) Developments leading to the report

7. Following discussions in the CAS in 2012, the Employers' group put forward a number of objections to certain observations made by the CEACR in its 2012 General Survey concerning the right to strike.⁵ Apart from the substantive norm in question, the

³ K. Tapiola: "The ILO system of regular supervision of the application of Conventions and Recommendations: A lasting paradigm", in *Protecting Labour Rights as Human Rights: Present and Future of International Supervision – Proceedings of the International Colloquium on the 80th Anniversary of the ILO Committee of Experts on the Application of Conventions and Recommendations, Geneva, 24–25 November 2006*, p. 26.

⁴ GB.323/INS/5, para. 1(5)(b).

⁵ ILO: *Giving globalization a human face*, General Survey on the fundamental Conventions concerning rights at work in light of the ILO Declaration on Social Justice for a Fair Globalization, 2008, Report III (Part 1B), ILC, 101st Session, Geneva, 2012.

controversy related to the supervisory procedures and the mandate of the CEACR.⁶ Concerns were expressed over the role of the CEACR with regard to the interpretation of Conventions and the Committee's relation to the other supervisory procedures and mechanisms, primarily the CAS and the CFA.⁷ A clarification of the role of the Committee of Experts in relation to its mandate was requested. Ultimately the 2012 CAS was unable to adopt its list of individual cases for the first time since this aspect of supervision was created in 1927.⁸ This generated renewed discussion about the functioning of the Committee of Experts in particular and the supervisory mechanism as a whole.

8. The CEACR has recently undertaken further examination of its working methods. While the consideration of its working methods has been an ongoing process since its establishment, a special subcommittee on working methods was set up in 2001 which discussed the functioning of the CEACR on several occasions.⁹ The subcommittee reviews the methods of work with the aim of enhancing the CEACR's effectiveness and efficiency, by endeavouring to streamline the content of its report and improving the organization of its work with a view to increasing it in terms of transparency and quality.¹⁰
9. As regards the relationship between the CAS and the CEACR, the 2015 report of the Committee of Experts noted that a transparent and continuous dialogue between the CAS and the CEACR proved invaluable for ensuring a proper and balanced functioning of the ILO standards system. The CAS and the CEACR can be regarded as distinct but inextricably linked as their activities are mutually dependent. Moreover, the tripartite constituents reiterated their full support for the ILO supervisory system and their commitment to finding a fair and sustainable solution to the current issues.¹¹ In 2014, the Committee of Experts included a statement of its mandate in its report:

The Committee of Experts on the Application of Conventions and Recommendations is an independent body established by the International Labour Conference and its members are appointed by the ILO Governing Body. It is composed of legal experts charged with examining the application of ILO Conventions and Recommendations by ILO member States. The Committee of Experts undertakes an impartial and technical analysis of how the Conventions are applied in law and practice by member States, while cognizant of different national realities and legal systems. In doing so, it must determine the legal scope, content and meaning of the provisions of the Conventions. Its opinions and recommendations are non-

⁶ ILO: *Provisional Record* No. 19(Rev.), Part One, ILC, 101st Session, Geneva, 2012, Committee on the Application of Standards at the Conference, extracts from the *Record of Proceedings*, ILC, 101st Session, 2012. See especially paras 144–236. Also see F. Maupain: “The ILO Regular Supervisory System: A model in crisis?”, in *International Organizations Law Review*, Vol. 10, Issue 1, 2013, pp. 117–165.

⁷ ILO: *Provisional Record* No. 19(Rev.), Part One, op. cit., paras 147–149.

⁸ L. Swepston: “Crisis in the ILO supervisory system: Dispute over the right to strike”, in *International Journal of Comparative Labour Law and Industrial Relations*, Vol. 29, No. 2, 2013, pp. 199–218.

⁹ ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution)*, Third item on the agenda: Information and reports on the application of Conventions and Recommendations, Report III (Part 1A), ILC, 104th Session, Geneva, 2015, p. 7.

¹⁰ *ibid.*, p. 8.

¹¹ *ibid.*, p. 9.

binding, being intended to guide the actions of national authorities. They derive their persuasive value from the legitimacy and rationality of the Committee's work based on its impartiality, experience and expertise. The Committee's technical role and moral authority is well recognized, particularly as it has been engaged in its supervisory task for over 85 years, by virtue of its composition, independence and its working methods built on continuing dialogue with governments taking into account information provided by employers' and workers' organizations. This has been reflected in the incorporation of the Committee's opinions and recommendations in national legislation, international instruments and court decisions.¹²

10. The Committee noted that the statement of its mandate, which was reiterated in its 2015 report, was welcomed by the Governing Body and has the support of the tripartite constituents.¹³ It reiterated that the functioning and existence of the Committee were: "anchored in tripartism, and that its mandate had been determined by the International Labour Conference and the Governing Body. Tripartite consensus on the ILO supervisory system was therefore an important parameter for the work of the Committee which, although an independent body, did not function in an autonomous manner."¹⁴
11. The Committee restated that it will continue to strictly abide by its mandate and core principles of independence, objectivity and impartiality. Furthermore, it stated that regular examinations will be conducted on the means of improving its methods of work, and reaffirmed its willingness to contribute to resolving the current challenges to the supervisory system and to the enhancement of the functioning and impact of the ILO's supervisory mechanism as a whole.¹⁵
12. Similarly, the CFA undertakes efforts to improve its working methods on a regular basis.¹⁶ The CFA's composition is renewed every three years and the Committee discusses questions related to its impact, visibility and working methods in separate sessions.¹⁷ The present report is an exposition of these continuing efforts to assess and strengthen the supervisory procedures.

¹² ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), ILC, 103rd Session, Geneva, 2014, para. 31.

¹³ ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution)*, Third item on the agenda: Information and reports on the application of Conventions and Recommendations, Report III (Part 1A), ILC, 104th Session, Geneva, 2015, p. 10, para. 24.

¹⁴ *ibid.*

¹⁵ *ibid.*, p. 10, paras 25–26.

¹⁶ ILO: *371st Report of the Committee on Freedom of Association*, Governing Body, 320th Session, Geneva, 13–27 Mar. 2014, GB.320/INS/12, para. 14. Also see ILO: *Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, fifth (revised) edition, Geneva, 2006, Annex I: Special procedures for the examination in the International Labour Organization of complaints alleging violations of freedom of association, pp. 231–243.

¹⁷ GB.320/INS/12, para. 14.

(d) Approach and structure

13. This review covers three main areas related to articles 22, 23, 24 and 26 of the ILO Constitution and the complaints mechanism on freedom of association: the functioning, interrelationship and possible improvements to the existing supervisory system.
14. The functioning of the system will be analysed by examining the development of the regular and special procedures, as well as their legal basis. Furthermore, their operation in practice, effectiveness and impact will be discussed. The current challenges, criticisms and concerns of the system will be scrutinized.
15. The interrelationship between the ILO supervisory bodies will be critically addressed. Complementarity, balance and symmetry of the different procedures will be discussed and possible gaps in coverage or, inversely, areas of overlap will be identified.
16. Finally, suggestions and proposals on how to improve the ILO supervisory system will be discussed. In order to arrive at these suggestions, an assessment of the workings of the various procedures and their primary objectives as well as a clear understanding of the constitutional framework is necessary.
17. The report is structured as follows: Part II of this report examines the architecture and development of the supervisory system in order to get a clear picture of the existing procedures in the supervisory landscape. Part III outlines the practice of the different supervisory bodies; their interrelationship, impact and effectiveness to come to an informed understanding of similarities and differences of the supervisory mechanisms and to identify possible gaps or overlapping competences. Part IV reviews the shortcomings of the current system and evaluates suggested improvements to the supervisory system. Part V will conclude the report with a concise overview of the authors' main findings. Appendix I will discuss other monitoring or supervisory systems outside the ILO system to assess which lessons could be learned from – primarily – the UN Charter- and Treaty-based human rights bodies. Appendix II includes further statistical data on the supervisory procedures.

II. Overview, development and procedural aspects of the supervisory mechanisms

18. This section will explain the structure of the supervisory mechanisms and the developments that shaped them into their contemporary forms. In order to set the stage for a more elaborate examination of the evolution and particulars of the different procedures and bodies a concise overview of the present system is first provided. Secondly, a more thorough analysis of the different procedures including their genesis and key features will be presented.

**(a) The regular and special supervisory procedures:
A short introduction**

19. The ILO regularly examines the application of labour standards in its member States in order to ensure that the ratified Conventions are duly implemented at the domestic level. Furthermore, the Organization points out areas in which these standards could be applied more judiciously and offers technical assistance and support for social dialogue. The regular system of supervision works as follows: once a member State ratifies an ILO Convention it is obliged to report on a regular basis on the measures it has taken towards its implementation. Every three years governments are to submit reports on the steps taken in law and practice to apply the eight fundamental and the four governance – or priority–

Conventions. For other Conventions the reporting obligation is once in every five years (except for shelved Conventions).¹⁸ However, governments may be urged to send report at shorter intervals when required. Article 23 of the Constitution requires governments to send copies of their reports to the national social partners. The national and international social partners may also provide the ILO with comments on the application of labour standards.

20. The Committee of Experts is the body primarily responsible for conducting the technical examination of the compliance of member States with provisions of ratified Conventions.¹⁹ The CEACR was set up in 1926 and is presently composed of 20 eminent jurists from different geographical regions, representing different legal systems and cultures. They are appointed by the Governing Body and the Conference for a term of three years.
21. Being a technical body, the CEACR produces two kinds of comments: observations and direct requests. Observations are comments on fundamental questions raised by the application of a particular Convention by a member State and are published in the Committee's flagship publication; its annual report.²⁰ Direct requests relate to more technical questions or requests for additional information that are communicated directly to the governments concerned.
22. The annual report of the CEACR consists of three separate parts. The first part is a General Report, which contains comments and remarks about the degree to which member States respect their obligations derived from article 22 of the ILO Constitution. Part II includes the observations on the application of the international labour standards and Part III concerns a General Survey of one or more specific themes selected by the Governing Body.²¹
23. The annual report of the Committee of Experts is submitted to the plenary session of the Conference in June each year, where it is examined by the CAS. The CAS is an ILC tripartite standing committee composed of Government, Employer and Worker representatives. The CAS analyses the CEACR report and selects a number of observations for discussion. Governments referred to in these comments are invited to respond to the CAS and provide further details about the matters at hand. The CAS draws up conclusions in which it recommends governments to take specific measures to remedy a problem or to ask the ILO for technical assistance.²² In the General Report of the CAS certain situations of particular concern are highlighted in special paragraphs.²³

¹⁸ ILO: *Rules of the Game: A brief introduction to international labour standards* (revised edition 2014), p. 102.

¹⁹ ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), ILC, 104th Session, Geneva, 2015, p. 2.

²⁰ ILO: *Handbook of procedures relating to international labour Conventions and Recommendations*, International Labour Standards Department, Rev. 2012, p. 34.

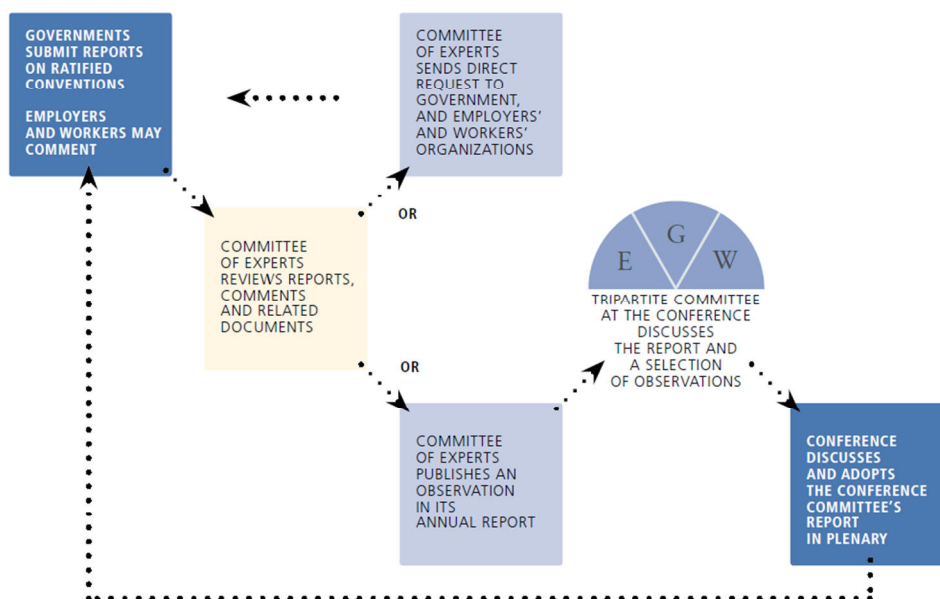
²¹ ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, op. cit., p. 2.

²² ILO: *Provisional Record No. 14(Rev.)*, Part One, Report of the Committee on the Application of Standards, ILC, 104th Session, Geneva, 2015, paras 8–23.

²³ ILO: *Rules of the Game*, op. cit., p. 103.

24. Comprised in a simple diagram, the regular system of supervision can be presented as follows:

Figure 1. The regular supervisory process ²⁴



25. Unlike the regular system of supervision, the three special supervisory procedures are based on the submission of a complaint or representation. The article 24 representations procedure, the complaints procedure under article 26 of the Constitution and the special procedure concerning complaints regarding freedom of association will be briefly introduced below.

Article 24 representations

26. The representations procedure is enshrined in articles 24 and 25 of the ILO Constitution. These provisions grant an industrial organization of employers or workers the right to present a representation to the Governing Body against any member State which, in its view, “has failed to secure in any respect the effective observance of any Convention to which it is a party”. ²⁵ The Governing Body may appoint a three-member tripartite committee – if the representation is admissible – to examine it on its merits and the government’s response thereto. ²⁶ When representations deal with possible violations of the principles contained in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the matter is usually referred to the CFA, which will be examined below. The CFA – after requesting the government for further information – subsequently submits a report to the Governing Body in which it states the legal and practical aspects of the case, examines the information submitted and concludes with certain recommendations. If the response of the government is deemed not satisfactory, the Governing Body may choose to publish the representation and the government’s response.

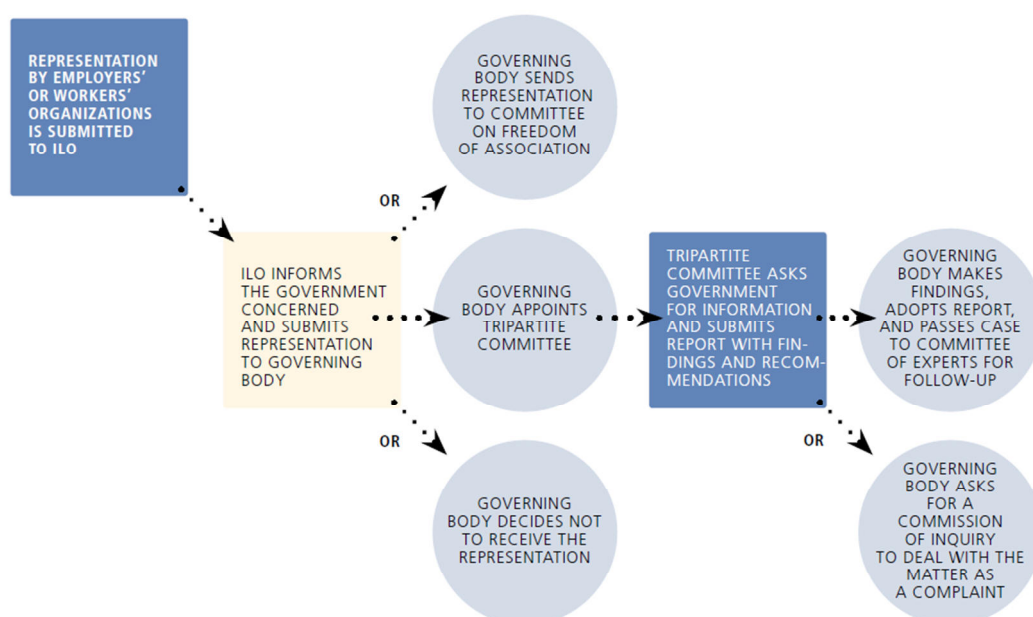
²⁴ *ibid.*

²⁵ *ibid.*, p. 106.

²⁶ ILO: *Handbook of procedures relating to international labour Conventions and Recommendations*, op. cit., p. 49.

The case may be referred to the CEACR for follow up, or dealt with as a complaint, in which case the Governing Body asks for a Commission of Inquiry to be set up. Individuals or other groups are not allowed to submit a representation directly to the Governing Body.

Figure 2. The representations procedure ²⁷



Article 26 complaints

27. The second special procedure, the complaints procedure, is provided for in articles 26–34 of the ILO Constitution. Complaints may be filed against a member State for not complying with a ratified Convention by another member State which has ratified that same Convention, a delegate to the ILC or the Governing Body in its own capacity.²⁸ When a complaint is received, the Governing Body may set up a Commission of Inquiry, consisting of three independent members, which is responsible for carrying out an investigation of the complaint in which it ascertains all the facts and issues recommendations on measures to be taken to address the complaint.²⁹ The Commission of Inquiry is the most severe investigative procedure available and is usually set up when a State persistently and seriously violates international labour standards.³⁰ Up to this date there have been 12 such Commissions established (see figure 4 in Appendix II).

28. When a State refuses to adhere to the recommendations of the Commission, the Governing Body can take action under article 33 of the Constitution, which provides as follows:

In the event of any Member failing to carry out within the time specified the recommendations, if any, contained in the report of the Commission of Inquiry, or in the decision of the International Court of Justice, as the case may be, the Governing Body may

²⁷ ILO: *Rules of the Game*, op. cit.

²⁸ *ibid.*, p. 108.

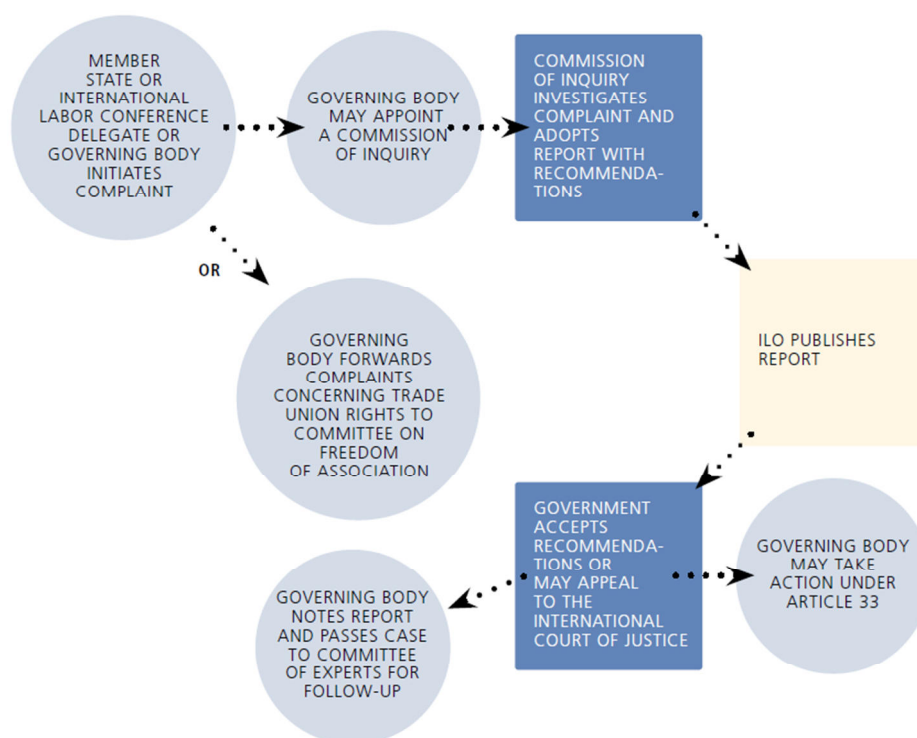
²⁹ ILO: *Handbook of procedures relating to international labour Conventions and Recommendations*, op. cit., paras 82–84.

³⁰ ILO: *Rules of the Game*, op. cit., p. 108.

recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith.

29. Article 33 has only been invoked once, in 2000, when the Governing Body requested the ILC to take measures against the widespread and systematic use of forced labour in Myanmar.

Figure 3. The complaints procedure ³¹



The complaints procedure before the Committee on Freedom of Association

30. The third special supervisory mechanism concerns the procedure before the CFA. Following the establishment of the Fact-Finding and Conciliation Commission on Freedom of Association (FFCC) in 1950, the CFA was set up in 1951 for the purpose of examining complaints about violations of the principles of freedom of association laid down in Conventions Nos 87 and 98. Paragraph 14 of the special procedures for examining complaints alleging violations of freedom of association states that: “The mandate of the Committee consists in determining whether any given legislation or practice complies with the principles of freedom of association and collective bargaining laid down in the relevant Conventions.” ³² The mandate has been regularly approved by the Governing Body, including in 2009 when it was included in the Compendium of rules of Governing Body committees. ³³ Formally, the responsibility of the CFA is to consider, with a view to

³¹ *ibid.*, p. 109.

³² Paragraph 14 of the special procedures for examining complaints alleging violations of freedom of association. Also see ILO: *Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, fifth (revised) edition, Geneva, 2006, para. 6.

³³ GB.306/LILS/1, para. 8; GB.306/10/1(Rev.), para. 4.

making recommendations to the Governing Body, whether a case is worthy of examination by the Governing Body or possible referral to the FFCC.³⁴ The Committee may examine complaints whether or not the country concerned has ratified the relevant Conventions. These complaints may be lodged by employers' and workers' organizations against a member State. The CFA is a Governing Body committee and is composed of an independent chairperson and three members and three deputies from each of the three groups: Governments, Employers and Workers, all acting in their personal capacity. Its function is not to form general conclusions concerning trade unions' and/or employers' situations in particular countries on the basis of vague general statements, but to evaluate specific allegations about the principles of freedom of association.³⁵ The main objective of the CFA procedure is not to criticize certain governments, but rather to engage in a constructive tripartite dialogue to promote respect for trade unions' and employers' associations' rights in law and practice.³⁶

- 31.** In order for a case to be receivable by the CFA, certain requirements must be met. The complaint should clearly state that its intent is to lodge a complaint to the CFA, it must come from an employers' or workers' organization, the complaint has to be in writing and it has to be signed by a representative of a body entitled to make a complaint.³⁷ Non-governmental organizations (NGOs) with consultative status with the ILO are also entitled to file complaints.³⁸ Substantively, the allegations in the complaints should not be purely political in character, should be clearly stated and fully supported by evidence. There is no requirement of exhaustion of domestic remedies although the CFA takes into account the fact that a matter may be pending before the national courts.³⁹
- 32.** If the CFA decides to receive a case it subsequently requests a response from the government concerned. After the response is examined, the Committee analyses the case and draws up recommendations on how the specific situation could be remedied.⁴⁰ If a violation of freedom of association principles is found, governments are requested to report on the implementation of those adopted recommendations. In cases where the member

³⁴ D. Tajzman and K. Curtis: *Freedom of Association: A user's guide – Standards, principles and procedures of the International Labour Organization* (Geneva, ILO, 2000), p. 58.

³⁵ ILO: *Freedom of Association: Digest and principles of the Freedom of Association Committee of the Governing Body of the ILO*, fifth (revised) edition, Geneva, 2006, Annex, para. 16.

³⁶ *Freedom of Association: Digest and principles of the Freedom of Association Committee of the Governing Body of the ILO*, fifth (revised) edition, Geneva, 2006, para. 4. The legitimacy and authority of the supervisory mechanism is based on stability and consistency of its decisions. This is the reason behind the adoption of a Conference resolution in 1970 which called for the establishment of the CFA *Digest*, see: Resolution concerning trade union rights and their relation to civil liberties, adopted on 25 June 1970, ILC, 54th Session, Geneva, 1970, para. 11.

³⁷ D. Tajzman and K. Curtis, *op. cit.*, pp. 58–59. Also see paragraphs 31 and 40–42 of the special procedures for examining complaints alleging violations of freedom of association.

³⁸ Non-governmental international organizations having general consultative status with the ILO are: International Co-operative Alliance, International Organisation of Employers, International Trade Union Confederation, Organization of African Trade Union Unity, Business Africa and World Federation of Trade Unions.

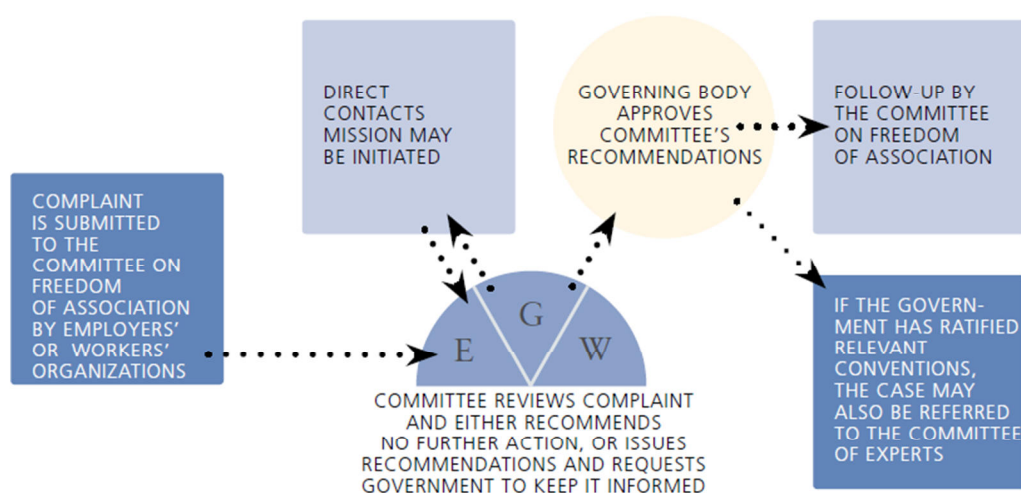
³⁹ *ibid.*, pp. 60–61. See paragraphs 28–30 of the special procedures for examining complaints alleging violations of freedom of association.

⁴⁰ ILO: *Rules of the Game*, *op. cit.*, p. 110.

State under scrutiny has ratified the relevant Convention, the technical legal aspects of the case may be referred to the Committee of Experts.

33. Once the CFA has examined a case it sends its report to the Governing Body for adoption. The CFA may indicate in its conclusions and recommendations that the case calls for no further examination; include interim conclusions and recommendations; and may ask to be kept informed of certain developments or make definitive conclusions and recommendations.⁴¹ At various stages in the procedure, the CFA may issue urgent appeals or send other special communications to the government concerned. Moreover, direct contacts – whereby a representative of the Director-General is sent to the country concerned to ascertain the facts of a case – may be established during or after the examination process.⁴² These missions are meant to discuss the issue directly with government representatives and the social partners. The Committee convenes three times a year including in the week before the Governing Body meeting takes place. The CFA has examined over 3,100 cases since its creation.⁴³

Figure 4. The freedom of association procedure⁴⁴



Reporting obligations on unratified Conventions and on Recommendations

34. Under article 19 of the Constitution, member States are required to report at regular intervals, at the request of the Governing Body, on the position of its law and practice with regard to the extent to which effect is given, or proposed to be given, to any of the provisions of unratified Conventions. The goal of this obligation is to keep track of developments in all countries, whether or not they have ratified Conventions. Article 19 is the basis for the annual in-depth General Survey by the CEACR. These Surveys – on a subject chosen by the Governing Body – are established mainly on the basis of information

⁴¹ D. Tajgman and K. Curtis, op. cit., p. 66.

⁴² *ibid.*, p. 64.

⁴³ Also see E. Gravel, I. Duplessis and B. Gernigon: *The Committee on Freedom of Association: Its impact over 50 years* (Geneva, ILO, 2001).

⁴⁴ ILO: *Rules of the Game*, op. cit., p. 111.

and reports received from member States, and employers' and workers' organizations. Furthermore, a special follow-up reporting procedure has been implemented with the adoption of the 1998 ILO Declaration on Fundamental Principles and Rights at Work, whereby member States are required to report annually on any changes which may have taken place in their law and practice with regard to unratified fundamental Conventions.⁴⁵ Article 19 reports may identify obstacles in the way of ratification or may point out areas in which assistance may be required.⁴⁶

Technical assistance

35. The ILO, in supporting the supervisory bodies, is also mandated to provide technical assistance whereby ILO officials or other experts help countries to address problems in legislation and practice in order to bring them into conformity with ratified instruments.⁴⁷ Different types of assistance are available. These range from facilitation of social dialogue or dispute resolution processes, legal advisory services – including the analysis of, and advice on, legal drafts and the provision of an informal opinion of the International Labour Office (the Office) on certain legal matters – to direct contacts, tripartite missions or ILO advisory visits.⁴⁸ Whether the Office provides such assistance depends on the political will in a country to resolve the issues, matters of budget and the specificity of the request.⁴⁹ Technical assistance is an important component of effective supervision of international labour standards.

(b) Establishment and development of the supervisory mechanisms

36. This section examines the historical development of the supervisory system in order to set the stage for a more elaborate analysis of the contemporary status of the supervisory bodies and procedures in the following paragraphs. First, a more expansive and general description of the creation and development of the mandate and functioning of the CEACR and the CAS – the regular system of supervision – will be provided. Subsequently, the development of the special procedures – the CFA, representations and complaint procedures – will be briefly visited in separate sections.

⁴⁵ ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, adopted by the International Labour Conference at its 86th Session, Geneva, 18 June 1998, Annex, Part II, section B.

⁴⁶ D. Tajgman and K. Curtis, *op. cit.*, p. 52.

⁴⁷ <http://www.ilo.org/global/standards/applying-and-promoting-international-labour-standards/technical-assistance-and-training/lang--en/index.htm>.

⁴⁸ D. Tajgman and K. Curtis, *op. cit.*, p. 73.

⁴⁹ *ibid.*

Development of the CAS and the CEACR

37. The CAS and the CEACR were established to carry out their supervisory responsibilities under the concept of “mutual supervision” which emerged from the work leading to the development of the ILO in 1919.⁵⁰ This concept is based on the precept that unfair competition between countries would be prevented if ILO Members would all be bound by the same ratified Conventions. Furthermore, the Commission on International Labour Legislation, which drafted the Labour Chapter in the Treaty of Versailles, emphasized that the supervisory procedures were “carefully devised in order to avoid the imposition of penalties, except in the last resort, when a State has flagrantly and persistently refused to carry out its obligations under a Convention”.⁵¹ The supervisory machinery was therefore based on persuasion and deliberation, rather than on sanctions or other types of measures. Article 22 of the Constitution provides the basis for the regular system of “mutual supervision”.⁵² It provides as follows:

Article 22

Annual reports on ratified Conventions

Each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of Conventions to which it is a party. These reports shall be made in such form and shall contain such particulars as the Governing Body may request.

38. This constitutional context provided the means for information exchange between Members while the (special) representation and complaints procedures – originally Articles 409 and 411 of Part XIII of the Treaty of Versailles – could potentially be used in cases where Members failed to give effect to the provisions of ratified Conventions.⁵³ Originally, the Director-General’s summary of the reports was to serve as a basis for further action, but in practice this did not happen. Therefore, the CEACR and the CAS provided the only effective means for supervising the implementation of ratified Conventions since their inception.

1926–39

39. In 1926, the ILC set up the CAS and requested the Governing Body to appoint a Committee, the current CEACR, whose functions would be defined in the report of the Committee on the examination of annual reports under Article 408 of the Treaty of Versailles.⁵⁴ The Committee indicated that the CEACR would have no juridical capacity or interpretative authority. The role of the CEACR was, in the Committee’s view, to take

⁵⁰ *Informal tripartite consultations (19–20 February 2013): Follow-up to matters arising out of the report of the Committee on the Application of Standards of the 101st Session (June 2012) of the International Labour Conference*, Information paper on the history and development of the mandate of the Committee of Experts on the Application of Conventions and Recommendations, paras 7–9. (Henceforth: *Information paper on the history and development of the mandate of the CEACR (19–20 February 2013)*).

⁵¹ ILO: *Official Bulletin*, Vol. 1, April 1919–August 1920, pp. 265–266.

⁵² Originally Article 408 of Part XIII of the Treaty of Versailles, 1919.

⁵³ *Information paper on the history and development of the mandate of the CEACR (19–20 February 2013)*, para. 8.

⁵⁴ *ibid.*, para. 10.

notice of inadequate reports, to call attention to diverging interpretations of Conventions and to present a technical report to the Director, who would communicate this report to the Conference.⁵⁵

40. The CEACR received 180 reports for its First Session of which 70 gave rise to “observations”. The CAS noted that the CEACR report in 1928 had rendered useful results and the Governing Body decided to appoint the CEACR for another year and tacitly renewed its mandate annually.⁵⁶
41. In this first period – between 1926 and 1939 – the CEACR was initially composed of eight members, but this grew to 13 in 1939. The workload also increased, from 180 reports in 1928 to 600 in 1939. The CEACR methods of work evolved through interaction with the Governing Body and the CAS. The CEACR also commenced with addressing member States’ governments directly, thereby gradually establishing a dialogue with those governments.⁵⁷
42. As regards the relationship between the CAS and the CEACR in this first period, the deliberations in the CAS focused on matters of principle arising out of the report of the CEACR, while an independent examination was still possible for reports that were received too late to be examined by the CEACR. While the CEACR’s main task was therefore to examine the reports from member States, the procedures in the CAS developed around the opportunities given to member States to submit certain explanations orally or in writing.⁵⁸
43. In 1939, the CAS commented on this double examination process in its report and stated – in order to urge member States to submit their reports in a timely manner – that this system placed member States on a footing of equality in respect of the supervision of the application of ratified Conventions. It added that the examination of reports by the CEACR and the CAS differed in certain respects: the CEACR consisted of independent experts whose examination is generally limited to a scrutiny of the documents provided by governments while the CAS is a tripartite organ, made up of representatives of governments, workers and employers, who are in a better position to go beyond questions of conformity and as far as practicable, verify the day-to-day practical application of the Conventions in question.⁵⁹ The CAS explained that in this system of mutual supervision and review “... the preparatory work carried out by the Experts plays an important and essential part”.⁶⁰

⁵⁵ ILO: *Record of Proceedings*, Appendix V, Report of the Committee on Article 408, ILC, Eighth Session, 1926, pp. 405–406. The current Director-General was simply called “Director” in the early days of the Organization.

⁵⁶ ILO: Minutes of the 30th Session of the Governing Body, Jan. 1926, p. 56.

⁵⁷ *Information paper on the history and development of the mandate of the CEACR (19–20 February 2013)*, para. 16.

⁵⁸ *ibid.*, para. 19.

⁵⁹ ILO: *Record of Proceedings*, Appendix V, ILC, 25th Session, 1939, p. 414.

⁶⁰ *ibid.*

44. A second period in the development of the CEACR and the CAS, from 1944 to about 1961, witnessed an expansion of the supervisory role of the committees.⁶¹ In the period following the Second World War, the ILO reviewed its standard-setting system through an analysis of the functioning of the supervisory machinery.⁶² During the 26th Session of the Conference, it was discussed – on the basis of a preparatory report – that although the system offered a rather reliable impression of the extent to which national laws were in conformity with labour standards, it did not provide a clear picture of the extent to which those laws were effectively applied.⁶³ This led to a broadening of the terms of reference of the CAS and the CEACR in light of the 1946 constitutional amendment in which the system of information and reports to be supplied by member States was expanded.⁶⁴
45. More specifically, the constitutional amendments entailed important changes to articles 19 and 22 and concerned the obligation to report on measures taken to submit newly adopted instruments to the competent national authorities, the obligation to submit information on unratified Conventions and Recommendations at the request of the Governing Body and the obligation to communicate reports to representative workers’ and employers’ organizations.⁶⁵
46. Due to the increasing workload, the membership of the CEACR grew to 17 and its sessions were lengthened to an average of one-and-a-half weeks. Dialogue between governments was further enhanced during this period and the first references to “technical assistance” were made.⁶⁶
47. The CAS emphasized that “double examination” was essential to the functioning of the supervisory system and repeatedly supported calls for strengthening the CEACR. Furthermore, the CEACR and the CAS focused on ensuring that governments fulfilled their new obligation to provide representative organizations of employers and workers with copies of their reports. In 1953, the CEACR took notice of the first comments made by workers’ organizations.⁶⁷
48. From the mid-1950s, the Governing Body stopped its practice of commenting on the report of the CEACR and confined itself to taking note of it. In 1950, the CEACR examined its first reports on unratified Conventions, based on the 1946 constitutional amendment and a

⁶¹ *Information paper on the history and development of the mandate of the CEACR (19–20 February 2013)*, paras 21–41.

⁶² *ibid.*, para. 21.

⁶³ ILO: *Future, policy, programme and status of the ILO*, Report I, ILC, 26th Session, 1944, pp. 95–96 and 99–100.

⁶⁴ *Information paper on the history and development of the mandate of the CEACR (19–20 February 2013)*, paras 26–29.

⁶⁵ ILO: *Improvements in the standards-related activities of the ILO: Initial implementation of the interim plan of action to enhance the impact of the standards system*, Geneva, Mar. 2008, GB.301/LILS/6(Rev.), para. 46.

⁶⁶ *Information paper on the history and development of the mandate of the CEACR (19–20 February 2013)*, paras 32–34.

⁶⁷ *ibid.*, para. 37.

1948 decision of the Governing Body.⁶⁸ Examination of the unratified Conventions was strengthened during the 1950s and in 1955, the Governing Body approved a proposal that the CEACR should undertake, in addition to a technical examination on the application of Conventions, a study on general matters, such as positions of the application of certain Conventions and Recommendations by all governments. These examinations, presently known as “General Surveys”, were established with a view to reinforcing the work of the CAS and intended to cover Conventions and Recommendations selected under article 19 of the Constitution. Since 1956, the CAS has consistently discussed the General Surveys produced by the CEACR.⁶⁹ In 1950 and 1951, a special procedure on freedom of association was established. This process will be described later on in a separate section.

1962–89

- 49.** A third period in the development of the supervisory system, from 1962 to 1989 is characterized by further diversification of the supervisory model.⁷⁰ The ILO began to focus more on the assistance it could provide to its new Members in light of its expanded membership resulting from the attainments of independence of many new territories. Tripartism was strengthened by the increased participation of employers’ and workers’ organizations, the adoption of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and the rise of the international trade union movement.⁷¹
- 50.** Although the mandate of the CEACR did not alter, its functions were further developed and the impartiality of the supervisory bodies was reinforced. The ILO collaborated with other international mechanisms in supervising the application of common standards. The CEACR examined reports on the European Code of Social Security and certain reports from States parties to the International Covenant on Economic, Social and Cultural Rights (ICESCR) until the Committee on Economic, Social and Cultural Rights (CESCR) was established in 1985.⁷²
- 51.** The competence and functioning of the CEACR was frequently discussed in this period. Concerns were voiced over the absence of formal rules of procedure and the role of the CEACR as a disguised judicial body.⁷³ A majority of the tripartite parties disagreed and considered that the CEACR had functioned well without any formal rules of procedure.⁷⁴ They “expressed their faith in the impartiality, objectivity and integrity of the Committee

⁶⁸ Informal tripartite consultations on the follow-up to the discussions of the Conference Committee on the Application of Standards (19 September 2012), *The ILO supervisory system: A factual and historical information note*, paras 51–54.

⁶⁹ *Information paper on the history and development of the mandate of the CEACR (19–20 February 2013)*, para. 41.

⁷⁰ *ibid.*, paras 42–62.

⁷¹ *ibid.*, para. 42–43.

⁷² *ibid.*, para. 47.

⁷³ *ibid.*, paras 48–49. Also see para. 50. In 1983, in a memorandum, socialist countries considered that the composition, criteria and methods of the supervisory bodies did not reflect the membership of the Organization and the present-day conditions. ILO procedures, in their view, were being misused for political purposes to direct criticism at socialist and developing countries.

⁷⁴ *Information paper on the history and development of the mandate of the CEACR (19–20 February 2013)*, para. 49.

of Experts, a quasi-judicial body whose professional competence was beyond question. ... Objectivity could not be guaranteed by rules of procedure but depended upon the personal qualities of the members of the Committee.”⁷⁵

- 52.** In 1979, the CEACR reached its current level of 20 experts and the issue of the geographical representation of the experts took on greater importance.⁷⁶ As regards the Committee’s working methods, a number of developments took place. In 1963, the CEACR indicated – supported by the CAS – that it reviewed the practical application of ratified Conventions and their incorporation into domestic law.⁷⁷ A year later, the CEACR started to record cases of progress in its report and in 1968 the direct contacts procedure was introduced.⁷⁸
- 53.** From 1970, the CEACR began giving special attention to the obligation for Members, under article 23 of the Constitution, to communicate reports and further information to the representative employers’ and workers’ organizations, by which greater participation of workers and employers was to be promoted.⁷⁹ In 1973, the CEACR noted that the number of comments had increased from seven during the previous year to 30 in the present one. Most comments were submitted together with the governments’ reports, while some had been sent directly to the Organization.⁸⁰ The submission of comments became established practice during this period and their number steadily increased to 149 in 1985.

1990–2012

- 54.** The review of standards-related activities broadened in recent decades in order to take the context of globalization better into account. Between 1994 and 2005, the Governing Body and the Conference discussed virtually all aspects of the ILO standards system.⁸¹ Discussions – about the core values and goals of the Organization – similar to those in the early years of the Organization and the years prior to the Second World War led to the adoption of the 1998 ILO Declaration on Fundamental Principles and Rights at Work and the ILO Declaration on Social Justice for a Fair Globalization in 2008.⁸²

⁷⁵ ILO: *Record of Proceedings*, Appendix V, ILC, 47th Session, 1963, para. 10.

⁷⁶ *Information paper on the history and development of the mandate of the CEACR (19–20 February 2013)*, para. 51.

⁷⁷ ILO: *Record of Proceedings*, Appendix V, op. cit., para. 5.

⁷⁸ *Information paper on the history and development of the mandate of the CEACR (19–20 February 2013)*, paras 54–55. During direct contact missions, ILO officials meet government officials to discuss problems in the application of standards with the aim of finding solutions. Different formalities for conducting such missions are possible, for example on the spot, direct contact, high-level, and high-level tripartite missions.

⁷⁹ *ibid.*, para. 56.

⁸⁰ *ibid.*, para. 58.

⁸¹ ILO: For a comprehensive overview of the standards-related activities from 1994–2004, see: *Improvements in the standards-related activities of the ILO: A progress report*, Geneva, Mar. 2005, GB.292/LILS/7.

⁸² *Information paper on the history and development of the mandate of the CEACR (19–20 February 2013)*, para. 64.

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- 55.** The CEACR's terms of reference were not adjusted during this period, but the Governing Body did attribute a role to the Committee in cases where representations declared admissible related to facts and allegations similar to those of an earlier representation.⁸³ The membership of the CEACR remained unchanged at 20 experts, but a 15-year limit for all members was established by the experts themselves in 2002. In 1996, the dates of the CEACR's sessions were moved from February–March to November–December.
- 56.** In 2001, the CEACR established a subcommittee on its working methods and these methods were discussed in plenary during the CEACR's sessions in 2005 and 2006. The reviews were prompted by discussions in the Governing Body as well as the desire to effectively address the workload of the Committee. The number of comments also increased to over 1,000.⁸⁴
- 57.** While this last period witnessed greater coordination and interaction between the CEACR and the CAS, it was also marked by divergences concerning the role of the CEACR in relation to matters of interpretation and the division between the functions of the respective committees.⁸⁵ These discussions, mainly held in 1994, forebode the 2012 problems and substantively covered similar ground. The Governing Body began to address the work of the CEACR more frequently during this period, especially due to the new reporting procedure under the Social Justice Declaration, the streamlining of the regular reporting procedure and the more rapid renewal of the CEACR membership.⁸⁶

The special procedure on freedom of association

- 58.** While the CEACR and the CAS have been in operation almost from the creation of the ILO, another important component of the supervisory system developed from 1950 onward. Following the adoption of Conventions Nos 87 and 98, the ILO with the support of the Economic and Social Council of the United Nations (ECOSOC) created a special procedure for the examination of allegations concerning the violation of trade union rights.⁸⁷
- 59.** A new supervisory body was created, the FFCC, and it was agreed that allegations regarding violations of trade union rights would be forwarded by ECOSOC to the Governing Body. The new process was meant to ensure facilities for impartial and authoritative investigations of questions of fact raised by allegations of infringements of trade unions' and employers' associations' rights.⁸⁸
- 60.** Since the principle of freedom of association was enshrined in the Constitution and the Declaration of Philadelphia and in light of its importance for the tripartite model of the Organization, these allegations could be made against all member States, irrespective of whether they had ratified the relevant Conventions. However, without the consent of the government concerned, no allegations could be submitted to the Commission. These new

⁸³ *ibid.*, para. 65.

⁸⁴ *ibid.*, paras 69–71.

⁸⁵ *ibid.*, paras 72–74.

⁸⁶ *ibid.*, para. 74.

⁸⁷ GB.301/LILS/6(Rev.), para. 47.

⁸⁸ *ibid.*

procedures were not meant to replace the existing constitutional representations and complaints procedures.⁸⁹

- 61.** In 1951, the CFA was created by the Governing Body. Originally, examination of complaints by the CFA was intended to determine whether the allegation warranted further examination by the Governing Body and to secure the consent of the government concerned should referral to the FFCC be justified. Examination by the CFA did not require such consent and the CFA quickly became the main platform for examining allegations of violations of freedom of association.⁹⁰ This occurred for a number of reasons, mainly because of the difficulty to obtain consent from the government under consideration and the formal nature of the procedure before the FFCC. Moreover, important developments in the procedure of the CFA contributed to a broadening of the examination of complaints by this Committee over time.
- 62.** Such procedural changes and the Committee's mandate were discussed at different moments.⁹¹ At its session in 1952, the Committee considered it desirable to establish a simpler and more expeditious procedure to deal with complaints that were not sufficiently substantiated.⁹² In its ninth report, the Committee proposed a number of changes to the procedure related to the presentation of complaints, governments' replies, hearings of the parties and the form of the Committee's recommendations.⁹³ In 1958, the Committee formulated additional improvements aimed at strengthening its impartiality, preventing abuse of its procedures and making a distinction between urgent and less urgent cases.⁹⁴ In 1969, another set of proposals dealing with complainants, receivability and measures to speed up the procedure were formulated.⁹⁵ In 1977, two proposals concerning contacts with governments and the direct contacts procedure were adopted to increase the impact of the CFA.⁹⁶ In 1979, the Governing Body adopted a number of proposals by the Committee regarding hearing the parties, direct contacts missions, relations with complainants and governments, and improving efficiency.⁹⁷

⁸⁹ Informal tripartite consultations on the follow-up to the discussions of the Conference Committee on the Application of Standards (19 September 2012), *The ILO supervisory system: A factual and historical information note*, para. 68.

⁹⁰ GB.301/LILS/6(Rev.), para. 48.

⁹¹ CFA: *Examination of complaints alleging infringements of trade union rights*, Document on Procedure, Mar. 2002; Sixth Report of the Committee on Freedom of Association reproduced in the Seventh Report of the International Labour Organization to the United Nations, Appendix V, Reports of the Governing Body Committee on Freedom of Association, para. 25. Also see: GB.306/10/1(Rev.), para. 4.

⁹² Sixth Report of the Committee on Freedom of Association reproduced in the Seventh Report of the International Labour Organization to the United Nations, Appendix V, Reports of the Governing Body Committee on Freedom of Association, para. 24.

⁹³ CFA: Document on Procedure, op. cit., paras 7–13.

⁹⁴ ILO: *Official Bulletin*, Vol. XLIII, 1960, No. 3, 29th Report of the Committee on Freedom of Association, paras 8–12.

⁹⁵ CFA: Document on Procedure, op. cit., para. 21.

⁹⁶ *ibid.*, para. 29.

⁹⁷ *ibid.*, paras 32–39.

63. The CFA procedure has been adapted and enhanced regularly since its creation. As was discussed, the CFA has presently examined over 3,100 complaints while the FFCC has reviewed six cases.⁹⁸

Article 24 representations and article 26 complaints

64. The functioning of the representations procedure, governed by articles 24 and 25, and the complaints procedure, governed by articles 26–29 and 30–34 of the Constitution, has been discussed by the Governing Body on various occasions.⁹⁹ Over the years the increase in the use of these procedures has called attention to their efficiency, specificity and coherence among the other supervisory mechanisms. A number of adjustments have been introduced over time.

65. Articles 409 and 410 of the Treaty of Versailles contained the original procedure for representations. The submission of the first representations in 1924 and 1931 raised a number of practical issues about the procedure. To safeguard both the rights of industrial associations and the freedom to act of the Governing Body, Standing Orders were adopted in 1932.¹⁰⁰ These provided for the instalment of a tripartite committee to examine each representation. Initially, the tripartite committee's mandate covered both the receivability and the substance of the representations, but this was later changed so that the Governing Body would decide on matters of admissibility.¹⁰¹ The Standing Orders for the examination of representations were last amended in 2004.¹⁰²

66. The complaints procedure was initially regulated in Articles 411–420 of the Treaty of Versailles, limiting the right to file a complaint only to a member State and providing for tripartite panels to examine the complaint.¹⁰³ The procedure was amended substantially in 1946 with the adoption of articles 26–34 of the Constitution. As explained above, a complaint may be filed against a member State for not complying with a ratified Convention by another member State, provided that it has ratified the same Convention.¹⁰⁴ The Governing Body may use the same procedure either of its own motion or on receipt of a complaint from a delegate to the Conference. Subsequently, a Commission of Inquiry may be set up by the Governing Body to examine the complaint, although this happens only occasionally.¹⁰⁵ Furthermore, the reference to measures of an economic character was replaced by a provision under which the Governing Body can recommend to the

⁹⁸ Informal tripartite consultations on the follow-up to the discussions of the Conference Committee on the Application of Standards (19 September 2012), *The ILO supervisory system: A factual and historical information note*, para. 69.

⁹⁹ For both procedures, see GB.288/LILS/1; for specific debates on the representations procedure, see GB.271/LILS/3; GB.273/LILS/1; GB.277/LILS/1; and GB.291/LILS/1.

¹⁰⁰ *The ILO supervisory system: A factual and historical information note*, op. cit., para. 62.

¹⁰¹ *ibid.*, para. 64.

¹⁰² GB.288/LILS/1, para. 20.

¹⁰³ *The ILO supervisory system: A factual and historical information note*, op. cit., para. 65.

¹⁰⁴ Article 26(4) of the Constitution grants similar complaint rights to the Governing Body or a delegate to the International Labour Conference.

¹⁰⁵ *Improvements in the standards-related activities of the ILO – articles 19, 24 and 26 of the Constitution*, GB.288/LILS/1, para. 33.

Conference such measures it deems “wise and expedient” to bring about compliance with the Convention concerned.¹⁰⁶

67. From the 1960s, supervision of the application of ratified Conventions, which had been carried out before that time largely through the regular supervisory process, began to see the more frequent use of complaints and representations. In 1961, the first complaint was lodged leading to the first Commission of Inquiry.¹⁰⁷ The diversification of the use of the supervisory procedures after the 1960s also demonstrated the complementarity of the system.¹⁰⁸
68. Thus, some of the concerns raised during that period have come to the forefront again in recent times – particularly those regarding the effects of the special procedures on the regular procedure, the overlapping of procedures and the increasing workload – in all parts of the supervisory system. It is against this background that it has been suggested that improvement of coherence and the effectiveness of the supervisory system needs to address the balance and interrelationship of the different supervisory components.¹⁰⁹ The following section will explain the contemporary status of the different parts of the supervisory system in order to provide a clear picture of its current procedural aspects.

(c) Procedural aspects and contemporary supervisory architecture

69. The different supervisory procedures serve a common purpose: the effective observance of international labour standards, particularly in relation to ratified Conventions, taking into account the extent to which Members have given effect to the provisions of the Conventions. The different links that exist between the supervisory mechanisms therefore operate in respect of obligations freely assumed by the Organization’s member States through the ratification of Conventions.¹¹⁰

¹⁰⁶ *Information paper on the history and development of the mandate of the CEACR (19–20 February 2013)*, para. 27.

¹⁰⁷ GB.301/LILS/6(Rev.), para. 51. Also see: *Information paper on the history and development of the mandate of the CEACR (19–20 February 2013)*, para. 9: “... the preference was to focus on the review of annual reports, so as to render recourse to the other constitutional procedures (representations and complaints) unnecessary”.

¹⁰⁸ *Information paper on the history and development of the mandate of the CEACR (19–20 February 2013)*, para. 44.

¹⁰⁹ GB.301/LILS/6(Rev.), op. cit., paras 39–79.

¹¹⁰ GB.301/LILS/6(Rev.), op. cit., para. 57.

70. The following section sets out the procedures of the different supervisory mechanisms in one comprehensive table.¹¹¹ The different sections – placed in the left column – discuss: (a) the constitutional or other legal basis; (b) procedure; (c) nature and mandate; (d) composition; (e) information considered; (f) the status of the reports; and (g) the outcomes for each respective supervisory procedure or body. This table offers a concise, comparative and comprehensive overview of the supervisory system as a whole. Subsequent paragraphs will focus on the interrelationship of the different supervisory procedures.

¹¹¹ This table is similar to the one that can be found in document GB.301/LILS/6(Rev.), para. 54.

	Regular supervisory procedure	Special supervisory procedures		
	Reports on the application of ratified Conventions	Representations alleging non-observance of ratified Conventions	Complaints alleging non-observance of ratified Conventions	Complaints alleging violations of freedom of association
Constitutional basis	Articles 22 and 23	Articles 24 and 25	Articles 26–29 and 31–34	Principle of freedom of association embodied in the Preamble of the Constitution and the Declaration of Philadelphia
Other legal basis	<ul style="list-style-type: none"> (i) Conference resolution of 1926; (ii) article 7 of the Conference Standing Orders; (iii) decisions of the Governing Body; (iv) decisions by the supervisory bodies concerning their methods of work and procedure. 	Standing Orders concerning the representation procedure adopted by the Governing Body (last modified at its 291st Session, November 2004).	Governing Body has left the determination of the procedure to the competent supervisory body. No rules of procedure explicitly set out but developed and evolved in practice.	<ul style="list-style-type: none"> (i) Provisions adopted by common consent by the Governing Body and ECOSOC in January and February 1950; (ii) decisions taken by the Governing Body; (iii) decisions adopted by the supervisory bodies themselves. (Also see: Compendium of rules applicable to the Governing Body of the International Labour Office, ILO, Geneva, 2011.)
Initiation of the procedure	<p>Obligation of Members to provide reports (article 22) on the measures taken to give effect to ratified Conventions, in accordance with the report form and the reporting cycle determined by the Governing Body (and comments submitted by employers' and workers' organizations under article 23).</p> <p>In 2015, 2,336 reports (under articles 22 and 35 of the ILO Constitution) were requested from governments on the application of Conventions ratified by member States. The Committee of Experts has received 1,628 reports. This figure corresponds to 69.7 per cent of the reports requested.</p>	<p>Representation made by an industrial association of employers or workers alleging failure by a Member to secure effective observance of a ratified Convention.</p> <p>168 representations have been submitted to date.</p>	<p>Complaint by a Member alleging failure by another Member to secure effective observance of any Convention which both have ratified.</p> <p>The Governing Body also may adopt the same procedure either of its own motion or on receipt of a complaint from a delegate to the Conference.</p> <p>30 complaints have been submitted to date.</p>	<ul style="list-style-type: none"> (i) Initiation of the procedure: <p>Complaints lodged with the Office against an ILO Member, either directly or through the UN, either by organizations of workers or employers or by governments. Complaints may be entertained whether or not the country concerned has ratified the freedom of association Conventions;</p> (ii) Initiation of the procedure – Specific conditions: <p>Fact-Finding and Conciliation Commission (FFCC):</p> <ul style="list-style-type: none"> – Complaints may be lodged against a Member of the UN which is not a Member of the ILO; – Complaints which the Governing Body, or the Conference acting on the report of its Credentials Committee or ECOSOC, considers it appropriate to refer to the FFCC; – In principle, no complaint may be referred to the Commission without the consent of the government concerned; <p>Committee on Freedom of Association (CFA):</p> <ul style="list-style-type: none"> – Referrals proposed unanimously by the Credentials Committee of the Conference and decided upon by the Conference, concerning an objection as to the composition of a delegation to the Conference.

	Regular supervisory procedure		Special supervisory procedures			
	Reports on the application of ratified Conventions		Representations alleging non-observance of ratified Conventions	Complaints alleging non-observance of ratified Conventions	Complaints alleging violations of freedom of association	
Competent supervisory bodies	Committee of Experts on the Application of Conventions and Recommendations (CEACR) (1926 Conference resolution)	Conference Committee on the Application of Standards (CAS) (1926 Conference resolution)	Tripartite committees of the Governing Body (Standing Orders concerning the procedure for the examination of representations)	Commissions of Inquiry and Governing Body (including through high-level missions) (article 26(3))	CFA (Governing Body decision of 1951, 117th Session)	FFCC (1950 decisions of the Governing Body (110th Session) and of ECOSOC accepting the services of the ILO and the FFCC on behalf of the UN)
Nature and mandate	<i>Standing body</i> To examine annual reports (article 22) on measures taken to give effect to ratified Conventions. To make a report that is submitted by the Director-General to the Governing Body and the Conference (Governing Body decision, 103rd Session, 1947).	<i>Standing Committee of the Conference</i> To consider measures taken by Members to give effect to ratified Conventions. To submit a report to the Conference (article 7 of the Conference Standing Orders).	<i>Ad hoc tripartite body of the Governing Body</i> To examine a representation deemed receivable by the Governing Body. To submit a report to the Governing Body setting out conclusions and recommendations on the merits of the case (article 3(1) and article 6 of the Standing Orders).	<i>Ad hoc body</i> To fully consider a complaint referred to it by the Governing Body. To prepare a report embodying findings on all questions of fact and containing recommendations as to the steps to be taken and a time frame within which this should occur (article 28 of the Constitution). 12 complaints have been examined by a Commission of Inquiry thus far.	<i>Standing tripartite body of the Governing Body</i> To examine allegations of violations of freedom of association so as to determine whether any given legislation or practice complies with the principles of freedom of association and collective bargaining. To report to the Governing Body (Governing Body decision of 1951; <i>Digest</i> , para. 6). Until July 2015, 3,126 complaints have been examined by the CFA.	<i>Standing body</i> To examine allegations of violations of freedom of association. To ascertain the facts, as a fact-finding body. Authorized to discuss situations with the government concerned with a view to securing the adjustment of difficulties by agreement. To report to the Governing Body (Governing Body decision of 1950). Six complaints examined by the FFCC.

	Regular supervisory procedure		Special supervisory procedures			
	Reports on the application of ratified Conventions		Representations alleging non-observance of ratified Conventions	Complaints alleging non-observance of ratified Conventions	Complaints alleging violations of freedom of association	
Competent supervisory bodies	CEACR	CAS	Tripartite committees	Commissions of Inquiry	CFA	FFCC
Composition	Members are appointed by the Governing Body, upon the proposal of the Director-General in their personal capacity. Members are appointed in view of their legal expertise, impartiality and independence.	Government, Employer and Worker members of the Committee form part of national delegations to the Conference.	Members of the Governing Body chosen in equal numbers from the Government, Employers' and Workers' groups (i.e. one per group).	Members appointed by the Governing Body in their personal capacity upon the proposal of the Director-General. Persons chosen for their impartiality, integrity and standing.	Members of the Governing Body representing in equal proportion the Government, Employers' and Workers' groups (i.e. six per group). Each member participates in a personal capacity. Chaired by an independent person.	Members appointed by the Governing Body for their personal qualifications and independence upon the proposal of the Director-General. Governing Body has authorized members of the Commission to have the work undertaken by panels of no less than three and no more than five members.

	Regular supervisory procedure		Special supervisory procedures			
	Reports on the application of ratified Conventions		Representations alleging non-observance of ratified Conventions	Complaints alleging non-observance of ratified Conventions	Complaints alleging violations of freedom of association	
Competent supervisory bodies	CEACR	CAS	Tripartite committees	Commissions of Inquiry	CFA	FFCC
Information considered	Written information on the application in law and practice of ratified Conventions including: (i) article 22 reports; (ii) article 23 comments submitted by employers' and workers' organizations; (iii) other information, such as relevant legislation or mission reports.	Written information on the application in law and practice of ratified Conventions, including: (i) report of the CEACR; (ii) information supplied by governments. Oral information concerning the case under discussion supplied by the government concerned and by members of the Committee.	Written information supplied by the parties. The hearing of the parties could be possible.	Written and oral information. The Commissions of Inquiry can take all necessary steps to obtain full and objective information on questions at issue, in addition to information supplied by the parties (e.g. information supplied by other Members, the hearing of the parties and witnesses, visits by the Commission to the country).	Complaints and observations thereon by the government. Any additional information requested by the Committee and supplied by the parties, generally in writing. The hearing of the parties is possible, as decided in appropriate instances by the CFA, although such cases are rare. On the other hand, at various stages in the procedure, an ILO representative may be sent to the country concerned.	In order to ascertain facts, the Commission is free to hear evidence from all concerned (e.g. information from third parties, hearing of the parties and witnesses, visits to the country). Any discussions "with a view to securing the adjustment of difficulties by agreement" have to be held with the government concerned.
Status of the report	Governing Body takes note of the report and transmits it to the Conference. The report is published.	Plenary of the Conference discusses and approves the report. The report is published.	Report includes conclusions and recommendations of the tripartite committee. Governing Body discusses and approves the report in a private sitting.	Report communicated by the Director-General to the parties concerned and to the Governing Body, which takes note of it. Report published in the ILO <i>Official Bulletin</i> , under article 29 of the Constitution.	Report submitted to the Governing Body for discussion and approval. Report published in the ILO <i>Official Bulletin</i> .	Report communicated by the Director-General to the Governing Body, which takes note of it. Report published in the ILO <i>Official Bulletin</i> .

	Regular supervisory procedure		Special supervisory procedures			
	Reports on the application of ratified Conventions		Representations alleging non-observance of ratified Conventions	Complaints alleging non-observance of ratified Conventions	Complaints alleging violations of freedom of association	
Competent supervisory bodies	CEACR	CAS	Tripartite committees	Commissions of Inquiry	CFA	FFCC
Outcome	<p>Individual comments by the CEACR as part of an ongoing dialogue on the application in law and practice of ratified Conventions and, where appropriate, expressions of “satisfaction” and “interest”.</p> <p>Conclusions on individual cases by Conference Committee.</p> <p>Technical assistance provided by the Office at the request of the government in the light of these comments.</p>		<p>Governing Body’s decisions on the representation notified to the parties by the Office, including decision to publish the representation and the reply of the government, in accordance with article 25.</p> <p>Possible follow-up by the CEACR.</p>	<p>Governments concerned must inform the Director-General within three months whether or not they accept the recommendations and, if not, whether they propose referral of the complaint to the International Court of Justice.</p> <p>Governing Body may recommend action by the Conference in case of failure to give effect to the recommendations (article 33).</p> <p>Possible follow-up by the CEACR.</p>	<p>Possible recommendations to the Governing Body:</p> <p>(i) no further examination required;</p> <p>(ii) anomalies to be drawn to the government’s attention; government may be invited to take remedial steps and state the follow-up action taken;</p> <p>(iii) attempt to secure government’s consent to referral to the FFCC;</p> <p>(iv) CEACR’s attention drawn to legislative aspects if Conventions ratified.</p>	<p>The Governing Body may decide on arrangements to follow up the matters examined by the Commission, whether the complaint concerns an ILO Member or a UN Member which is not a Member of the ILO.</p>

71. These tables illustrate the different procedures of the supervisory system while also indicating the similarities and differences between them. With this general overview of the supervisory architecture in place, the following section will proceed to analyse the interrelationship between, and coherence of, the different procedures as well as the interactions that occur among the bodies in practice.

III. Interrelationship, functioning and effectiveness of the supervisory mechanisms

72. The system as a whole has a number of features that generate links and interactions between the different components. Apart from their common purpose, the different components – in a tripartite organization – involve the participation of employers’ and workers’ organizations in addition to governments. They can contribute to the work of the CEACR by sending comments and by initiating action through the submission of a representation under article 24, a complaint under article 26 (through a delegate to the Conference) or a complaint to the CFA.¹¹²

73. The representatives of these organizations participate directly in the work of different supervisory bodies and the Governing Body, which has a central role in relation to the operation of the supervisory procedures. The Governing Body’s specific functions in this respect include the approval of report forms on ratified Conventions and the consideration of representations and complaints.

74. Furthermore, the Governing Body decides upon the mandates of certain supervisory bodies (although not in relation to the CAS and Commissions of Inquiry), appoints the members of most of these bodies and receives the reports of the supervisory bodies, either to note or to approve them.¹¹³ The Governing Body takes the difference between its role and those of the specific other entities into consideration when exercising these functions.¹¹⁴

75. As indicated in the tables above, the supervisory procedures have many other similarities. In relation to the tools they possess these include: submission of written information, direct contact missions, follow-up arrangements and various publicity measures.¹¹⁵ Some supervisory bodies have additional, similar characteristics in relation to their composition, nature and procedures.

76. The complementarity of the system, which has been emphasized by the Governing Body and Conference on each occasion the institutional framework was supplemented or enhanced, means that examination under one procedure does not hinder the initiation of another procedure on the same issue.¹¹⁶ The resulting coordination, dialogue and coherence between the different supervisory entities has created a number of links. These will be discussed in the following section.

¹¹² GB.301/LILS/6(Rev.), para. 58.

¹¹³ *ibid.*, para. 59.

¹¹⁴ *ibid.*

¹¹⁵ *ibid.*, para. 61

¹¹⁶ *ibid.*, para. 63.

(a) Interrelationship and coherence

77. For the sake of coherence and effectiveness of the system as a whole, relationships exist between the different supervisory bodies, both in principle and in practice.
78. Such interactions can be found in three areas: first, the referral of matters to the relevant body; second, the suspension or closure of a procedure when another is initiated; and third, as regards the examination by other supervisory bodies – in particular the CEACR – of the follow-up and effect given to specific recommendations of supervisory bodies.¹¹⁷
79. In the context of a representation, the Governing Body may decide to refer the matter to a tripartite committee if it deems the representation admissible. The Governing Body may also decide to refer aspects of the case that relate to trade union and employers' rights to the CFA.¹¹⁸ This possibility was introduced in 1980 in accordance with articles 24 and 25 of the Constitution and, to date, 16 of these referrals have been made. Furthermore, the Governing Body may postpone the appointment of a tripartite committee if the CEACR is still in the process of examining a follow-up to a similar previous recommendation.¹¹⁹ Regarding an article 26 complaint related to freedom of association that is already pending before the CFA, the Governing Body may seek the CFA's recommendation as to whether the complaint should be referred to a Commission of Inquiry, or whether the examination remains with the CFA.¹²⁰
80. Examination of a case by the CEACR and subsequently by the CAS may be suspended in the event of a representation or complaint in relation to the same case.¹²¹ When the Governing Body has decided on the outcome, the CEACR's subsequent examination may include monitoring the follow-up to the recommendations of the body which examined the representation or complaint. In cases involving representations or complaints where certain aspects of the case are referred to the CFA, examination of the legislative issues by the CEACR is not suspended.¹²²
81. In relation to the follow-up and effect given to the recommendations of the supervisory bodies, governments are required to indicate which measures are taken. Following the reporting obligations derived from article 22 of the Constitution, the CEACR is the body entrusted with examining the follow-up to the recommendations made by tripartite committees (article 24) and Commissions of Inquiry (article 26). As regards representations, this practice was acknowledged during the revision of the Standing Orders concerning representations in 2004.¹²³ In relation to recommendations by a Commission of

¹¹⁷ GB.301/LILS/6(Rev.), para. 64.

¹¹⁸ ILO: *Handbook of procedures relating to international labour Conventions and Recommendations*, op. cit., para. 81.

¹¹⁹ GB.301/LILS/6(Rev.), para. 66.

¹²⁰ *ibid.*, para. 68.

¹²¹ *ibid.*, para. 69.

¹²² ILO: *Handbook of procedures relating to international labour Conventions and Recommendations*, op. cit., para. 69.

¹²³ GB.301/LILS/6(Rev.), para. 72; Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the International Labour Organisation, adopted by the Governing Body at its 57th Session (8 April 1932), modified at its

Inquiry, this practice has been followed since the first such Commission was established.¹²⁴

- 82.** The procedure of the CFA provides for the examination of the effect given to its recommendations.¹²⁵ Under these rules, the examination of the legislative aspects of the recommendation adopted by the Governing Body is referred to the CEACR if member States have ratified one or more Conventions on freedom of association.¹²⁶ Such a referral does not prevent the CFA from examining the follow-up given to its recommendations, especially in relation to cases involving urgent issues.
- 83.** In 2008, the Office was requested to conduct a study on the dynamics of the supervisory system, from a substantive and practical standpoint, based on the examination of a number of cases. Seven cases were examined in which the following issues were discussed: the roles of the supervisory bodies at the various stages, the extent to which there has been duplication of work and how the interaction between the procedures occurred in practice.¹²⁷ A number of insights regarding the dynamics of interaction in practice can be drawn from this study.
- 84.** The main findings derived from the case studies indicated that: the pattern of interactions is multifaceted and dependent on a number of factors, among which the actions, approach and role of the constituents and the Governing Body are most influential. Furthermore, the various supervisory bodies often become involved at different times, in no predetermined order.¹²⁸
- 85.** As mentioned, the main interactions can be found between the regular supervisory procedure through the CEACR and the special procedures. The CAS may also discuss certain specific cases of the CEACR's General Report. Interactions are heavily influenced by the choices that constituents make regarding the procedure under which they would like to see matters examined.¹²⁹
- 86.** It has been suggested that the coordination of the response by the supervisory system largely falls under the responsibility of the Governing Body.¹³⁰ Its central role in the interactions is set out in the Constitution and in the Standing Orders concerning the

82nd Session (5 February 1938), 212th Session (7 March 1980) and 291st Session (18 November 2004), Article 3(3).

¹²⁴ GB.301/LILS/6(Rev.), para. 73.

¹²⁵ ILO: *Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, fifth (revised) edition, Geneva, 2006, Appendix I, paras 70–74.

¹²⁶ GB.301/LILS/6(Rev.), para. 75.

¹²⁷ GB.303/LILS/4/2, paras 4–5.

¹²⁸ *ibid.*, para. 6.

¹²⁹ *ibid.*, para. 9.

¹³⁰ *ibid.*, para. 10.

procedure for the examination of representations under articles 24 and 25 of the ILO Constitution.¹³¹

- 87.** A key feature of the supervisory machinery is its pragmatic functioning. Interactions are possible in different ways depending on the issues in question and the choices made by the constituents. This is also possible because the Constitution does not provide for explicit standardized links between the procedures, and does not prescribe a specific fixed order for the consideration by the different supervisory bodies.¹³²
- 88.** As stated above, the distinctive nature of each procedure has often been highlighted by the Governing Body and the Conference. The consequences of the assertion that none of the procedures can operate as the substitute for the other are twofold. First, the examination of issues under one procedure is not an impediment for an examination under another. Secondly, matters can be raised directly under any of the supervisory procedures, provided that the admissibility criteria have been met.¹³³ This way, constituents can make full use of their freedom to choose which procedure suits their concerns best.¹³⁴ The case studies examined in 2008 indicate that although there are some simultaneous interactions, most interactions occur in sequence.¹³⁵
- 89.** The same study investigated the issue of whether the complementarity of procedures may lead to duplication. The fact that all supervisory processes pursue the common goal of effective observance of international labour standards creates the need for coordination and coherence between the implementation and examination of the various procedures. Conflicting views within the supervisory system may undermine its impact, although in practice there do not seem to be problems in this respect.¹³⁶ At the same time this complementarity may lead to some elements of duplication, since the different supervisory mechanisms may reconsider the same issues.
- 90.** Some duplication in the information provided is therefore sometimes inevitable.¹³⁷ Also, in relation to the follow-up, a degree of duplication may be present, for instance when the CEACR and the CFA, under different mandates, examine the same matters. The CAS may also decide to examine the same issues. The responsibility for the coordination and management of the interactions lies with the Conference and Governing Body, whose roles in overseeing the processes should prevent excessive overlap.¹³⁸ Complementarity of the different procedures may create venues for exerting additional pressure on governments to

¹³¹ ILO: Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the International Labour Organisation, adopted by the Governing Body at its 57th Session (8 April 1932), modified at its 82nd Session (5 February 1938), 212th Session (7 March 1980), and 291st Session (18 November 2004), Article 3(1) and Article 7. Also see: GB.303/LILS/4/2.

¹³² GB.303/LILS/4/2, para. 13.

¹³³ *ibid.*, para. 14.

¹³⁴ *ibid.*, para. 15.

¹³⁵ *ibid.*, para. 17.

¹³⁶ *ibid.*, paras 25–26.

¹³⁷ *ibid.*, para. 27.

¹³⁸ See case studies examined in GB.303/LILS/4/2.

remedy certain violations of labour standards. The mechanisms do not call for different ways to comply and typically reinforce each other.

- 91.** When considering the extent to which the interactions may enhance the functioning of the supervisory system a number of remarks can be made. Interactions may provide a more thorough examination of national labour laws, policies and practices by creating different perspectives. Different opportunities of dialogue and monitoring may also lead to better, more comprehensive and accurate information and evaluation of a specific situation. Different combinations of procedures can have the benefit that the system is able to respond to a variety of situations and changing circumstances.¹³⁹
- 92.** The effective functioning of the supervisory system as a whole is based on the links and interaction between its different elements. The constituents, Governing Body, the Conference and the Office play a key role in ensuring the balance and coherence of the different procedures.¹⁴⁰ In this connection, it is remarkable that between the chairpersons of the CEACR and the CFA there is formally very little interaction. Furthermore, tripartism is central to an effective functioning of the interactions between the supervisory bodies and to preventing unnecessary duplication. Interactions may occur in the context of referral, suspension of procedures and follow-up. The functioning of the supervisory system is complex and has evolved substantially over the years since its establishment in 1919. Pragmatism and the need to adapt to changing social circumstances have influenced these developments. Coherent and well-informed interaction between the different supervisory procedures is essential to a properly functioning system of monitoring international labour standards.

(b) Functioning, impact and effectiveness

- 93.** To provide an overview of data related to the effectiveness and impact of the supervisory system the special procedures under articles 24 and 26 will first be discussed. Subsequently, the standing committees (CEACR, CAS and CFA) will be discussed in more detail. Three substantial studies into the effectiveness and impact of these standing committees have been produced since the turn of the century. These studies all contain an elaborate analysis of cases of progress.¹⁴¹

Article 24 representations

- 94.** The procedure under article 24 of the ILO Constitution grants industrial associations of employers or workers the right to file a representation that any of the Members of the Organization has failed to secure effective observance of any Convention within its jurisdiction. Since 1924, there have been 168 received representations. The number of yearly representations has increased since the 1980s, although the number has exceeded ten only three times: in 1994 (13 received), 1996 (11 received) and 2014 (13 received). In respect of the regional distribution, Europe has been involved in 71, the Americas in 63,

¹³⁹ *ibid.*, paras 32–36.

¹⁴⁰ GB.303/LILS/4/2, para. 39.

¹⁴¹ ILO: *The Committee on Freedom of Association: Its impact over 50 years* (Geneva, 2001, second edition 2002); E. Gravel and C. Charbonneau-Jobin: *The Committee of Experts on the Application of Conventions and Recommendations: Its dynamic and impact* (Geneva, 2003); *The Committee on the Application of Standards of the International Labour Conference: A dynamic and impact built on decades of dialogue and persuasion* (Geneva, 2011).

Asia in 11, Africa in ten and the Arab States in five representation procedures. The average duration of representation procedures since 1990 has been approximately 20 months. Although it was expected that the end of the Cold War would bring about an enormous increase in the number of representations, this did not happen in fact.¹⁴²

Article 26 complaints

95. Article 26 complaints procedures, by which a member State – or a delegate to the ILC – may file a complaint of non-observance of a Convention against another member State provided that they have both ratified that same Convention, have been fewer. Since 1961, a total of 30 complaints have been received and only 12 Commissions of Inquiry have been established until today. There has been no substantial increase in the setting up of Commissions of Inquiry since the 1960s, when use of the complaints procedure became more accepted practice.¹⁴³ The average duration of an article 26 complaint before a Commission of Inquiry is about 19 months.¹⁴⁴
96. One third of the complaints filed under article 26 relate exclusively or primarily to the application of fundamental Conventions. Especially the application of fundamental Conventions dealing with freedom of association leads to more interactions between the different complaint-based mechanisms (articles 24, 26 and the CFA procedure).¹⁴⁵

The Committee of Experts on the Application of Conventions and Recommendations (CEACR)

97. In relation to the regular system of supervision, the Committee of Experts is one of the two bodies responsible for monitoring the application of labour standards. Different studies into its effectiveness and impact have been published.¹⁴⁶ The following section will provide a brief overview of the impact of the work of the Committee and its report.¹⁴⁷

¹⁴² For an overview of the number of article 24 representations received by year, region and by type of Convention covered, see figures 1–3 in Appendix II.

¹⁴³ Although there are four complaints procedures pending presently.

¹⁴⁴ For a complete overview of statistics concerning articles 24 and 26 procedures until 2015, see Appendix II.

¹⁴⁵ GB.303/LILS/4/2, 2008, para. 12.

¹⁴⁶ G.P. Politakis (ed.): *Protecting Labour Rights as Human Rights: Present and Future of International Supervision – Proceedings of the International Colloquium on the 80th Anniversary of the ILO Committee of Experts on the Application of Conventions and Recommendations, Geneva, 24–25 November 2006*; E. Gravel and C. Charbonneau-Jobin: *The Committee of Experts on the Application of Conventions and Recommendations: Its dynamic and impact* (Geneva, ILO, 2003).

¹⁴⁷ The following paragraphs are largely based on E. Gravel and C. Charbonneau-Jobin: *The Committee of Experts on the Application of Conventions and Recommendations: Its dynamic and impact* (Geneva, ILO, 2003), since this study covers the impact of the CEACR over the years since 1977.

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- 98.** Since 1926, the number of Conventions as well as the membership of the Organization has grown substantially, which has led to an enormous increase in the number of reports the CEACR has to examine each year. Similarly, the number of observations and direct requests has been on the rise.¹⁴⁸
- 99.** A 2003 study on the impact of the CEACR’s work focused on the composition and functioning of the Committee and on an analysis of a number of “cases of progress”.¹⁴⁹ Discussing the details of these cases is beyond the scope of this report, but the general conclusions will be discussed. The study conducted an examination of cases that dealt with core Conventions and the work of the Experts over the past few decades.¹⁵⁰ Since 1964, the CEACR has listed the cases in which governments have made changes in law or practice as a result of the comments of the Committee. In practice, the Committee identifies such cases by noting “with satisfaction” the effect that a government has given to its previous comments. Since 2000, the Committee also uses the terminology “with interest” to indicate certain measures taken by governments in response to its observations and requests.¹⁵¹
- 100.** While the increase in the number of “progress cases” is understandable in light of the increase in ratifications, it is also caused by receptiveness of member States in implementing the Committee’s observations more fully.¹⁵² The impact of the Committee’s work cannot be measured solely in light of “cases of progress” and an indirect or a priori impact of the Experts’ work is certainly an important factor to take into account. Nevertheless, monitoring these cases is useful for assessing the impact of the Committee and the supervisory system as a whole.¹⁵³
- 101.** The cases investigated show a variety of measures that have been implemented by member States. Positive developments were detected, for example in relation to recognition of trade unions, protection against anti-union discrimination, trade union pluralism and independence, trade union resources, free collective agreements, inclusion of civil servants, forced labour and forms of serfdom, freedom of expression, prison labour, equal treatment and remuneration, sex-based discrimination, works council procedures, equal opportunities legislation, indirect discrimination, child and youth labour, and so forth. The numerous examples of cases of progress underline the importance of the work of the CAS and the CEACR.¹⁵⁴
- 102.** Approximately 3,000 of these cases of progress have been noted since 1964. Noteworthy recent examples are the 2013 adoption of Samoa’s labour legislation in order to prohibit children under 18 years of age from working with dangerous machinery or under working

¹⁴⁸ G.P. Politakis (ed.), *op. cit.*, pp. 289–290. The table in Annex II clearly illustrates this development in respect of the number of member States, ratifications of Conventions, number of experts, and observations and direct requests.

¹⁴⁹ E. Gravel and C. Charbonneau-Jobin, *op. cit.*

¹⁵⁰ *ibid.*, p. 2.

¹⁵¹ *ibid.*, p. 23.

¹⁵² *ibid.*, p. 24.

¹⁵³ Nevertheless, proper, *de facto*, implementation of legal changes remains an important concern.

¹⁵⁴ For the full overview of cases of progress, see: E. Gravel and C. Charbonneau-Jobin, *op. cit.*, pp. 29–71.

conditions likely to be injurious to their physical and moral health.¹⁵⁵ Furthermore, Ukraine adopted a law on equal rights and opportunities for women and men in 2006 and Lebanon adopted legislation in 2012 on the prohibition of employment for minors under 18 in types of work that harm their safety, health, limit their education or constitute one of the worst forms of child labour.¹⁵⁶

- 103.** The CEACR has shown considerable effectiveness over the years and it is suggested that the ILO supervisory mechanism is among the most advanced in the international system.¹⁵⁷ Contrary to the critique that international legal monitoring bodies often receive, the CEACR has demonstrated that supervision has real, practical and tangible effects in domestic jurisdictions. The credibility and impact of the Committee of Experts can be explained by several factors. Important factors are the independence and high qualifications of the Experts. Furthermore, technical examinations are balanced with comprehensive examinations by representative bodies composed of government, worker and employer representatives. This increases the coherence of the system as a whole.¹⁵⁸ Moreover, effectiveness of the Committee is enhanced by its capacity to adapt to new developments and realities, for instance, through rethinking its working methods.¹⁵⁹ Improving the working methods is a continuous priority of the CEACR.

The Conference Committee on the Application of Standards (CAS)

- 104.** The CAS makes an examination of compliance with standards-related obligations on the basis of the report of the CEACR each year. The procedure of the CAS offers the representatives of governments, employers and workers an opportunity to jointly examine the manner in which member States comply with their obligations derived from Conventions and Recommendations.¹⁶⁰ The CAS is thus responsible for determining the extent to which international labour standards are given effect and reporting about this to the Conference. This mandate is derived from article 23 of the Constitution and the Standing Orders of the ILC.¹⁶¹
- 105.** Regarding its functioning, the CAS prepares a list of cases based on the observations in the report of the Committee of Experts in respect of situations in which further government information would seem desirable.¹⁶² Subsequently, the Conference Committee examines

¹⁵⁵ ILO: *Rules of the Game*, op. cit., p. 104.

¹⁵⁶ *ibid.*

¹⁵⁷ E. Gravel and C. Charbonneau-Jobin, op. cit., p. 75. However, besides positive remarks, concerns were also raised by the tripartite constituents in recent years. See, for example, Report of the Committee on the Application of Standards, *Provisional Record 14*(Rev.), ILC, 104th Session, Geneva, 2015, paras 38–39, and Report of the Committee on the Application of Standards, *Provisional Record No. 13*, Part One, ILC, 103rd Session, Geneva, 2014, paras 58 and 69.

¹⁵⁸ E. Gravel and C. Charbonneau-Jobin, op. cit., p. 76.

¹⁵⁹ *ibid.*

¹⁶⁰ ILO: *The Committee on the Application of Standards of the International Labour Conference: A dynamic and impact built on decades of dialogue and persuasion* (Geneva, 2011), p. 1.

¹⁶¹ *ibid.*

¹⁶² *ibid.*, p. 2.

approximately 25 cases and submits its report on those cases to the Conference for plenary discussion.¹⁶³ The CEACR may use “single footnotes” to observations in its report, by which it indicates that a government should send an earlier report than is required under the reporting cycle or it may use a “double footnote” which means that the government is requested to send detailed information to the Committee of Experts and the CAS.¹⁶⁴ The CAS report is published in the *Record of Proceedings* of the Conference.

- 106.** The CAS normally begins its work with a brief general discussion after which the General Survey of the CEACR is discussed. Subsequently, the observations of the Experts are discussed and cases of serious failure to report are identified (so-called automatic cases). The Workers’ and Employers’ groups draft a list of individual cases which are selected by reference to the following criteria: (a) the nature of the comments of the CEACR and the existence of a “footnote”; (b) the quality and scope of response provided by the government; (c) the seriousness and persistence of shortcomings in the application of the Convention; (d) the urgency of a specific situation; (e) comments received from employers’ and workers’ organizations; (f) the nature of a specific situation; (g) previous discussions and conclusions by the CAS; (h) the likelihood that discussing the case will have impact; (i) balance between fundamental, governance and technical Conventions; (j) geographical balance; and (k) balance between developed and developing countries.¹⁶⁵ After consultations with the Reporter and Vice-Chairpersons, the conclusions may be proposed by the Chairperson to the CAS for adoption.¹⁶⁶
- 107.** In 2011, an extensive study into the impact of the CAS was published in which the diversity, depth, permanence and progressive nature of the impact of the work carried out by the CAS in combination with the other ILO supervisory bodies was assessed. In the study, different cases of progress and cases of serious failure to respect constitutional reporting obligations are examined as well as the general functioning and working methods of the CAS. The study also addressed the formal procedures of the ILO supervisory bodies that draw attention to such “progress cases” as well as the more informal impact of ILO supervision.¹⁶⁷
- 108.** While it is outside the scope of this report to discuss in depth the identified “progress cases”, the most important insights from the 2011 study will be examined. The emphasis in the analysis was on the effect from repetition of individual examinations, the content of the discussions and the force of the conclusions of the CAS versus a particular member State.¹⁶⁸ The fact that a State may be included on the list of individual cases can certainly

¹⁶³ *ibid.*

¹⁶⁴ *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), ILC, 102nd Session, Geneva, 2013, para. 68.

¹⁶⁵ In this respect, see for a detailed and recent explanation of the manner in which the work of the CAS is carried out: Report of the Committee on the Application of Standards, *Provisional Record* No. 14(Rev.), Part One, 104th Session, Geneva, 2015, Annex I, C.App./D.1.

¹⁶⁶ ILO: *The Committee on the Application of Standards of the International Labour Conference: A dynamic and impact built on decades of dialogue and persuasion* (Geneva, 2011), p. 21.

¹⁶⁷ *ibid.*, p. 23.

¹⁶⁸ *ibid.*, p. 26.

have a positive effect on compliance. The repetition of cases, on the other hand, does not seem to have a determinative effect in this respect according to the 2011 impact report.¹⁶⁹

- 109.** It is therefore important to assess the impact of the CAS in the context of other means used by the Organization to persuade member States towards compliance. The complementarity of the work of the different supervisory bodies in combination with targeted technical assistance missions (practical advice) is key in promoting compliance. With this framework in mind, the 2011 analysis covers cases of progress over the past 20 years related to a selection of countries.¹⁷⁰ It covers a quantitative evaluation of cases of serious failure by member States to meet their constitutional reporting obligations, an analysis of cases of progress in complying with those obligations and a discussion of the relevant elements that need to be discussed to assess the impact of the CAS.¹⁷¹
- 110.** The main conclusions of the study indicate that it is impossible to separate the work of the CAS from that of the Committee of Experts, in cooperation with the Office and other ILO supervisory bodies. The impact of such joint action is also dependent upon the activities and expertise present “in the field” through technical assistance, support, training, Decent Work Country Programmes and technical cooperation with other international organizations.¹⁷²
- 111.** The CAS constitutes an invaluable component of the ILO’s supervisory mechanism to promote compliance with, and effective implementation of, international labour standards.¹⁷³ The work of the CAS is especially meaningful when it operates in synergy with the other bodies and procedures within the ILO system.¹⁷⁴ Although the CAS has a commendable record of promoting adherence to international labour standards, it is also necessary to keep improving its working methods and cooperation with other supervisory bodies.¹⁷⁵

The Committee on Freedom of Association

- 112.** While the FFCC has examined only six complaints in total (1966: Japan; 1966: Greece; 1975: Chile; 1975: Lesotho; 1981: United States; 1992: South Africa), the CFA has been presented with over 3,100 cases since its establishment in 1951. With regard to the geographical distribution of those cases, 49 per cent concern Latin American countries, 21 per cent European countries, 12 per cent Asian, another 12 per cent African States and only 6 per cent concern States in North America. In recent years – from 1995 onwards – even a larger percentage of the cases (57 per cent) originated in Latin America.¹⁷⁶ The

¹⁶⁹ *ibid.*

¹⁷⁰ *ibid.*, p. 30.

¹⁷¹ *ibid.*, p. 103.

¹⁷² *ibid.*, pp. 139–142.

¹⁷³ *ibid.*, p. 145.

¹⁷⁴ *ibid.*

¹⁷⁵ *ibid.*, p. 146.

¹⁷⁶ See figures 7–13 in Appendix II.

CFA examines around 120 cases each year. The following table shows the distribution of cases before the CFA from its establishment in 1951 to 2015.

Region	No. of cases
Africa	383
Asia	388
Europe	645
Latin America	1 527
North America	183
Total	3 126

- 113.** In light of the 50th anniversary of the CFA in 2001, the Organization published a study on the manner in which the Committee carries out its supervisory role through an examination of the historical background and functions as well as an empirical study into its impact and effectiveness through a number of case studies. The study highlights that the value and significance of international labour standards depend on their impact and that the desire for practical implementation has been the drive that has led to the development of the different supervisory systems, including the CFA.¹⁷⁷ The goal of the impact study is to show the CFA's influence on the effect that is given to ILO principles in the field of freedom of association.
- 114.** The CFA has to date succeeded in adopting all its recommendations by consensus, which helps ensure proper weight to its decisions while at the same time safeguarding the balance between the interests defended by the Government, Employer and Worker members. This methodology furthermore helps to gain broad support in the Governing Body.¹⁷⁸ The overall purpose of the procedure is the observance of freedom of association in law and practice, and this system implies a certain complementarity between the competences of the various supervisory mechanisms.¹⁷⁹ As mentioned, cases in which the country concerned has ratified one or more Conventions on freedom of association, legislative aspects are referred to the CEACR, while in other cases the CFA may periodically examine follow-up to its recommendations in cooperation with the Director-General.¹⁸⁰
- 115.** The 2001 impact study analyses the impact and effectiveness of the CFA's procedure by examining a number of cases of progress.¹⁸¹ The impact is assessed on the basis of such cases since 1971, from which year the progress has been systematically recorded. A case of progress in this analysis means that following the filing of a complaint with the Committee and its subsequent recommendations, changes have been made in law or

¹⁷⁷ ILO: *The Committee on Freedom of Association: Its impact over 50 years* (Geneva, second edition 2002), p. 1.

¹⁷⁸ *ibid.*, pp. 11–12.

¹⁷⁹ *ibid.*, p. 12.

¹⁸⁰ *ibid.*

¹⁸¹ *ibid.*

practice in the country concerned with a view to bringing them more into conformity with the principles of freedom of association as developed by the ILO.¹⁸²

- 116.** Although it is beyond the scope of this report to go into the empirical analysis, the main findings of the 2001 study will be briefly discussed. The cases of progress examined by the ILO demonstrated clearly the effectiveness of the CFA system in many fields related to the exercise of freedom of association. The Committee has ensured that trade unionists are able to enjoy the legal safeguards of States in which the rule of law is respected. Additionally, the CFA has caused the release of imprisoned trade unionists or the reduction of their disproportional sentences in a significant number of cases.¹⁸³ It has secured application of the right to establish and join organizations, the right to elect representatives of those organizations as well as the freedom to formulate their rules, programmes and administrative systems.¹⁸⁴
- 117.** Furthermore, the CFA has managed to achieve re-registration of banned or dissolved worker organizations and has remedied acts of anti-trade union discrimination. Emphasizing the need for expeditious, impartial and objective procedures for workers considered victims of such discriminatory practices has been a continuous effort. Moreover, the CFA has watched over the exercise of the right to free collective bargaining and protection of the right to strike.¹⁸⁵
- 118.** A salient example of the CFA's impact concerns the case of Dita Indah Sari, an Indonesian labour activist who was detained because of her trade union activities in 1996.¹⁸⁶ Continuing pressure by the CFA and the international community led to her release and the release of other detained union members. In the years since, Indonesia has taken significant steps to improve protection of trade union rights and has ratified all eight fundamental Conventions.¹⁸⁷ This case is not unique: in the last few decades, several hundred trade unionists worldwide were released from prison after the CFA examined their cases and drafted recommendations to the governments concerned.¹⁸⁸
- 119.** The 2011 report of the CFA illustrated a substantial increase in the number of cases of progress in the first decade of the new millennium.¹⁸⁹ According to the CFA, the assessment of the Committee's influence on the ground demonstrates a substantially increased impact for the Committee's conclusions and recommendations.¹⁹⁰ One of the reasons for this increased impact is the CFA's formulation of consensual conclusions and recommendations that are aimed at providing practicable solutions that ensure harmonious

¹⁸² *ibid.*, p. 22. See pp. 21–25 for a detailed description of the methodology used.

¹⁸³ ILO: *The Committee on Freedom of Association*, op. cit., p. 65.

¹⁸⁴ *ibid.*

¹⁸⁵ *ibid.*, pp. 65–66.

¹⁸⁶ ILO: *Rules of the Game*, op. cit., p. 111.

¹⁸⁷ Notwithstanding existing problems in relation to the protection of freedom of association.

¹⁸⁸ ILO: *Rules of the Game*, op. cit., p. 111.

¹⁸⁹ GB.311/4/1, 2011.

¹⁹⁰ *ibid.*, para. 18.

and sustainable environments for the exercise of freedom of association.¹⁹¹ Furthermore, a number of complaints have been resolved at the national level with the assistance of preliminary on-the-spot missions and direct contacts missions.¹⁹²

120. The Committee carries out a review of its working methods on a regular basis in which it assesses its procedures, visibility and impact.¹⁹³ While the increase in cases of progress is significant, the CFA remains concerned about countries which have not responded to its urgent appeals or have otherwise failed to comply with its requests.¹⁹⁴ In such cases of persistent failure to respond to complaints, the Committee has called upon its Chairperson to meet directly with Government representatives, offered the Office's assistance and has sent missions to collect information.¹⁹⁵ Another important effect of the CFA's work is that compliance with the principles of freedom of association, which apply to all member States of the ILO, paves the way for ratification of the freedom of association Conventions.¹⁹⁶

121. The accomplishments of the CFA are also attributable to the joint action of the ILO's supervisory bodies, particularly its cooperation with the CEACR and the CAS.¹⁹⁷ The action of the technical bodies, whose members are selected in view of their expertise and independence, is balanced against the activities of representative bodies that group together delegates of governments, workers and employers. Additionally, the success of the CFA lies in the underlying philosophy of the system of its complaints procedures; this is based more on persuasion than repression, and more on dialogue and cooperation than on blame and judgments.¹⁹⁸ In summary, the methods used by the CFA have the ability to address, debate and resolve specific social problems bound to arise within a globalizing economy.¹⁹⁹

(c) Concluding remarks

122. The historical development of the ILO and its supervisory system attests to the value of international labour standards as tools to promote social justice and decent work on the ground. With the Constitution as its basis, the ILO has developed a series of mechanisms

¹⁹¹ *ibid.*, para. 19.

¹⁹² *ibid.*, para. 17.

¹⁹³ ILO: *371st Report of the Committee on Freedom of Association*, Governing Body, 320th Session, Geneva, 13–17 Mar. 2014, GB.320/INS/12, para. 14.

¹⁹⁴ *ibid.*, para. 15.

¹⁹⁵ *ibid.*, para. 16.

¹⁹⁶ *ibid.*, para. 15 and 1998 ILO Declaration on Fundamental Principles and Rights at Work, para. 2, "Declares that all Members, even if they have not ratified the Conventions in question, have an obligation arising from the very fact of membership in the Organization, to respect, to promote and to realize, in good faith and in accordance with the Constitution, the principles concerning the fundamental rights which are the subject of those Conventions"

¹⁹⁷ ILO: *The Committee on Freedom of Association: Its impact over 50 years*, op. cit., p. 66.

¹⁹⁸ *ibid.*, p. 67.

¹⁹⁹ *ibid.*, p. 68.

and procedures that are all intended to increase effectiveness in the field of standards. The Committee of Experts and the CAS – the principal actors in the regular supervisory procedures – together with special procedures in the framework of the CFA, article 24 representations and article 26 complaints, are responsible for effective compliance with Conventions and Recommendations. It is the general coherence of, and cooperation between, these supervisory elements – in different possible combinations – that makes the system effective.

- 123.** Furthermore, technical assistance and advice is an indispensable additional supervisory component. Close collaboration between the supervisory bodies, the Office, including people in the field in offering technical assistance in the form of training, legal advice, tripartite workshops and technical support, increases the impact of the supervisory system.²⁰⁰
- 124.** Different impact studies that focused on cases of progress indicate the diverse positive effects of this system in domestic law and practice. However, for reasons of effectiveness and accountability, the supervisory system as a whole needs to be continuously reviewed if it is to be able to respond to changing socio-economic needs. This ability to respond and react to societal and economic developments has been the strength of the system since its inception.

IV. Proposals and suggestions for improvement

- 125.** As discussed above, it is inherent to any supervisory system – including the ILO’s – that it must be reviewed and enhanced on a continuous basis with a view to improving its coherence and effectiveness. The following paragraphs will discuss three key areas in which improvements could be made. They will specify potential areas of concern and make suggestions on how to deal with those. These – sometimes interconnected – issues are grouped under (a) transparency, visibility and coherence; (b) mandates and the interpretation of Conventions; and (c) workload, efficiency and effectiveness.

(a) Issues of transparency, visibility and coherence

- 126.** Complexity is perceived as one of the main features of the existing supervisory mechanism. As discussed above, different procedures may be used in different combinations in order to promote compliance with international labour standards. While the diversity of the system is also a major strength, a point of concern is whether such a varied system may lead to overlap between, or a duplication of, procedures. A related concern is that there may be too many different committees involved in the system which may have negative effects on the transparency and effectiveness of the procedures for those involved. Extra efforts should be made to make the system more user-friendly and clear.²⁰¹

²⁰⁰ *ibid.*, p. 140.

²⁰¹ K. Tapiola: “The ILO system of regular supervision of the application of Conventions and Recommendations: A lasting paradigm”, in *Protecting Labour Rights as Human Rights: Present and Future of International Supervision – Proceedings of the International Colloquium on the 80th Anniversary of the ILO Committee of Experts on the Application of Conventions and Recommendations, Geneva, 24–25 November 2006*, p. 29.

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- 127.** To improve the collaboration between the different supervisory bodies, an annual meeting between the chairpersons of the different committees – CAS, CEACR and CFA – could be held. During this meeting, an exchange of information, views about current cases, issues of coordination, possible overlap and general ideas on supervision could be discussed. This meeting could take place during the ILC in June and could lead to more effective and coherent supervision, as well as to the prevention of unnecessary duplication. A complementary option could be that the Chairperson of the CFA releases a yearly report to the CAS in which the main trends would be addressed and the most difficult cases pointed out, for instance serious and urgent cases, long-standing cases without progress or cases sent to the CEACR for legislative aspects. Such a report may also lead to increased transparency and coordination between the supervisory bodies.
- 128.** Another area of attention is the relationship between the CAS and the CEACR. The application of international labour standards can only be effective if these two committees, which are at the heart of the ILO’s supervisory mechanism, continue to advance their solid relationship of cooperation and shared responsibility.²⁰² The ongoing dialogue between the CAS and the CEACR has an important impact on the methods of work of the CEACR and constitutes an essential component of the supervisory system.²⁰³ Efforts towards a more constructive relationship between the CAS and the CEACR should be continued and strengthened to improve effectiveness.²⁰⁴ The Committee of Experts emphasized in its 2015 report that the current institutional context offers opportunities for a forward-looking approach to the relationship between both Committees.²⁰⁵ The dual system of regular supervision composed of a technical examination by the CEACR followed by a comprehensive political analysis by the CAS is unique at the international level.²⁰⁶
- 129.** Transparency and visibility of the ILO’s supervisory work could also be enhanced through adopting an inclusive approach tailored to the needs of the various constituencies. Addressing the interests of unorganized groups of workers, for instance the large number of workers in the informal economy, is an important objective for the ILO in view of promoting universal minimum standards and should be further examined.²⁰⁷

²⁰² Statement of the Chairperson of the Committee of Experts on the Application of Conventions and Recommendations, Judge Abdul G. Koroma, ILC, 104th Session, Geneva, June 2015 (C.App./D.4).

²⁰³ *Provisional Record* No. 14(Rev.), Report of the Committee on the Application of Standards, Part One, General Report, ILC, 104th Session, Geneva, June 2015, para. 52.

²⁰⁴ An interesting idea may be to also include “cases of progress” on the CAS list in order for it to have a positive component as well. Some have argued for different, more accessible criteria for the adoption of the list in the CAS.

²⁰⁵ ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution)*, Third item on the agenda: Information and reports on the application of Conventions and Recommendations, Report III (Part 1A), ILC, 104th Session, Geneva, 2015, para. 23.

²⁰⁶ A similar system was introduced at the regional level in the framework of the European Social Charter in which the Committee of Independent Experts examines government reports. Its conclusions are submitted to the Governmental Committee which reports to the Committee of Ministers.

²⁰⁷ See, for example, the recent report: *The transition from the informal to the formal economy*, Report V(1), ILC, 104th Session, Geneva, 2015.

130. Another way to improve the visibility of the ILO's work is by optimizing the ILO's data systems (for example NORMLEX). This can be done through an electronic system that provides a simple and concise overview of member States' implementation of ILO standards, and in which a "country dashboard" provides statistical and graphical information about the progress towards ratification of Conventions. Such a system could improve visibility of the implementation efforts by States. All other relevant data would also be easily accessible through this system. The better use of modern technology to streamline and simplify the reporting procedures could also strengthen transparency and effectiveness. This way the impact and relevance of the supervisory system, among all its Members, could be improved and it could lead to an increased awareness of the content of international labour standards for national employers' and workers' organizations.

(b) Supervisory mandates and the interpretation of Conventions

131. While the terms of reference for the present report confine its scope to articles 22, 23, 24 and 26 of the ILO Constitution and the complaints mechanism on freedom of association, it is necessary to discuss the mandates of the supervisory bodies in light of the question of interpretation, since this question is inextricably tied up with the discussions surrounding the present supervisory mechanism review. The mandate of the CEACR has been explained and accepted by the tripartite constituents since it was included in the 2014 report of the Committee of Experts.²⁰⁸ This reiteration of the Committee's mandate "to determine the legal scope, content and meaning of the provisions of Conventions" has reduced part of the tensions in respect of the functioning of the supervisory system.²⁰⁹

132. Although the Constitution of the ILO forms the basis for the mandate of the CFA, over the years that mandate has developed in practice namely to determine "whether any given legislation or practice complies with the principles of freedom of association and collective bargaining laid down in the relevant Conventions".²¹⁰ Although concerns have been expressed about this mandate, it is generally acknowledged that some degree of interpretation is necessary in order for the CEACR to conduct its examination of reports, and for the CFA to investigate and examine complaints. The Experts conduct a technical analysis of provisions of Conventions and Recommendations, while the CFA refers to the principles of freedom of association. As mentioned, legislative aspects of CFA cases are referred to the CEACR.

133. International governmental organizations are based on democratic decision-making, the rule of law and the separation of powers into – different types of – legislative, executive and judicial bodies. Within the ILO, the legal interpretation of Conventions is the prerogative of the International Court of Justice (ICJ). Questions or disputes about the interpretation of Conventions or the Constitution are to be submitted to the ICJ on the basis of article 37(1) of the Constitution. A viable approach could be to emphasize the role of the ICJ as the authoritative body for interpretation and promote the procedure in article 37(1).

²⁰⁸ This mandate was reproduced in full in paragraph 9 of this report.

²⁰⁹ ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part 1A), ILC, 104th Session, Geneva, 2015, para. 29.

²¹⁰ ILO: *Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, fifth (revised) edition, Geneva, 2006, para. 6.

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- 134.** There is an additional possibility under article 37(2). Under this provision, the Governing Body may create a tribunal for the “expeditious determination of any dispute or question relating to the interpretation of a Convention”. The creation of such an “ILO Tribunal” to deal with matters of interpretation may be considered when trying to furthercommas added. the debate concerning the roles and mandates of the supervisory bodies.²¹¹ Such a tribunal would not be a novelty in the international arena; for example the International Tribunal on the Law of the Sea and the Appellate Body of the World Trade Organization operate in parallel with the ICJ and deal with interpretive issues.²¹²
- 135.** The constitutional option of creating an “in-house” mechanism for the interpretation of Conventions was adopted in 1946 in order to introduce greater flexibility under the Constitution by providing an additional authoritative mechanism and in order to ensure uniformity of interpretation.²¹³ Such uniformity implies that the decisions should be binding and apply to all ILO member States, that all Members should be informed of decisions and have the possibility to make observations before the Conference, and that coordination with the ICJ is necessary.²¹⁴ Informal discussions in 2010 identified three paramount considerations when reflecting on the creation of an article 37(2) mechanism: (1) it needs to contribute to strengthening the standards system, including the supervisory system; (2) it needs to strengthen tripartite contribution to the interpretation of Conventions; and (3) the integrity of the ILO supervisory system has to be preserved.²¹⁵
- 136.** Such a tribunal should be easily accessible to constituents and should adhere strictly to the rules laid down in article 37(2). The Governing Body may make and submit rules – to be approved by the Conference – providing for the appointment of the tribunal. The Governing Body is responsible for the referral of any dispute or question related to the interpretation of a Convention to the tribunal and the decision of the tribunal would have a binding effect.²¹⁶ Related to the composition, it is of vital importance to ensure the independence of the tribunal, secure the quality of adjudicators and further specify the binding effects of the decisions.²¹⁷ Moreover, the conditions for a possible appeal to the

²¹¹ *Information paper on the history and development of the mandate of the CEACR (19–20 February 2013)*, para. 116.

²¹² *ibid.*

²¹³ Informal exploratory paper prepared by the International Labour Standards Department and the Office of the Legal Adviser, *Interpretation of international labour Conventions: Follow-up to the informal tripartite consultations held in February–March 2010*, para. 5. See Appendix 1: “Overview of the considerations and discussions in 1945 and 1946 relating to the introduction of article 37, paragraph 2, into the ILO Constitution”.

²¹⁴ *ibid.*, para. 5.

²¹⁵ *ibid.*, para. 10.

²¹⁶ *ibid.*

²¹⁷ In this context, it may be useful to take note of the advanced codes of ethics and guidelines for members who serve on treaty bodies that were developed within the framework of the UN Human Rights bodies. See: United Nations, HRI/MC/2012, Addis Ababa Guidelines on the independence and impartiality of members of the human rights treaty bodies, Advance unedited version, June 2012.

ICJ should be examined and specified.²¹⁸ This possible innovation would have to be integrated in the existing machinery, in which the ILO supervisory system plays a central role.²¹⁹ This option could have the additional benefit of being composed of specialists in the field of (interpretation of) international labour law.

(c) Workload, efficiency and effectiveness

- 137.** The existence of the supervisory system has led to an increase in the workload of the different bodies. With the increase of membership and the number of ratified Conventions, the workload, especially for the CEACR, has increased over time, while the number of Experts and time available has not increased proportionally.²²⁰ This means that an important area of attention is streamlining and improving the capacity of the supervisory bodies. At the same time, constituents should be encouraged to respond as quickly as possible to the requests of the supervisory bodies. The effectiveness of the supervisory bodies in practice must continue to engage the attention of the constituents.
- 138.** The Committee of Experts continues its efforts to streamline the content of its report and improve its method of work. The subcommittee on working methods is examining – on an ongoing basis – the opportunities for enhancing the CEACR’s effectiveness and efficiency.²²¹ Efforts are directed towards improving the visibility of the Committee’s work, which could not only facilitate more efficient work in the CAS, but also help the tripartite constituents – in particular governments – to better understand and identify the Committee’s requests. This could lead to greater implementation of, and compliance with, international labour standards.²²² Furthermore, the CEACR should be encouraged to improve its organization and method of work as highlighted in the report of its subcommittee on the streamlining of treatment of certain reports.²²³ It has been suggested that a longer meeting period of the Experts or “split sessions” could be envisaged in this respect. Moreover, further improvements of the structure and clarity of the comments could also be beneficial. Improving the coherence and visibility of the Experts’ work, without losing substance, is an iterative process.
- 139.** Additionally, it has been suggested to enhance the efficiency of the CAS proceedings by: (a) displaying the names of those registered to speak on a screen in the CAS room; (b) creating the option for CAS members to make amendments to the *Record of Proceedings* online; and (c) providing better access to computers and printing facilities to better facilitate the drafting of conclusions.

²¹⁸ Informal exploratory paper prepared by the International Labour Standards Department and the Office of the Legal Adviser, *Interpretation of international labour Conventions: Follow-up to the informal tripartite consultations held in February–March 2010*, para. 24.

²¹⁹ *ibid.*, para. 43.

²²⁰ Although currently the CEACR is again operating at its full capacity of 20 members.

²²¹ ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations (articles 19, 22 and 35 of the Constitution)*, Third item on the agenda: Information and reports on the application of Conventions and Recommendations, Report III (Part 1A), ILC, 104th Session, Geneva, 2015, para. 8.

²²² *ibid.*, para. 9.

²²³ *ibid.*, para. 10.

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- 140.** With regard to the CFA, it has been suggested that it would be useful if the Members could receive the working documents at an earlier time. Another option to increase its effectiveness may be to introduce the possibility of consolidating complaints from the same country, if they allege similar violations. An automatic follow-up mechanism at the national level could also contribute to a more effective implementation of the Committee's recommendations.
- 141.** Another important way to improve the effectiveness and to relieve pressure on the ILO's supervisory mechanisms is to search for (non-judicial) dispute settlement options at the national level – that have the confidence of the parties – and precede recourse to the ILO system. One example of such a national solution is the CETCOIT system (Comité Especial de Tratamiento de Conflictos ante la OIT) in Colombia that functions as a voluntary tripartite conflict settlement procedure for conflicts related to freedom of association and collective bargaining. Parties can use this voluntary tripartite conflict settlement procedure prior to considering filing a possible complaint to the CFA as well as for following-up on cases examined by the CFA.²²⁴
- 142.** Concerning such national procedures it is essential that these mechanisms are both independent and effective. Furthermore, setting up such a mechanism requires a context of respect for the rule of law and a sufficient degree of political will to succeed. Otherwise, the risks involved for parties (for example small unions) that allege violations of labour standards would be too great. An important question that needs to be answered in this respect is how to establish a fair threshold for the admissibility of cases before the supervisory bodies.²²⁵ Admissibility criteria must not have the effect of excluding options for, for example, small unions. On the other hand, systems for filtering out unsubstantiated cases may relieve some pressure on the supervisory system. Additionally, the Standards Review Mechanism could provide further advice on the selection of Conventions that are out of date and on which regular reporting is no longer required.
- 143.** As the continuing process of globalization may contribute to dwindling employment protection and subsequently to an increasing need for universal minimum standards, more attention for non-ratifying Members could improve the impact and effectiveness of international labour standards. A point of critique that is often mentioned is that only countries that ratify a large number of Conventions are scrutinized by the supervisory machinery. Efforts towards ratification of, and compliance with, established minimum norms and principles are, and should be, high on the agenda of the ILO. Technical assistance and advice should play a major role in the promotion of ratification and implementation of Conventions. Follow-up mechanisms under article 19 of the Constitution, such as in the framework of the 1998 Declaration on Fundamental Principles and Rights at Work, need to be promoted.
- 144.** More coordination between the formal supervisory procedures and the more informal means of supervision, like technical assistance, direct contacts missions or tripartite meetings could also help improve the effectiveness of the implementation of international labour standards. Especially in the area of follow-up to recommendations in the framework of the special procedures, such a combination could prove fruitful in, for instance, working out a time-bound plan in respect of implementing requested measures. Setting deadlines could help to incrementally promote compliance. Improved coordination between the

²²⁴ A similar committee has been installed in Guatemala.

²²⁵ For the receivability criteria of representations, see article 2 of the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the International Labour Organisation.

Office in Geneva and the regional offices concerning supervisory matters also needs to be further encouraged. Another option to consider in this respect is the possibility of interim measures, meant to remedy particularly urgent situations. Such procedures are well known in the framework of different UN Human Rights Bodies.²²⁶ But also in relation to the regular reporting process, further cooperation between the Committee of Experts and local advisers, and reliance on information and knowledge of specialized field staff in specific situations, could create a better “feedback loop” that will lead to a more efficient system. Improved coordination between technical assistance, support, Decent Work Country Programmes, training and programmes by other international organizations as well as better coordination between the Committees – through their chairpersons – could also add to the effectiveness of the supervisory system as a whole.

V. Concluding remarks

- 145.** Efforts towards improving the supervisory machinery of the ILO must be made on a continuous basis in order for the Organization to be able to adapt to changing social and economic dynamics. The ILO system has managed to do this remarkably well for almost a century of monitoring the implementation of international labour standards. Changes to the system have occurred over time, in a gradual manner. The ILO’s system of supervision – with its tripartite structure – is complex, advanced and unique. Improving this system requires well-thought out adaptations that would streamline the current procedural and practical framework in order to make it more comprehensible and coherent.
- 146.** The supervisory system functions adequately and generally meets its objective of ensuring compliance with international labour standards, cognizant of different national realities and legal systems. Its different procedures and bodies facilitate countries to adhere to their obligations and have complementary functions that create tailor-made solutions to labour-related conflicts and promote implementation of Conventions and Recommendations. The independence, expertise, objectivity and personal authority of the members of the supervisory bodies are essential for the success of the supervisory mechanism.²²⁷
- 147.** Nevertheless, certain specific improvements are suggested, mainly in paragraphs 127, 130, 133, 134, 138, 139, 140, 141, 142 and 144 of this report. These improvements include, for example: better communication about the functioning of the complex supervisory system, which is needed to improve its transparency and accessibility; a better use of technology, for instance by further digitalization of the reporting system; and better use of technical assistance, which is essential to enhance the impact of the supervisory mechanisms. Furthermore an improved balance between obligations of ratifying and non-ratifying member States could be achieved. Moreover, coordination between the supervisory bodies and between their chairpersons could be enhanced. Different options for tackling questions about the interpretation of Conventions are available under the Constitution. Finally, independent and impartial national conflict settlement procedures that precede recourse to the ILO bodies could relieve some of the pressure on the system.
- 148.** The different supervisory procedures serve a common purpose, the effective observance of international labour standards, particularly in relation to ratified Conventions. The existing connections between the supervisory mechanisms therefore operate in respect of

²²⁶ See Annex I for the different procedural options in respect of interim measures, early-warning mechanisms or urgent interventions in the UN human rights system.

²²⁷ C.W. Jenks: “The International Protection of Trade Union Rights”, in E. Luard (ed.): *The International Protection of Human Rights*, 1967, pp. 210–224.

obligations freely assumed by the Organization's member States through the ratification of Conventions. The combination of reporting and complaints, obligations regarding ratified and unratified instruments, options for technical assistance and on-site missions, and the mixture of technical and political scrutiny gives coherence to the ILO's system of supervision and ensures its effectiveness.²²⁸ However, continuous evaluation, review and, where necessary, making adaptations, are required for ensuring sustained compliance with international labour standards and promoting social justice.

²²⁸ Cf. N. Valticos: "Once more about the ILO system of supervision: In what respect is it still a model?", in N. Blokker and S. Muller: "Towards more effective supervision by international organizations", in *Essays in Honour of Henry G. Schermers*, Vol. I, 1994, p. 112.

Appendix I. Human rights bodies' supervisory machinery outside the ILO

Introduction

1. The terms of reference of the Governing Body's request to the Chairpersons included an invitation to comparatively examine other international supervisory mechanisms. This appendix therefore examines a number of other human rights monitoring mechanisms within the UN framework in order to provide an overview of those supervisory systems and identify elements that may be of help in improving the ILO's supervisory machinery. In 1946, the ILO became the UN's first specialized agency. Under the Charter of the UN, specialized agencies refer to intergovernmental agencies affiliated with the UN. They are separate, autonomous organizations that work with the UN and each other via the coordinating function of ECOSOC. Other specialized agencies include the World Bank Group, the International Monetary Fund and the World Health Organization.
2. Since the ILO is positioned under the "UN umbrella" it may be valuable to explore the supervisory machinery of other UN human rights instruments. Different human rights bodies exist, with different monitoring or supervisory mechanisms. Generally, these UN human rights bodies are divided into two groups: Charter-based and Treaty-based bodies. Charter-based bodies derive their legitimacy from the UN Charter.¹ The current Charter-based bodies are the Human Rights Council (HRC) including its subsidiary bodies, the Advisory Committee, the Universal Periodic Review (UPR) and the Special Procedures.² The HRC – established in 2006 – is the successor of the Commission on Human Rights which worked on human rights related issues from 1946.
3. Treaty-based bodies are established to supervise the implementation of a specific legal instrument. Their mandate is therefore not as broad as the Charter-based ones and they address a more limited audience. Treaty-based bodies could be described as committees comprising independent experts who conduct technical analyses of specific human rights instruments, while the HRC is a more politically oriented platform. Decision-making within the Treaty-based bodies is generally based on consensus, while Charter-based bodies take action based on majority voting.³ There are nine UN human rights Conventions with monitoring bodies to oversee the implementation of the provisions of the treaties concerned. The bodies are composed of independent experts who consider States parties' reports, communications or individual complaints. Generally, the Treaty-based mechanisms follow a similar pattern of supervision, although there are some notable differences.⁴
4. The Charter-based and Treaty-based bodies will be examined below in order to get a clear view of their monitoring systems and the possible benefits elements of these systems may have for the ILO's supervisory mechanism.

¹ Charter of the United Nations and the Statute of the International Court of Justice, San Francisco, 1945.

² Dag Hammarskjöld Library Research Guides: <http://research.un.org/en/docs/humanrights/charter>.

³ *ibid.*

⁴ *ibid.*

I. Charter-based bodies

(a) *The Human Rights Council procedures and Universal Periodic Review (UPR)*

5. Created by UN General Assembly Resolution 60/251 in 2006, the HRC is responsible for strengthening the promotion and protection of human rights worldwide.⁵ The HRC is composed of 47 UN member States elected by the General Assembly and is mandated to discuss all thematic human rights issues and situations.⁶ The HRC has three main procedures for monitoring the global human rights situation: the UPR, the Advisory Committee and the Complaint Procedure. Moreover, the HRC also makes use of the UN Special Procedures that were established in 1947 under its predecessor.

(b) *The Universal Periodic Review (UPR)*

6. The UPR process involves a review of the human rights record of all UN member States per cycle. Under the auspices of the HRC, the UPR is a State-driven process which provides the opportunity for each State to declare which actions have been taken to improve their national human rights situation.⁷ HRC Resolution 5/1 of 2007 outlines the main elements and procedures of the UPR process.⁸ The Universal Periodic Review Group holds three two-week sessions each year in which 16 countries are reviewed. Each review is facilitated by a group of three States (troikas) who act as rapporteurs. The reviews contain information from the State under review, independent human rights experts and groups, treaty bodies, other UN entities and other stakeholders, like national human rights commissions.⁹ This way, 48 countries are reviewed yearly and the entire UN membership over the full UPR cycle.¹⁰ For each country, a Working Group report is issued in which the meetings held are summarized and conclusions or recommendations are proclaimed.¹¹ A special database by the Office of the High Commissioner for Human Rights (OHCHR) has been developed in which all completed reports can be found.¹² The UPR process is a unique and innovative monitoring system based on equality and “peer-review” methodology.

(c) *The Advisory Committee*

7. The HRC Advisory Committee is a body composed of 18 independent experts from different regions and professional backgrounds who act in their personal capacity. The Committee – that acts as a think-tank for the Council – replaces the Sub-Commission on the Promotion and Protection of Human Rights that was active under the Commission on Human Rights.¹³ The Committee, which meets twice a year and provides expertise to the HRC, may put forward suggestions for research.

⁵ UN General Assembly Resolution A/RES/60/251.

⁶ <http://www.ohchr.org/EN/HRBodies/HRC/Pages/AboutCouncil.aspx#ftn1>.

⁷ <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRMain.aspx>.

⁸ A/HRC/RES/5/1, *Institution-building of the United Nations Human Rights Council*.

⁹ <http://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx>.

¹⁰ <http://www.ohchr.org/EN/HRBodies/UPR/Pages/UPRSessions.aspx>.

¹¹ Dag Hammarskjöld Library Research Guides: <http://research.un.org/en/docs/humanrights/charter>.

¹² <http://www.ohchr.org/EN/HRBodies/UPR/Pages/Documentation.aspx>.

¹³ Dag Hammarskjöld Library Research Guides: <http://research.un.org/en/docs/humanrights/charter>.

The Committee does not adopt resolutions or decisions but is limited to providing advice in an implementation-oriented manner on thematic issues.¹⁴

The Complaint Procedure

8. Under Resolution 5/1 of 2007, the HRC established a Complaint Procedure for addressing consistent patterns of gross and reliably attested violations of human rights and fundamental freedoms.¹⁵ The procedure addresses communications submitted by individuals, groups or NGOs that claim to be victims of human rights violations or have reliable knowledge of such violations. The procedure is confidential and victim-oriented and seeks to ensure impartiality, objectivity and efficiency.¹⁶
9. The Chairperson of the Working Group on Communications undertakes an initial screening of the communications based on the admissibility criteria in paragraphs 85–88 of Resolution 5/1. If the communication is not rejected, the State is informed of the communication. Two distinct working groups – the Working Group on Communications and the Working Group on Situations – are responsible for examining the communications and bringing the patterns of violations to the attention of the HRC.¹⁷ Possible measures are to keep the situation under review, to appoint an independent expert to report back to the HRC or to recommend technical assistance from the OHCHR.¹⁸

The Special Procedures

10. The HRC also has the responsibility for the special procedures that were originally created by the Commission on Human Rights. These special procedures concern independent human rights experts with a specific mandate, theme or country perspective. Special procedures are either an individual – the so-called Special Rapporteur – or a working group composed of five members.¹⁹ They are appointed by the HRC and serve in their personal capacity. Their mandate is limited to a maximum of six years and their independent status is meant to uphold impartiality, honesty and good faith.²⁰ As of 27 March 2015, there are 41 thematic and 14 country mandates.
11. Mandate holders have different means at their disposal to monitor and promote human rights. They may conduct country visits to analyse the human rights situation at the national level. Furthermore, most Special Procedures may send communications in the form of urgent appeals or other letters to States or other entities asking for clarification or action. Moreover, part of the Special Procedures may be to prepare thematic studies, develop human rights standards and guidelines, participate in expert consultations, promote human rights awareness and offer technical assistance.²¹

¹⁴ <http://www.ohchr.org/EN/HRBodies/HRC/AdvisoryCommittee/Pages/AboutAC.aspx>.

¹⁵ A/HRC/RES/5/1, *Institution-building of the United Nations Human Rights Council*, para. 85. The Complaint Procedure replaced the procedure under ECOSOC Resolution 1503 (XLVIII) of 27 May 1970, as revised by Resolution 2000/3 of 19 June 2000. See: <http://www.ohchr.org/EN/HRBodies/HRC/ComplaintProcedure/Pages/ReviewComplaintProcedure.aspx>.

¹⁶ <http://www.ohchr.org/EN/HRBodies/HRC/ComplaintProcedure/Pages/HRCComplaintProcedureIndex.aspx>.

¹⁷ A/HRC/RES/5/1, *Institution-building of the United Nations Human Rights Council*, paras 89–99.

¹⁸ *ibid.*, para. 109.

¹⁹ <http://www.ohchr.org/EN/HRBodies/SP/Pages/Introduction.aspx>.

²⁰ A/HRC/RES/5/1, *Institution-building of the United Nations Human Rights Council*, paras 39–53.

²¹ <http://www.ohchr.org/EN/HRBodies/SP/Pages/Introduction.aspx>.

II. Treaty-based bodies

12. Next to the Charter-based bodies and procedures, nine Treaty-based bodies with specific mandates attached to their respective human rights instrument are established within the UN human rights system. While in general their composition and functioning is rather similar, there are a number of differences and special procedures present as well. The following paragraphs will provide an overview of the Treaty-based monitoring mechanisms.
13. For each monitoring body, a short general introduction is provided after which its supervisory system is explored. Next, the reporting obligations and other procedures are examined and the types of documents the monitoring bodies produce are illustrated.

(a) *The Human Rights Committee (CCPR)*

14. The United Nations Human Rights Committee (CCPR) consists of 18 independent experts who monitor implementation of the International Covenant on Civil and Political Rights (ICCPR) by its States parties.²² The ICCPR is a multilateral treaty adopted by the UN General Assembly on 16 December 1966, and came into force on 23 March 1976. It has 74 signatories and 168 parties. The ICCPR commits its parties to respect the civil and political rights of individuals, including the right to life, freedom of religion, freedom of speech, freedom of assembly, electoral rights, and rights to due process and a fair trial. There are two Optional Protocols to the Covenant. The First Optional Protocol establishes an individual complaints mechanism, allowing individuals to complain to the CCPR about violations of the Covenant. The individual complaints mechanism has led to the creation of a complex body of quasi-jurisprudence on the interpretation and implementation of the provisions enshrined in the ICCPR.²³ The Second Optional Protocol aims at the abolition of the death penalty.²⁴ The Protocol effectively abolishes the death penalty although countries were permitted to make a reservation that allowed continued use of the death penalty for the most serious crimes of a military nature, committed during wartime.
15. The CCPR meets three times a year for four-week sessions to consider the five-yearly reports submitted by the member States on their compliance with the Covenant and to examine individual petitions concerning the States parties to the Optional Protocols. The reporting procedure is governed by Article 40 of the Covenant while an inter-State complaint procedure can be found in Article 41.²⁵ The CCPR does not have a system in place for initiating inquiries into allegations of serious or systematic violations of the ICCPR.
16. All States parties are obliged to submit regular reports to the Committee on how the Covenant's provisions are being implemented. Initially, States must report one year after acceding to the Covenant and afterwards they are obliged to do so whenever the Committee requests this, which is usually every four years. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of "concluding observations".

²² International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976. See: <http://www.ohchr.org/EN/HRBodies/CCPR/Pages/Membership.aspx>. Also see: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

²³ Optional Protocol to the International Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976. Signatories: 35, parties: 115.

²⁴ Second Optional Protocol to the International Covenant on Civil and Political Rights, aiming at the abolition of the death penalty, adopted and proclaimed by General Assembly Resolution 44/128 of 15 December 1989. Signatories: 37, parties: 81.

²⁵ To this date, this procedure has never been used.

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17. Furthermore, the CCPR prepares general comments to clarify the scope and meaning of the ICCPR's provisions. Such general comments help to clarify to States parties what the Committee's views are on the obligations each State has assumed by acceding to the ICCPR. Each general comment addresses a particular provision of the ICCPR. The CCPR also – infrequently – makes substantive statements, similar to pronouncements or press releases, regarding State practices or human rights conditions of concern and it may comment on certain developments within the UN human rights system. Additionally, the Committee hosts general discussions to solicit input from other UN agencies, national human rights institutions, NGOs and interested civil society stakeholders on topics of interest.

(b) The Committee on Economic, Social and Cultural Rights (CESCR)

18. The CESCR oversees the implementation of the International Covenant on Economic, Social and Cultural Rights (ICESCR), which is a multilateral treaty and sister to the ICCPR, and was adopted by the UN General Assembly on 16 December 1966 and came into force on 3 January 1976. It commits parties to work towards the realization of economic, social and cultural, including labour rights, the right to health, the right to education and the right to an adequate standard of living.²⁶
19. The Optional Protocol to the ICESCR is a side agreement to the Covenant that allows parties to recognize the competence of the CESCR to consider complaints from individuals.²⁷
20. The Committee consists of 18 independent experts and monitors the implementation of the ICESCR. Its members are elected for four-year terms, with half the members elected every two years. The Committee holds two sessions per year: a three-week plenary session and a one-week pre-sessional working group in Geneva.
21. Initially, a State must make a report on the implementation of the Covenants' provisions two years after acceding to the ICESCR. Following the initial report, periodic reports are then requested every five years. The reporting system requires each State party to submit firstly, a common core document, which lists general information about the reporting State, a framework for protecting human rights and information on non-discrimination and equality, and secondly, a treaty-specific document, which accounts for specific information relating to the implementation of Articles 1–15 of the ICESCR and elaborates upon any national law or policy in place to implement the ICESCR.²⁸
22. After States submit their reports, the CESCR initially reviews the report through a five-person pre-sessional working group that meets six months prior to the report being considered by the full Committee. The pre-sessional working group will then issue a list of written questions to the State party, and the State party will be required to answer prior to making their scheduled appearance before the Committee.

²⁶ International Covenant on Economic, Social and Cultural Rights, adopted and opened for signature, ratification and accession by General Assembly Resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976. Signatories: 5, parties: 164.

²⁷ Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, General Assembly Resolution A/RES/63/117, on 10 December 2008. Signatories: 5, parties: 164.

²⁸ See Committee on Economic, Social and Cultural Rights, *Guidelines on Treaty-Specific Documents to be Submitted by States Parties under Articles 16 and 17 of the International Covenant on Economic, Social and Cultural Rights*, E/C.12/2008/2, 24 Mar. 2009. For more specific guidance regarding the form and content of reports, the UN Secretary-General has published a *Compilation of Guidelines on the Form and Content of Reports to be submitted by States Parties to the International Human Rights Treaties*. The OHCHR also maintains a list of all the State party reports: <http://www.ijrcenter.org/un-treaty-bodies/committee-on-economic-social-and-cultural-rights/>.

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23. Representatives of each reporting State are invited to engage in a constructive dialogue with the CESCR. Concluding observations are then drafted and later adopted by consensus following a private discussion by the Committee. A list of concluding observations can be found on the OHCHR web page.²⁹
 24. The CESCR may, in its concluding observations, also make a specific request to a State party to provide more detailed information or statistical data prior to the date on which the State party's next periodic report is due.³⁰ If the CESCR is unable to obtain the information it requires, the CESCR may request that the State party accept a technical assistance mission consisting of one or two Committee members. If the State party does not accept the proposed technical assistance mission, the CESCR may then make recommendations to ECOSOC.³¹
 25. Furthermore, the Committee may consider individual communications alleging violations of the ICESCR by States parties to the Optional Protocol. Inter-State complaints are governed by Article 10 of the Optional Protocol, but this procedure has never been used. While there is no mechanism for urgent action, the CESCR can consider inquiries on grave or systematic violations of any of the rights set forth in the Covenant pursuant to Article 11 of the Optional Protocol. States parties may opt out of the inquiry procedure at any time by declaring that the State does not recognize the competence of the Committee to undertake inquiries.
 26. The CESCR may produce general comments that guide interpretation of the ICESCR provisions and assist States parties in fulfilling their obligations. Additionally, it may issue open letters and statements to clarify its position with respect to certain obligations under the ICESCR following major developments or other issues related to its implementation.³²

(c) *The Committee on the Elimination of Racial Discrimination (CERD)*

27. The CERD is the body of independent experts that monitors the implementation of the Convention on the Elimination of All Forms of Racial Discrimination by its States parties.³³ The Committee meets in Geneva and normally holds two sessions per year consisting of three weeks each.
28. Additionally, a Special Rapporteurship was created to examine contemporary forms of racism, racial discrimination, xenophobia and related intolerance. As mentioned above, Special Rapporteurs are part of the Special Procedures of the HRC.³⁴ The current Special Rapporteur for racial discrimination, Mr Mutuma Ruteere (Kenya), has been mandated by Human Rights Council Resolution 7/34 to focus on a number of issues related to racial discrimination.³⁵ In accordance with his mandate, the Special Rapporteur transmits urgent appeals and communications on alleged violations regarding contemporary forms of racism, discrimination based on race, xenophobia and related intolerance to the State concerned in order to induce the national authority to undertake the necessary investigations of all the incidents or individual cases reported. Moreover, he may

²⁹ http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=9&DocTypeID=5.

³⁰ See *Other activities of the human rights treaty bodies and participation of stakeholders in the human rights treaty body process*, UN document HRI/MC/2013/3, 22 Apr. 2013, para. 8. This is a rarely used procedure.

³¹ <http://www.ijrcenter.org/un-treaty-bodies/committee-on-economic-social-and-cultural-rights/>.

³² *ibid.*

³³ International Convention on the Elimination of All Forms of Racial Discrimination, adopted and opened for signature and ratification by General Assembly Resolution 2106 (XX) of 21 December 1965, entry into force 4 January 1969. Signatories: 87, parties: 177.

³⁴ <http://www.ohchr.org/EN/Issues/Education/SREducation/Pages/SREducationIndex.aspx>.

³⁵ <http://www.ohchr.org/EN/Issues/Racism/SRRacism/Pages/OverviewMandate.aspx>.

undertake fact-finding country visits and submit annual reports on the activities included in his mandate to the HRC and the UN General Assembly.³⁶

29. All States parties are obliged to submit regular reports to the Committee on how the provisions of the Convention are being implemented. States must initially report one year after acceding to the Convention and afterwards every two years. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of concluding observations.³⁷ Similar to the reporting system under the 1966 human rights Covenants, this system requires each State party to submit firstly, a common core document, which lists general information about the reporting State, a framework for protecting human rights and information on non-discrimination and equality, and secondly, a treaty-specific document which accounts for specific information relating to the implementation of Articles 1–7 of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) and any national law or policy that aims at implementing ICERD's provisions.³⁸ The CERD subsequently engages in a constructive dialogue with each State party that has fulfilled its reporting obligations. The CERD also has a follow-up procedure to request further information or any additional reports concerning action taken by the State party to implement the Committee's recommendations.³⁹
30. In addition to the reporting procedure, the Convention establishes three other mechanisms through which the Committee performs its monitoring functions: the examination of individual complaints, the examination of inter-State complaints and the early-warning procedure.⁴⁰
31. The CERD may consider individual petitions alleging violations of the Convention by States parties who have made the necessary declaration under Article 14 of the Convention.⁴¹ Article 14 also identifies the basic requirements a complaint must satisfy in order to be considered by the Committee.⁴² The CERD's decisions are accessible through an online database.⁴³
32. The ICERD provides a mechanism for States to complain about violations of the ICERD made by another State.⁴⁴ An ad hoc Conciliation Commission may be established, but to this date the inter-State complaint procedure has not been used. The ICERD also provides a mechanism for States to resolve inter-State disputes concerning the interpretation of the Convention.⁴⁵ In this procedure, negotiations may be followed by arbitration to solve the existing conflicts. If the parties fail to agree on an arbitration process within a period of six months, one of the States may refer the dispute to the

³⁶ <http://www.ohchr.org/EN/Issues/Racism/SRRacism/Pages/IndexSRRacism.aspx>.

³⁷ <http://www2.ohchr.org/english/bodies/cerd/>.

³⁸ <http://www.ijrcenter.org/un-treaty-bodies/committee-on-the-elimination-of-racial-discrimination/>.

³⁹ *ibid.*

⁴⁰ <http://www.ohchr.org/EN/HRBodies/CERD/Pages/CERDIntro.aspx>.

⁴¹ <http://www.ohchr.org/EN/HRBodies/CERD/Pages/CERDIntro.aspx> and <http://www.ijrcenter.org/un-treaty-bodies/committee-on-the-elimination-of-racial-discrimination/>. As of June 2014, 55 States have accepted the CERD complaint mechanism.

⁴² http://www.ijrcenter.org/un-treaty-bodies/committee-on-the-elimination-of-racial-discrimination/#Individual_Complaints.

⁴³ http://tbinternet.ohchr.org/_layouts/treatybodyexternal/TBSearch.aspx?Lang=en&TreatyID=6&DocTypeID=17.

⁴⁴ Articles 11–13 of the ICERD.

⁴⁵ Article 22 of the ICERD.

ICJ unless a State opted out of the procedure by making a declaration at the time of ratification or accession to the ICERD.⁴⁶

33. The ICERD has a special procedure for urgent issues. When serious violations of the ICERD are at stake, there is an early-warning procedure to prevent escalation of the conflict. When the CERD commences this procedure, the party involved is requested to provide information and adopt a decision that addresses specific concerns and recommends action.⁴⁷ The OHCHR has published a list of recent decisions under this procedure.⁴⁸
34. The Committee publishes interpretations of the content of the Convention's provisions in so-called general recommendations. It may also publish reports on thematic issues and may organize thematic discussions.⁴⁹ Furthermore, the CERD issues recommendations in the form of concluding observations after receiving the State reports.

(d) *The Committee on the Elimination of Discrimination against Women (CEDAW)*

35. The 1960s saw the emergence, in many parts of the world, of a new consciousness of the patterns of discrimination against women and a rise in the number of organizations committed to combating the effects of gender-based discrimination.⁵⁰ This led to the adoption of the Convention on the Elimination of All Forms of Discrimination against Women in 1981.⁵¹
36. The General Assembly adopted a 21-Article Optional Protocol to the Convention on 6 October 1999.⁵² When a State ratifies the Protocol, the State recognizes the competence of the CEDAW to receive and consider complaints from individuals or groups within its jurisdiction. The Optional Protocol entered into force on 22 December 2000.⁵³
37. The CEDAW is an expert body established in 1982, and is composed of 23 experts on women's issues from around the world.⁵⁴ The Committee watches over the progress made with regard to women's rights in countries that are a party to the Convention. The CEDAW monitors the implementation of national measures to fulfil this obligation. The experts are elected for a term of four years, while elections for nine out of the 18 members occur every two years in order to ensure the Committee maintains a balance between changing the Committee's composition and

⁴⁶ <http://www.ijrcenter.org/un-treaty-bodies/committee-on-the-elimination-of-racial-discrimination/>.

⁴⁷ <http://www.ohchr.org/EN/HRBodies/CERD/Pages/EarlyWarningProcedure.aspx>.

⁴⁸ *ibid.*

⁴⁹ <http://www2.ohchr.org/english/bodies/cerd/>.

⁵⁰ <http://www.un.org/womenwatch/daw/cedaw/committee.htm>.

⁵¹ Convention on the Elimination of All Forms of Discrimination against Women adopted and opened for signature, ratification and accession by General Assembly Resolution 34/180 of 18 December 1979, entry into force 3 September 1981. Signatories: 99, parties: 189.

⁵² <http://www.un.org/womenwatch/daw/cedaw/protocol/>.

⁵³ Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women, A/RES/54/4, 15 Oct. 1999, Signatories: 80, parties: 106; https://treaties.un.org/Pages/ViewDetails.aspx?src=TREATY&mtdsg_no=IV-8-b&chapter=4&lang=en.

⁵⁴ <http://www.un.org/womenwatch/daw/cedaw/committee.htm>.

continuity.⁵⁵ The Committee also has five officers: a Chairperson, three Vice-Chairpersons and a Rapporteur, who all serve for a term of two years.

38. The United Nations Commission on Human Rights decided in 1994 to appoint a Special Rapporteur on violence against women, including its causes and consequences.⁵⁶ According to her mandate, the Special Rapporteur, Ms Rashida Manjoo (South Africa), since August 2009, is requested to:
- (a) seek and receive information on violence against women, its causes and consequences from governments, treaty bodies, specialized agencies, other special rapporteurs responsible for various human rights questions and intergovernmental and non-governmental organizations, including women's organizations, and to respond effectively to such information;
 - (b) recommend measures, ways and means at the local, national, regional and international levels to eliminate all forms of violence against women and its causes, and to remedy its consequences;
 - (c) work closely with all Special Procedures and other human rights mechanisms of the Human Rights Council and with the treaty bodies, taking into account the request of the Council that they regularly and systematically integrate the human rights of women and a gender perspective into their work, and cooperate closely with the Commission on the Status of Women in the discharge of its functions;
 - (d) continue to adopt a comprehensive and universal approach to the elimination of violence against women, its causes and consequences, including causes of violence against women relating to the civil, cultural, economic, political and social spheres.⁵⁷
39. The Special Rapporteur also transmits urgent appeals and communications to States regarding violence against women, undertakes country visits and submits annual thematic reports.
40. Additionally, a Working Group on the issue of discrimination against women in law and its practice was created. The establishment of the Working Group by the HRC at its 15th Session in September 2010 was seen as necessary since, although many constitutional and legal reforms to fully integrate women's human rights into domestic law had occurred, there remains insufficient progress.⁵⁸ The Working Group identifies, promotes and exchanges views, in consultation with States and other actors, on good practices related to the elimination of laws that discriminate against women.⁵⁹
41. States parties are obliged to submit, within one year of ratification or accession, a national report to the CEDAW. Afterwards, they are held to do so every four years, or whenever the Committee requests them to do so.⁶⁰ The Committee reviews these State reports, which cover national action taken to improve the situation of women. In discussions with State officials, CEDAW members comment on the report and obtain additional information.
42. Following the receipt of the periodic reports, the Committee hosts a pre-session working group of five members who create a shortlist of issues and questions that the full Committee will consider at the following session. States parties are given an opportunity to respond to the list of issues and questions prior to engaging in a constructive dialogue at the Committee's session. Hereafter, the Committee adopts concluding observations, which generally include sections on positive aspects on

⁵⁵ <http://www.ijrcenter.org/un-treaty-bodies/committee-on-the-elimination-of-discrimination-against-women/>.

⁵⁶ <http://www.ohchr.org/EN/Issues/Women/SRWomen/Pages/SRWomenIndex.aspx>.

⁵⁷ *ibid.*

⁵⁸ <http://www.ohchr.org/EN/Issues/Women/WGWomen/Pages/WGWomenIndex.aspx>.

⁵⁹ At its 23rd Session, the HRC adopted by consensus Resolution 23/7 extending the mandate of the Working Group for another period of three years.

⁶⁰ <http://www.ijrcenter.org/un-treaty-bodies/committee-on-the-elimination-of-discrimination-against-women/>.

which the State has complied with the CEDAW, a potential list of factors and difficulties in implementation of the CEDAW, and principal areas of concern and recommendations. The Committee also maintains a list of concluding observations.⁶¹ This procedure of dialogue, developed by the Committee, has proven valuable because it allows for an exchange of views and a clearer analysis of anti-discrimination policies in the various countries.⁶²

43. The Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women contains two supervisory procedures: an Individual Communication Procedure and an Inquiry Procedure. Individual women can submit claims of violations of rights in the Convention to the Committee. Domestic remedies must have been exhausted before consideration of these individual communications. The inquiry procedure enables the Committee to initiate inquiries into situations of grave or systematic violations of women's rights.⁶³
44. Furthermore, the Convention provides for a mechanism for inter-State complaints in Article 29. If negotiations fail, arbitration is required. If this does not lead to a satisfactory result, one of the parties may refer the dispute to the ICJ, unless a State opted out of the procedure by making a declaration at the time of ratification or accession to the CEDAW. There is no mechanism for urgent interventions in the framework of the Convention.
45. The Committee produces different kinds of normative documents. It formulates general recommendations and suggestions. General recommendations are directed to States and discuss any issue relating to women that the Committee believes States parties should focus on. As such, general recommendations do not necessarily target a specific Article of the Convention. Additionally, the Committee may produce open letters and statements to clarify its position with respect to international developments and any issues that relate to the implementation of the Convention.⁶⁴ Moreover, thematic discussions and conferences are organized.⁶⁵

(e) *The Committee against Torture (CAT) and the Subcommittee on Prevention of Torture (SPT)*

46. The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, requires States to take effective measures to prevent torture in any territory under their jurisdiction, and forbids States to transport people to any country where there is reason to believe they will be tortured.⁶⁶
47. An Optional Protocol to the Torture Convention (OPCAT) was adopted by the General Assembly of the UN on 18 December 2002 and entered into force on 22 June 2006.⁶⁷ It establishes a system of regular visits by international and national bodies to places of detention in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. A Subcommittee on Prevention of

⁶¹ *ibid.*

⁶² <http://www.un.org/womenwatch/daw/cedaw/committee.htm>.

⁶³ There is an opt-out clause: States are allowed to declare that they do not accept the inquiry procedure.

⁶⁴ <http://www.ijrcenter.org/un-treaty-bodies/committee-on-the-elimination-of-discrimination-against-women/>.

⁶⁵ *ibid.*

⁶⁶ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984, entry into force 26 June 1987. Signatories: 81, parties: 158.

⁶⁷ Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, adopted on 18 December 2002 at the 57th session of the General Assembly of the United Nations by Resolution A/RES/57/199, entry into force on 22 June 2006. Signatories: 75, parties: 79.

Torture (SPT) was established under the Protocol to carry out visits and offer expertise to States parties and national institutions in order to create national preventive mechanisms.⁶⁸

48. The CAT consists of ten independent experts who monitor the implementation of the Convention. It holds two annual sessions in Geneva that last for two weeks, and in which it examines approximately eight to nine State reports.⁶⁹ At each session, the Committee examines reports from a number of States parties. Each report is examined orally in the presence of one or more representatives of the State concerned. After examination of each report the Committee adopts its conclusions and recommendations.⁷⁰
49. As mentioned, next to the CAT there is also the SPT. This is a new kind of treaty body in the UN human rights system which focuses on innovative, sustained and proactive approaches to the prevention of torture and ill treatment. The SPT is a committee that comprises 25 independent and impartial experts, who are elected by States and come from various regions of the world.⁷¹ Its two main functions are to undertake visits to States parties and provide advice. Under the Optional Protocol, the SPT has unrestricted access to all places where persons may be deprived of their liberty, their installations and facilities and to all relevant information.⁷² Article 17 of the Optional Protocol obliges States parties to create a National Preventive Mechanism (NPM). The OPCAT and the SPT are designed to guide States parties in establishing these bodies.
50. A working group prepares the examination of individual communications received under Article 22 of the Convention. The working group examines the admissibility and merits of the communications and makes recommendations to the Committee.⁷³
51. In 1985, the United Nations Commission on Human Rights mandated the appointment of a Special Rapporteur to examine questions that are relevant to torture.⁷⁴ The mandate was extended for three years by Human Rights Council Resolution 25/13 in March 2014.⁷⁵ The current Special Rapporteur is Mr Juan Méndez (Argentina). The Special Rapporteur covers all countries irrespective of whether a specific State has ratified the Convention. The mandate comprises three main activities: firstly, transmitting urgent appeals to States with regard to individuals reported to be at risk of torture, as well as communications on past alleged cases of torture; secondly, undertaking fact-finding country visits; and thirdly, submitting annual reports on activities, the mandate and methods of work to the HRC and the General Assembly.⁷⁶ Unlike the complaints mechanism of the human rights treaty monitoring bodies, the Special Rapporteur does not require the exhaustion of domestic remedies to act.⁷⁷

⁶⁸ A/RES/57/199, Articles 5–10. Also see: <http://legal.un.org/avl/ha/catcidtp/catcidtp.html>.

⁶⁹ <http://www.ijrcenter.org/un-treaty-bodies/committee-against-torture/>.

⁷⁰ <http://legal.un.org/avl/ha/catcidtp/catcidtp.html>.

⁷¹ <http://www.ohchr.org/EN/HRBodies/OPCAT/Pages/OPCATIntro.aspx>.

⁷² *ibid.*

⁷³ <http://legal.un.org/avl/ha/catcidtp/catcidtp.html>.

⁷⁴ E/CN.4/RES/1985/33, *Anti-Torture Initiative*.

⁷⁵ A/HRC/25/L.25, *Torture and other cruel, inhuman or degrading treatment or punishment: Mandate of the Special Rapporteur*. Also see: <http://www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/SRTortureIndex.aspx>.

⁷⁶ For the full mandate, see: A/HRC/25/L.25, *Torture and other cruel, inhuman or degrading treatment or punishment: Mandate of the Special Rapporteur*.

⁷⁷ <http://www.ohchr.org/EN/Issues/Torture/SRTorture/Pages/SRTortureIndex.aspx>.

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52. Pursuant to Article 19 of the Convention, each party is obliged to submit a report on measures taken to give effect to its undertakings under the Convention to the Committee one year after the entry into force and afterwards every four years or on request by the Committee. Periodic reports consist of three parts: information about the implementation of the Convention; information requested by the CAT; and measures that have been taken to comply with the conclusions and recommendations addressed to it by the CAT previously.⁷⁸ The CAT will first generate a list of issues that will be drafted by two members of the Committee chosen as rapporteurs for that particular State. The State may reply and send representatives to the UN, in order to establish a constructive dialogue. The CAT replies to the State with positive aspects, a section noting areas of concern and subsequent recommendations.⁷⁹
53. The CAT may consider individual complaints alleging violations of the rights set out in the Convention by States parties who have made the necessary declaration under Article 22 of the Convention. As of February 2014, 65 States have accepted the complaints mechanisms of the Convention against Torture.
54. Article 21 of the Convention establishes an inter-State complaints mechanism, while Article 30 provides a mechanism for States to resolve inter-State disputes concerning interpretation of application of the Convention. First there is negotiation, then arbitration and if the parties still fail to agree within a period of six months, then they can go to the ICJ, unless a State opted out. The CAT does not have a mechanism for urgent interventions.
55. When there is a grave or systematic violation of any of the rights of the Convention, the CAT is mandated, according to Article 20, to make use of the inquiry procedure. States parties may opt out of this procedure at the time of signature, ratification of, or accession to, the Convention by declaring that the State does not recognize the competence of the CAT to undertake inquiries, pursuant to Article 28.⁸⁰
56. The CAT publishes general comments on thematic issues related to the content of the Convention. Moreover, it may produce open letters and statements in which the CAT clarifies its position with respect to international developments and other issues that could potentially affect the Convention's implementation. Furthermore, thematic discussions and conferences are organized with interested stakeholders prior to the Committee's adoption of a general comment.⁸¹

(f) *The Committee on the Rights of the Child (CRC)*

57. The Convention on the Rights of the Child sets out the civil, political, economic, social, health and cultural rights of children.⁸² Three Optional Protocols are attached to the Convention.⁸³

⁷⁸ <http://www.ijrcenter.org/un-treaty-bodies/committee-against-torture/>.

⁷⁹ *ibid.*

⁸⁰ *ibid.*

⁸¹ *ibid.*

⁸² Convention on the Rights of the Child, adopted and opened for signature, ratification and accession by General Assembly Resolution 44/25 of 20 November 1989, entry into force 2 September 1990.

⁸³ Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography, adopted and opened for signature, ratification and accession by General Assembly Resolution A/RES/54/263 of 25 May 2000, entered into force on 18 Jan. 2002. Signatories: 121, parties: 169. Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict, adopted and opened for signature, ratification and accession by General Assembly Resolution A/RES/54/263 of 25 May 2000, entry into force 12 Feb. 2002. Signatories: 129; parties: 159. A/RES/66/138, resolution adopted on 19 Dec. 2011 by the General Assembly, Optional Protocol to the Convention on the Rights of the Child on a communications procedure, 27 Jan. 2012, entry into force 14 Apr. 2014. Signatories: 49; parties: 17.

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58. The Optional Protocol to the Convention on the Rights of the Child on the sale of children, child prostitution and child pornography obliges parties to pass laws within their territories against the sale of children, child prostitution and child pornography.
 59. The second Optional Protocol to the Convention on the involvement of children in armed conflict aims to protect children from recruitment and use in hostilities. States shall not recruit children under the age of 18 to battlefields, shall not conscript soldiers below the age of 18, and should take all possible measures to prevent such recruitment, demobilize anyone under 18 conscripted or used in hostilities, and to provide physical and psychological recovery services. Additionally, States parties are obliged to help with the social integration of former child combatants. Furthermore, armed groups distinct from the armed forces of a country should not, under any circumstances, recruit or use in hostilities anyone under the age of 18.⁸⁴
 60. The third and most recent Optional Protocol to the Convention establishes a communications procedure which allows children from States that have ratified the Protocol to bring complaints about violations of their rights directly to the CRC if they have not found a solution at the national level. The third Optional Protocol provides two new ways for children to challenge violations of their rights: a communication procedure and an inquiry procedure.
 61. The CRC is composed of 18 independent experts who monitor the implementation of the Convention. The Committee meets in Geneva and normally holds three sessions per year consisting of a three-week plenary and a one-week pre-session meeting.
 62. Furthermore, a Special Rapporteurship on the sale of children, child prostitution and child pornography was established in light of growing concerns over commercial sexual exploitation and sale of children. The mandate of the Special Rapporteur is to investigate the exploitation of children around the world and to submit reports to the General Assembly and the HRC, in which recommendations for the protection of the rights of the children concerned are included.⁸⁵ The current Special Rapporteur, Ms Maud de Boer-Buquicchio (Netherlands) was appointed in 2014 for a three-year period. The mandate covers issues related to the sexual exploitation of children online, tourism, travel, major sports events, child prostitution, child pornography and child trafficking and the sale of children for the purpose of illegal adoption, organ transfer, child marriage and forced labour. The recommendations of the Rapporteur are targeted primarily at governments, UN bodies, the business sector and NGOs.⁸⁶
 63. All States parties are obliged to submit regular reports to the Committee on how the provisions of the Convention are being implemented. States must submit an initial report two years after acceding to the Convention and afterwards are obliged to produce reports every five years. The report requires a common core document with general information about the reporting State and a treaty-specific document which entails specific information related to the implementation of the Convention and its Optional Protocols. The Committee examines each report and addresses its concerns and recommendations to the State party in the form of concluding observations.⁸⁷
 64. As mentioned, the CRC is mandated to consider individual complaints under the third Optional Protocol in accordance with the Protocol's rules of procedure.⁸⁸ Moreover, the CRC may initiate inquiries when there is a grave or systematic violation of any of the rights of the Convention. States can opt out of the inquiry procedure at the time of signature, ratification or accession of the Convention by declaring that it does not recognize the competence of the Committee to undertake such actions.

⁸⁴ <https://childrenandarmedconflict.un.org/mandate/opac/>.

⁸⁵ <http://www.ohchr.org/EN/Issues/Children/Pages/ChildrenIndex.aspx>.

⁸⁶ *ibid.*

⁸⁷ <http://www.ohchr.org/EN/HRBodies/CRC/Pages/CRCIntro.aspx>.

⁸⁸ For detailed guidance on the procedures of Optional Protocol 3, see: <https://www.crin.org/en/guides/legal/crc-complaints-mechanism-toolkit>.

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65. Inter-State communications are governed by Article 12 of the third Optional Protocol, which provides the procedure for a State to complain about violations that another State party to the Convention has committed. This procedure is the broadest in scope to raise potential violations of children's rights, as it does not require individual child victims to come forward.⁸⁹ Both States concerned must have made declarations accepting this procedure, which is rarely used. Furthermore, the CRC does not have a mandate for urgent interventions.
66. The Committee publishes interpretations of the content of the Convention's provisions, in the form of general comments on specific provisions or thematic issues. Moreover, the CRC may adopt statements to clarify its position with respect to international developments and any further issues that relate to the implementation of the Convention, and organizes general discussions to receive input on the implementation of specific provisions of the Convention by stakeholders and experts.

(g) The Committee on Migrant Workers (CMW)

67. The International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families' main objective is to foster respect for migrant's human rights.⁹⁰ It seeks to establish minimum standards that States parties should uphold in relation to migrant workers and their family members irrespective of their migratory status.⁹¹
68. The CMW is the body of 14 independent experts that monitors the implementation of the Convention by its States parties. The experts are elected for a term of four years by States parties to the Convention. Each member must be a national of a State party to the Convention, of high moral character and have recognized competences in the field of international human rights. The Committee meets in Geneva and normally holds two sessions per year.⁹²
69. A Special Rapporteurship on the Human Rights of Migrants was established in 1999 by the Commission on Human Rights.⁹³ Mr Francois Crépau (Canada) is the current Rapporteur. His mandate covers all countries, irrespective of whether a State has ratified the Convention, and there is no requirement of exhaustion of domestic remedies for him to act.⁹⁴
70. States are required to submit an initial report within one year after acceding to the Convention and afterwards once every five years. In order to reduce the administrative burden on the Committee, there is also a simplified reporting procedure, in which the traditional reporting obligation is waived and in which the CMW's list of issues and the replies by the State party constitute the report.⁹⁵
71. Article 77 of the Convention governs the individual complaints procedure which allows the CMW to address specific alleged violations of the Convention. The individual complaint mechanism, in which individual communications may be considered if the relevant State has made the necessary

⁸⁹ <http://www.ijrcenter.org/un-treaty-bodies/committee-on-the-rights-of-the-child/>.

⁹⁰ International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by General Assembly Resolution 45/158 of 18 Dec. 1990, entry into force 1 July 2003.

⁹¹ Office of the United Nations High Commissioner for Human Rights, *The International Convention on Migrant Workers and its Committee*, Fact Sheet No. 24 (Rev. 1), United Nations, New York and Geneva, 2005.

⁹² <http://www.ijrcenter.org/un-treaty-bodies/committee-on-migrant-workers/>.

⁹³ E/CN.4/RES/1999/44, *Human Rights of Migrants*, Commission on Human Rights Resolution 1999/44.

⁹⁴ <http://www.ohchr.org/EN/Issues/Migration/SRMigrants/Pages/SRMigrantsIndex.aspx>.

⁹⁵ <http://www.ijrcenter.org/un-treaty-bodies/committee-on-migrant-workers/>.

declaration, has not yet entered into force.⁹⁶ Article 74 of the Convention sets out an inter-State complaints procedure, which has never been used thus far. The CMW, furthermore, does not have a mechanism for urgent interventions or inquiries.

72. Following the submission of States' reports, the CMW issues recommendations in the form of concluding observations.⁹⁷ Moreover, the CMW may issue general comments that aim to clarify the scope and meaning of the CMW's substantive provisions, and thereby guides States' efforts towards implementing the Convention.⁹⁸

(h) The Committee on the Rights of Persons with Disabilities (CRPD)

73. The CRPD supervises the implementation of the Convention on the Rights of Persons with Disabilities through consideration of States' reports, individual complaints, early-awareness and urgent actions, inquiry requests.⁹⁹ Furthermore, it issues general comment and prepares general discussions, and the Convention has a special system of national monitoring mechanisms. According to Article 1 of the Convention, its purpose is to "promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity".¹⁰⁰
74. The CRPD comprises 18 independent experts, elected for a four-year term and holds two sessions a year in Geneva. States are required to submit initial reports within two years after acceding to the Convention and, afterwards, periodic reports on the implementation of the provisions of the Convention every four years.¹⁰¹ Pursuant to Article 35 of the Convention, reports have to include, firstly, a common core document and a framework for protecting human rights and secondly, a treaty-specific document.¹⁰² A simplified reporting procedure was adopted at its Tenth Session in September 2013.
75. If a State party has ratified the Optional Protocol to the Convention, the CRPD is mandated to consider individual complaints. A decision on the merits is issued in which possible State responsibility is asserted if the complaint is admissible.¹⁰³

⁹⁶ This individual complaint mechanism will become operative when ten States parties have made the necessary declaration under Article 77; <http://www.ohchr.org/EN/HRBodies/TBPetitions/Pages/HRTBPetitions.aspx#interstate>.

⁹⁷ <http://www.ijrcenter.org/un-treaty-bodies/committee-on-migrant-workers/>.

⁹⁸ *ibid.*

⁹⁹ Convention on the Rights of Persons with Disabilities, resolution adopted by the General Assembly, 24 Jan. 2007, A/RES/61/106, Article 1.

¹⁰⁰ *ibid.*

¹⁰¹ <http://www.ijrcenter.org/un-treaty-bodies/committee-on-the-rights-of-persons-with-disabilities/>.

¹⁰² Convention on the Rights of Persons with Disabilities, *op. cit.*, Article 35.

¹⁰³ Also see: CRPD/C/5/3/(Rev.1), June 2012, *Revised guidelines for submission of communications to the Committee on the Rights of Persons with Disabilities under the Optional Protocol to the Convention adopted by the Committee on the Rights of Persons with Disabilities*.

76. The CRPD does not have a procedure for inter-State complaints, but does have a special procedure for early-awareness and urgent action under which individuals or NGOs may ask the Committee for specific measures.¹⁰⁴ Furthermore, a confidential inquiry procedure is provided for in Article 6 of the Optional Protocol under which the CRPD is authorized to investigate alleged grave or systemic violations of the Convention.
77. Moreover, Articles 33–39 of the Convention provide for a special type of national monitoring mechanism, in which national human rights institutions and civil society are involved.¹⁰⁵ Article 33 provides that States are obliged to establish a focal point on issues of disability, to create a framework to promote, protect and monitor the implementation, and that civil society is invited to fully participate in this monitoring process.
78. A Special Rapporteurship was created in 2014 with the mandate to develop dialogue, exchange information, make recommendations, offer technical assistance, promote awareness and cooperate with other UN mechanisms to advance the rights of persons with disabilities. The first Special Rapporteur is Ms Catalina Devandas Aguilar from Costa Rica.¹⁰⁶
79. The CRPD issues general comments related to specific provisions of the Convention, themes or general issues that arise in the context of the Convention. Furthermore, the Committee periodically issues substantive statements and organizes thematic discussions and conferences.

(i) *The Committee on Enforced Disappearances (CED)*

80. The International Convention for the Protection of All Persons from Enforced Disappearances is supervised by the CED, which considers State reports, individual complaints, inter-State complaints, requests for urgent action and inquiries. Furthermore, it produces general comments, substantive statements and thematic discussions.¹⁰⁷ The Convention's purpose is to prevent forced disappearance which is considered a crime against humanity when it is used in a widespread or systematic way.¹⁰⁸ The CED consists of ten independent experts who are elected for four-year terms in accordance with Article 26 of the Convention. The Committee holds two sessions each year in Geneva, with each session lasting approximately two weeks.¹⁰⁹
81. States parties to the Convention have to make an initial report within two years of accession which must include a common core document and a treaty-specific document.¹¹⁰ After the CED has examined the State report it adopts concluding observations, which generally include a section on positive aspects, a section on concerns and related recommendations, and a request for follow-up.

¹⁰⁴ CRPD/C/5/4, *Working Methods of the Committee on the Rights of Persons with Disabilities*, adopted at its Fifth Session (11–15 April 2011), paras 26–29.

¹⁰⁵ *ibid.*, paras 38–42.

¹⁰⁶ <http://www.ohchr.org/EN/Issues/Disability/SRDisabilities/Pages/CatalinaDevandas.aspx>.

¹⁰⁷ International Convention for the Protection of All Persons from Enforced Disappearance, 20 Dec. 2006, entry into force 23 Dec. 2010. See: <http://www.ijrcenter.org/un-treaty-bodies/committee-on-enforced-disappearances/>.

¹⁰⁸ International Convention for the Protection of All Persons from Enforced Disappearance, 20 Dec. 2006, entry into force 23 Dec. 2010, Article 5.

¹⁰⁹ <http://www.ijrcenter.org/un-treaty-bodies/committee-on-enforced-disappearances/>.

¹¹⁰ See: CED/C/2, 8 June 2012, International Convention for the Protection of All Persons from Enforced Disappearance, *Guidelines on the form and content of reports under Article 29 to be submitted by States parties to the Convention, adopted by the Committee at its Second Session (26–30 March 2012)*.

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82. The CED is mandated to examine individual complaints for alleged violations of the Convention if the relevant State has made the necessary declaration under Article 31 of the Convention.¹¹¹ When the complaint is declared admissible, the CED will issue a decision on the merits and asserts whether the State involved is responsible for violating the Convention. A mechanism for inter-State complaints is provided for in Article 32 of the Convention. Both States concerned must have accepted this procedure, which has never been used to this date.¹¹² Furthermore, the Convention includes a specific procedure for requests for urgent action in Article 30. Pursuant to this procedure, the CED will request the State to provide information on the disappeared person's situation and may make recommendations to the government to locate and protect the person concerned. The CED's recommendations may also include interim measures to avoid causing or allowing irreparable harm to the victim.
83. Inquiry procedures are provided for in Article 33 of the Convention. The Committee may undertake a country visit and subsequently provide the State party with written observations and recommendations if it has received reliable information indicating that a State party is seriously violating the provisions of the Convention. Like the other Treaty-based bodies examined, the CED may produce general comments to clarify the scope and content of the Convention's provisions. Furthermore, it may issue substantive statements, open letters, and organize thematic discussions and conferences. The Committee also works in close cooperation with national human rights institutions.¹¹³

Concluding remarks

84. The UN Human Rights Treaty- and Charter-based bodies have developed a diverse mixture of supervisory options. Different procedures related to reporting, complaints, follow-up, implementation, urgent action and national settlement processes are included in the UN system, which is in continuous development. In some respects, the ILO's supervisory system appears to be more complex and advanced than many of the treaty bodies while in others the ILO should keep a close track of the developments in this field. Close cooperation and coordination between the ILO and other UN institutions could lead to a more effective and fair conception of international supervision. The introductory overview presented in this appendix contributes to this idea.

¹¹¹ International Convention for the Protection of All Persons from Enforced Disappearance, 20 Dec. 2006, entry into force 23 Dec. 2010, Article 31.

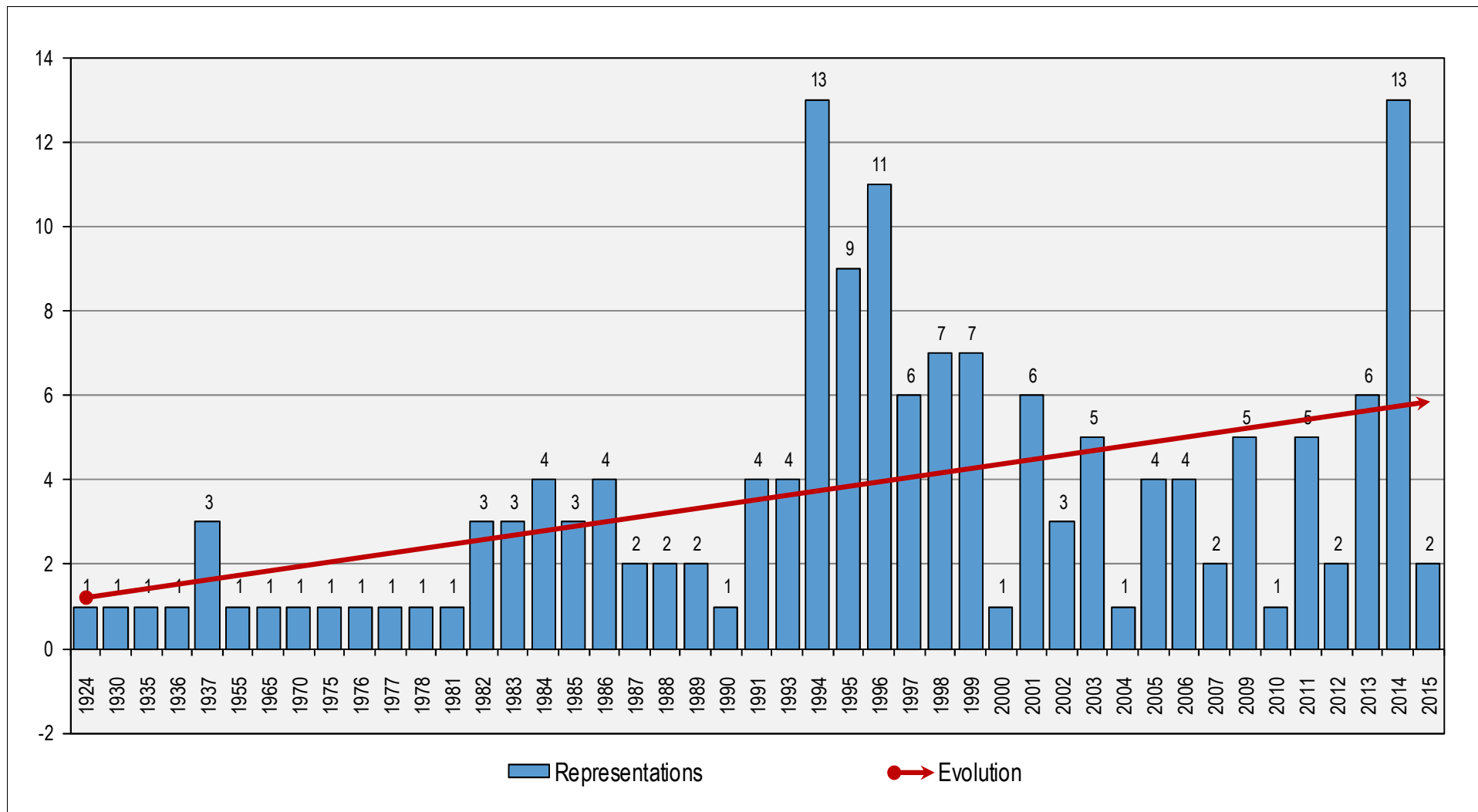
¹¹² <http://www.ijrcenter.org/un-treaty-bodies/committee-on-enforced-disappearances/>.

¹¹³ International Convention for the Protection of All Persons from Enforced Disappearance, *The relationship of the Committee on Enforced Disappearances with national human rights institutions*, CED/C/6, 28 Oct. 2014.

Appendix II. Statistics and figures

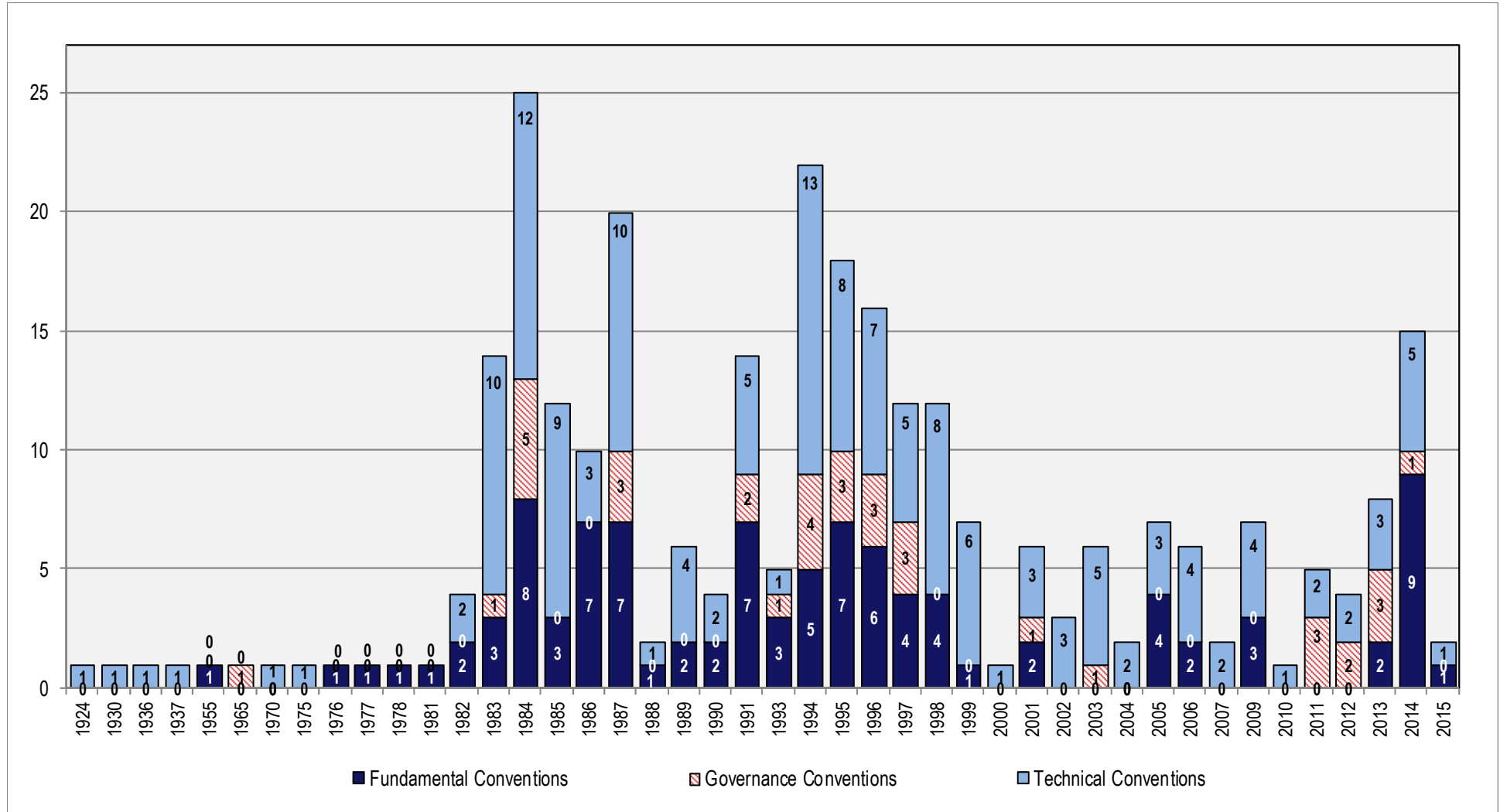
- Figure 1. Number of representations submitted under article 24 of the ILO Constitution and found receivable (1924–2015)
- Figure 2. Number of representations submitted under article 24 of the ILO Constitution, by year and type of Convention (1924–2015)
- Figure 3. Number of representations submitted under article 24 of the ILO Constitution, by region, year and type of Convention (1924–2015)
- Figure 4. Number of complaints submitted under article 26 of the ILO Constitution and of Commissions of Inquiry established (1934–2014)
- Figure 5. Number of complaints submitted under article 26 of the ILO Constitution, by year and type of Convention (1934–2014)
- Figure 6. Number of complaints submitted under article 26 of the ILO Constitution, by region, year and type of Convention (1934–2014)
- Figure 7. Complaints presented before the Committee on Freedom of Association, by region (1951–2015)
- Figure 8. Number of complaints originating from Africa (1951–2015)
- Figure 9. Number of complaints originating from Asia (1951–2015)
- Figure 10. Number of complaints originating from Europe (1951–2015)
- Figure 11. Number of complaints originating from Latin America (1951–2015)
- Figure 12. Number of complaints originating from North America (1951–2015)
- Figure 13. Complaints presented before the Committee on Freedom of Association, by region (1995–2015)

Figure 1. Number of representations submitted under article 24 of the ILO Constitution and found receivable (1924–2015)*



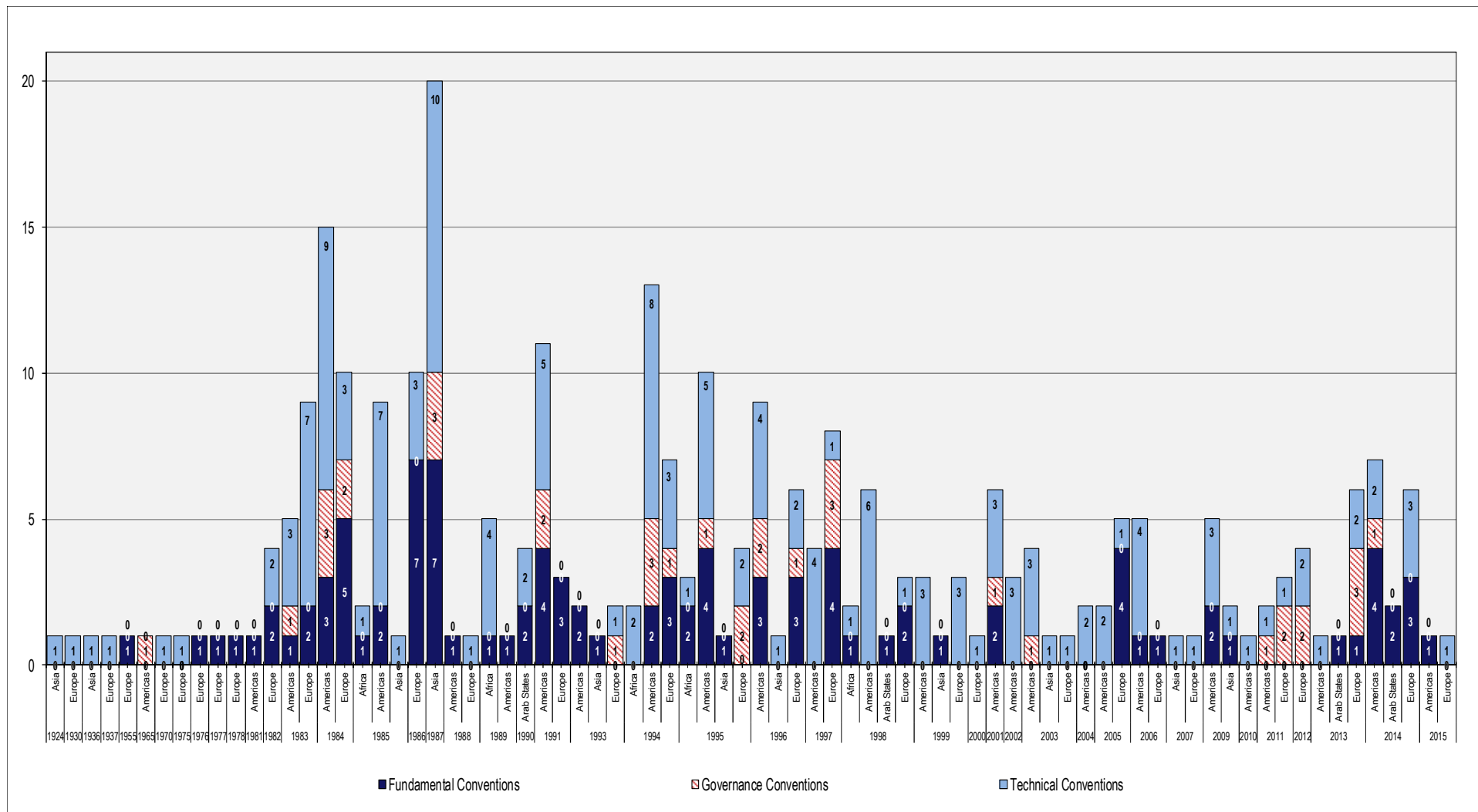
* The figure includes only the years on which at least one representation was submitted.

Figure 2. Number of representations submitted under article 24 of the ILO Constitution, by year and type of Convention (1924–2015) *



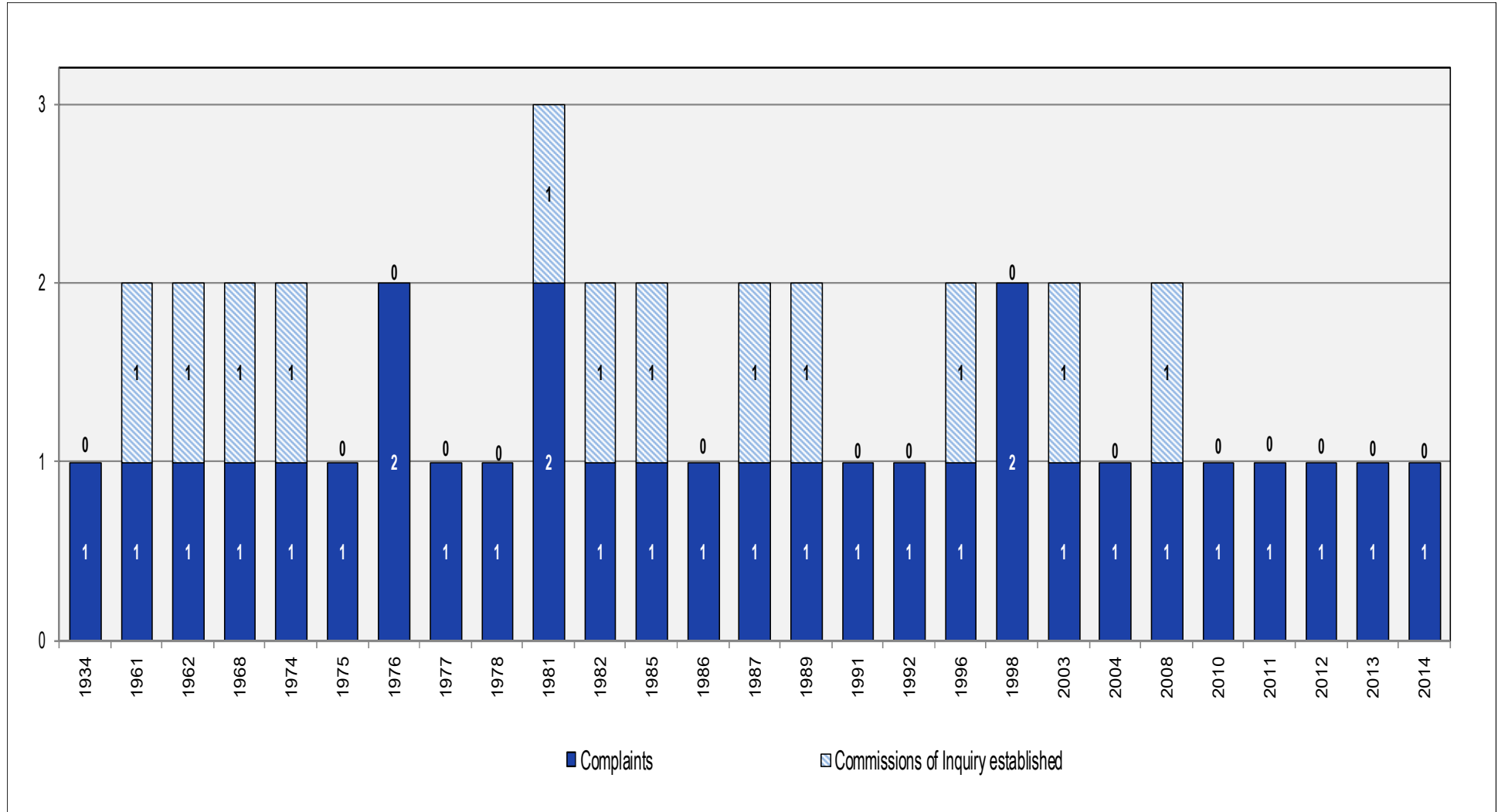
* The figure includes only the years on which at least one representation was submitted.

Figure 3. Number of representations submitted under article 24 of the ILO Constitution, by region, year and type of Convention (1924–2015) *



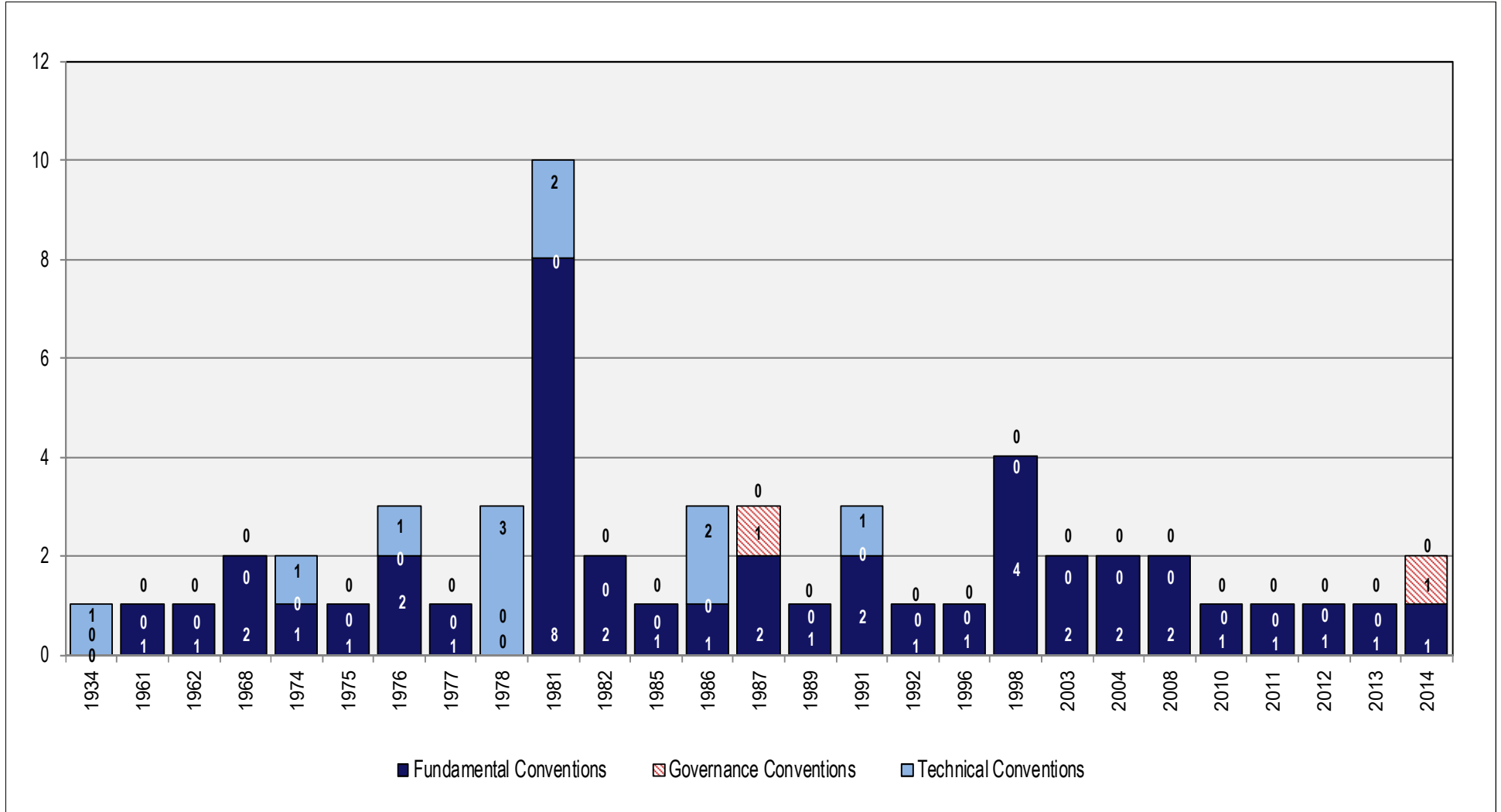
* The figure includes only the years on which at least one representation was submitted.

Figure 4. Number of complaints submitted under article 26 of the ILO Constitution and of Commissions of Inquiry established (1934–2014) *



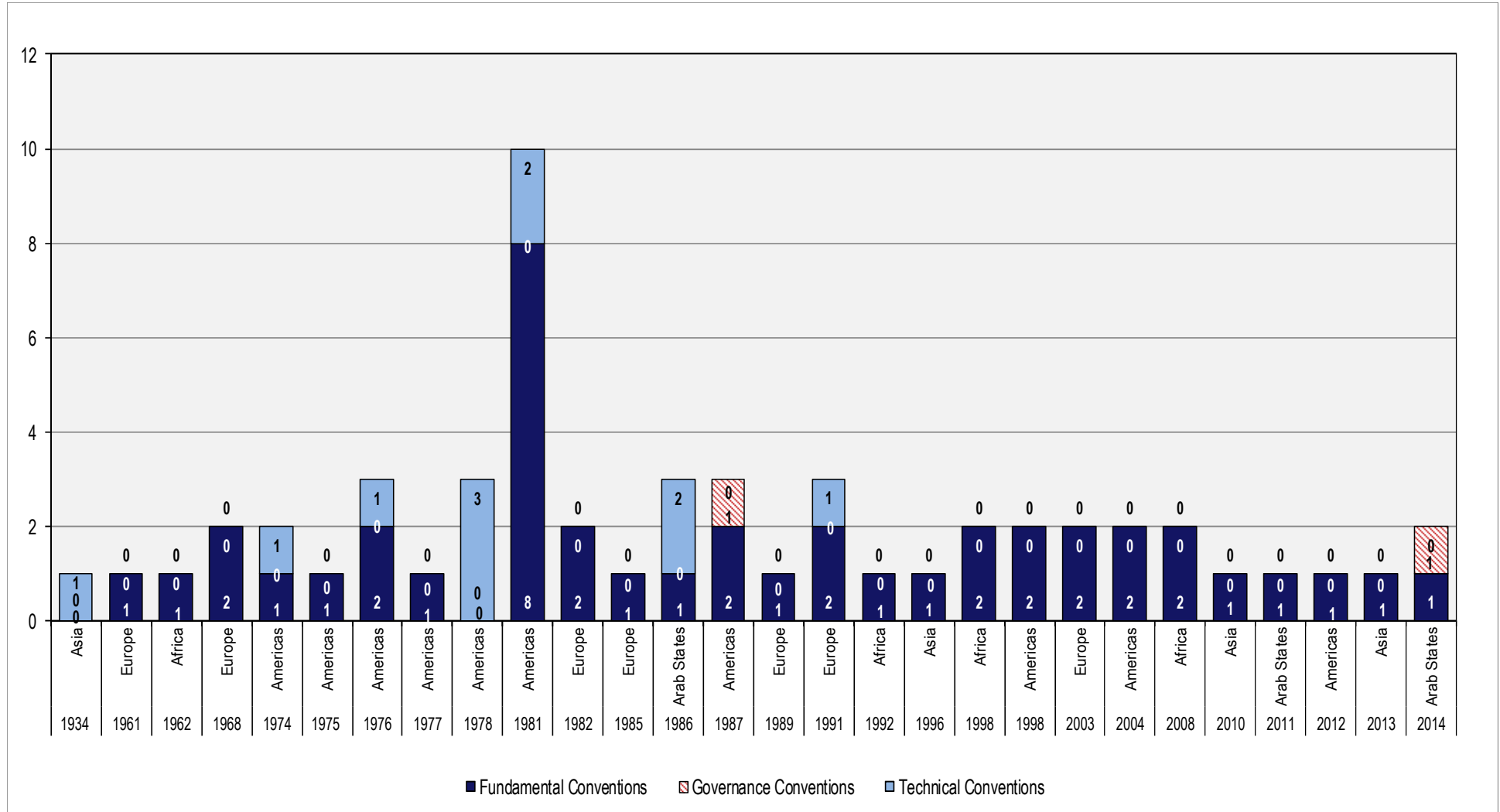
* The figure includes only the years on which at least one complaint was submitted.

Figure 5. Number of complaints submitted under article 26 of the ILO Constitution, by year and type of Convention (1934–2014) *



* The figure includes only the years on which at least one complaint was submitted.

Figure 6. Number of complaints submitted under article 26 of the ILO Constitution, by region, year and type of Convention (1934–2014) *



* The figure includes only the years on which at least one complaint was submitted.

Figure 7. Complaints presented before the Committee on Freedom of Association, by region (1951–2015)

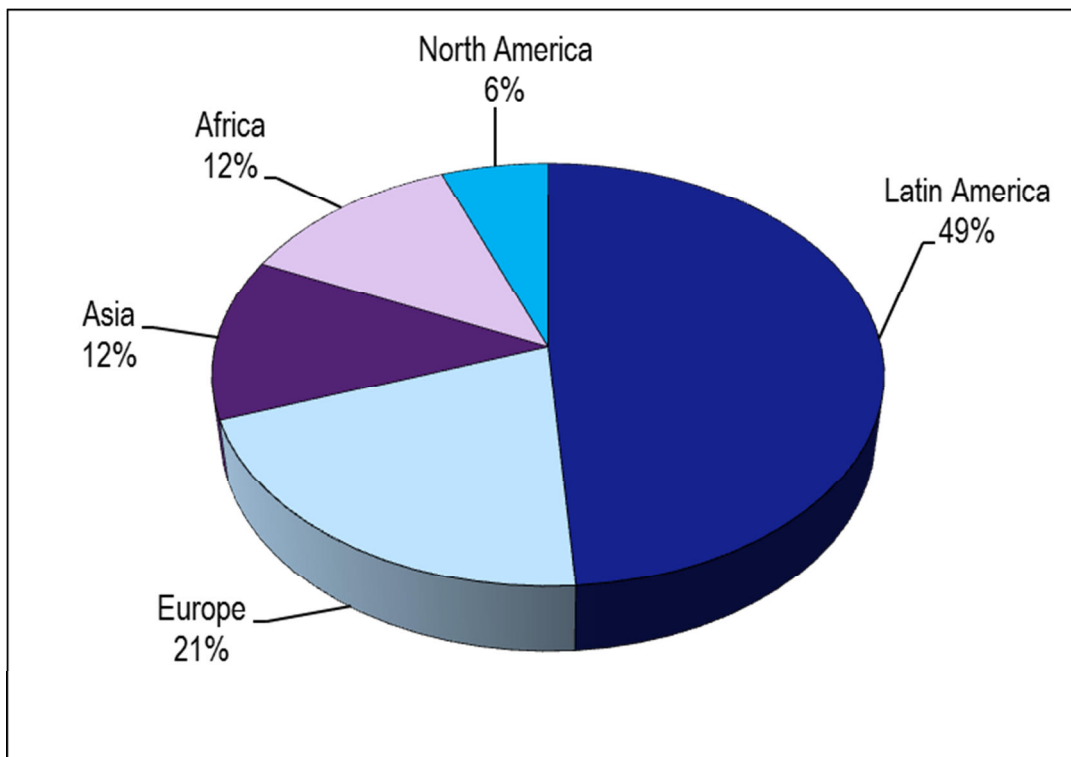


Figure 8. Number of complaints originating from Africa (1951–2015)

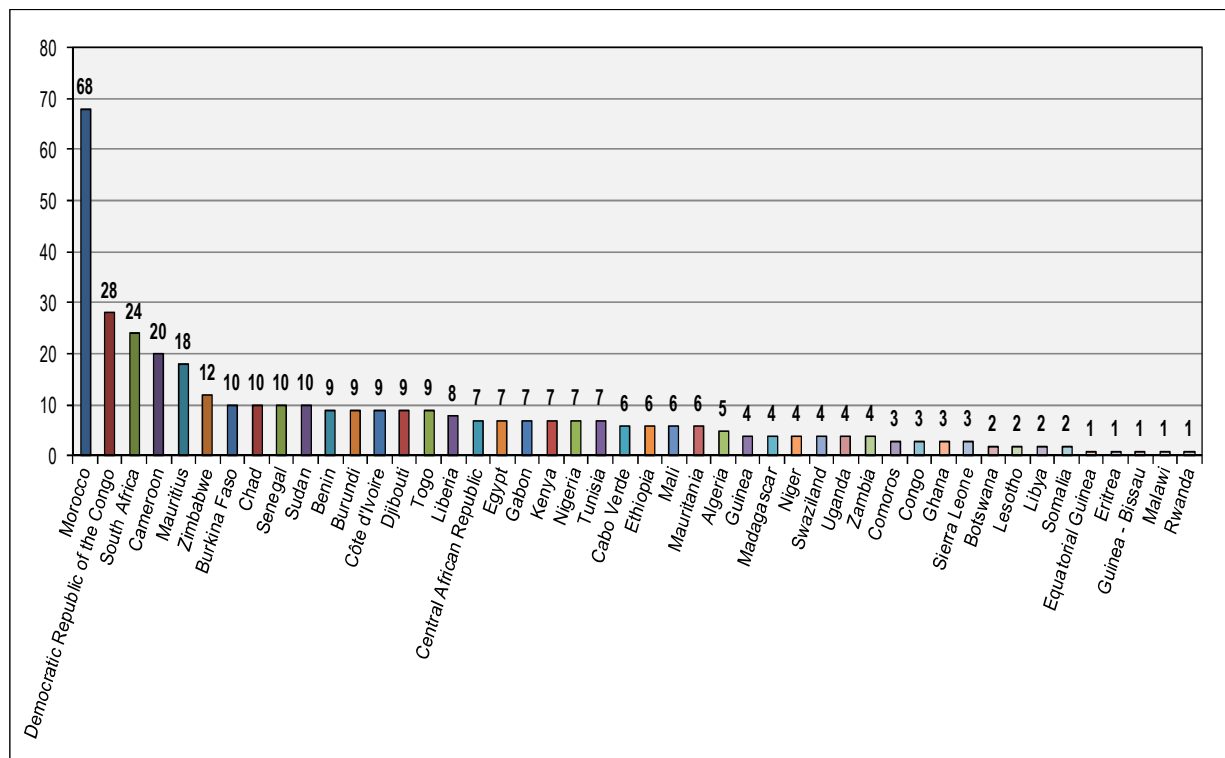


Figure 9. Number of complaints originating from Asia (1951–2015)

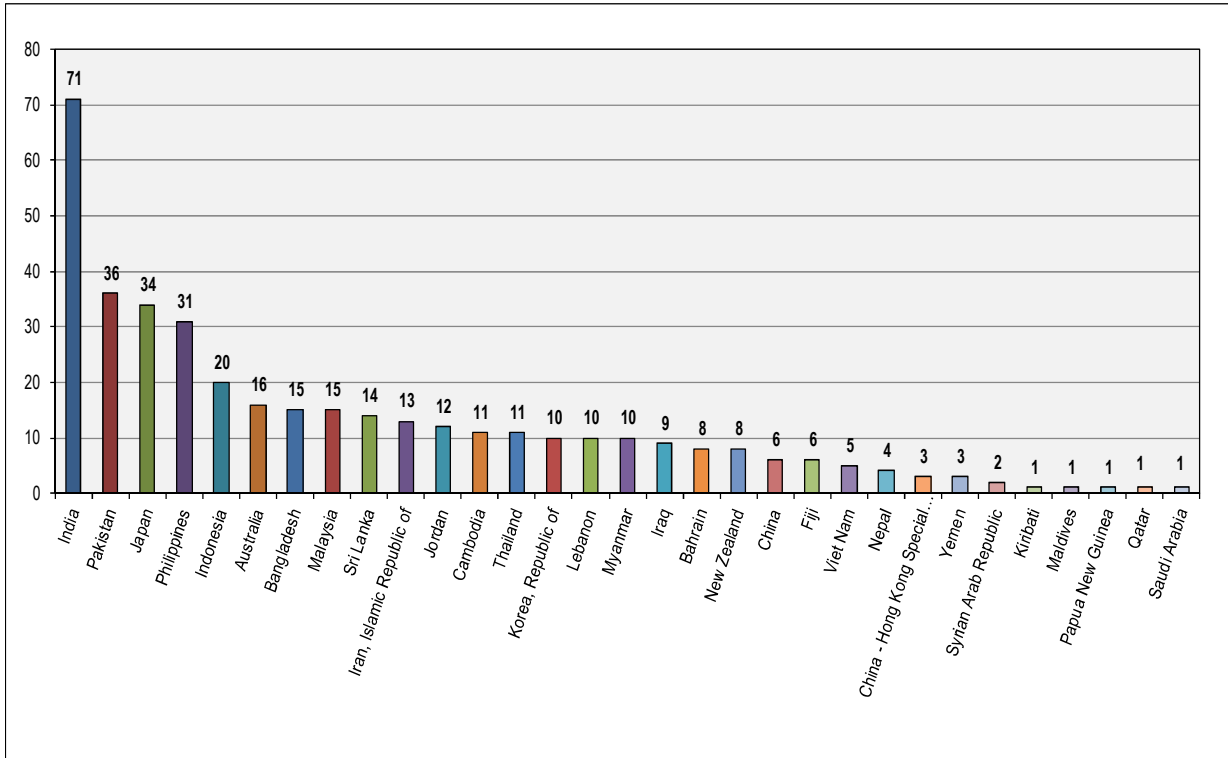


Figure 10. Number of complaints originating from Europe (1951–2015)

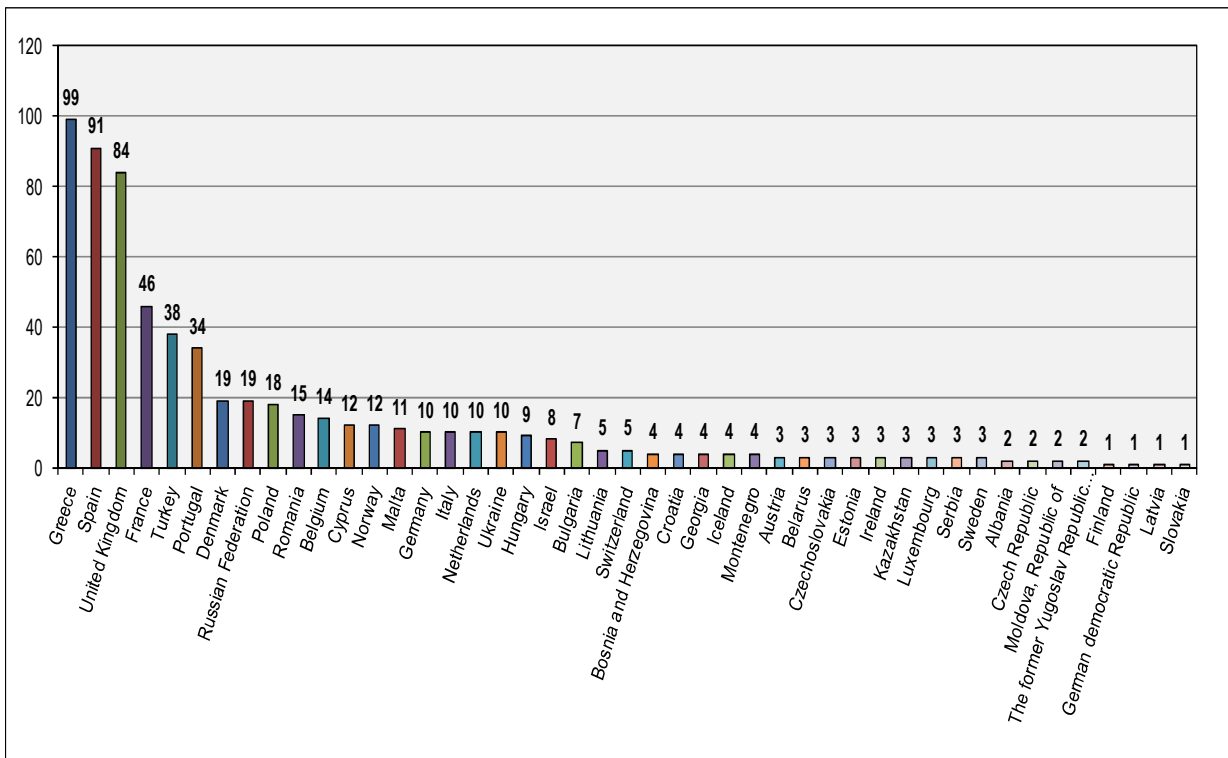


Figure 11. Number of complaints originating from Latin America (1951–2015)

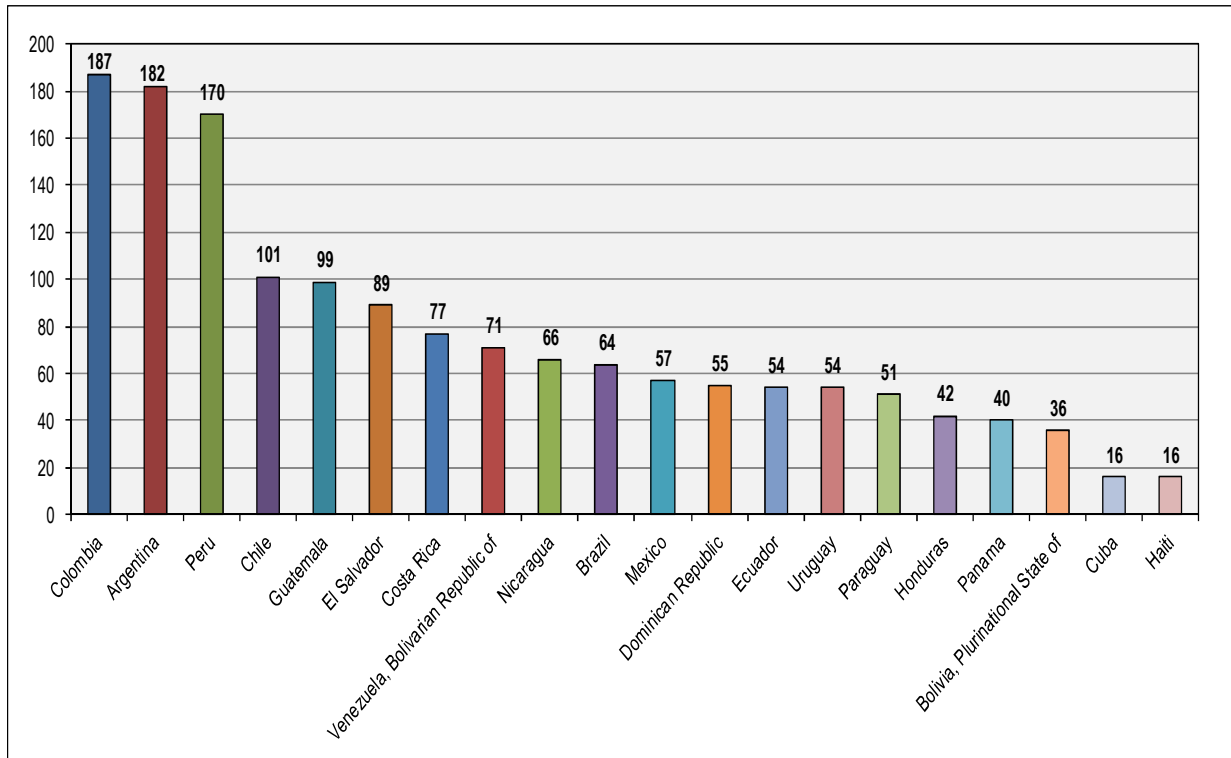


Figure 12. Number of complaints originating from North America (1951–2015)

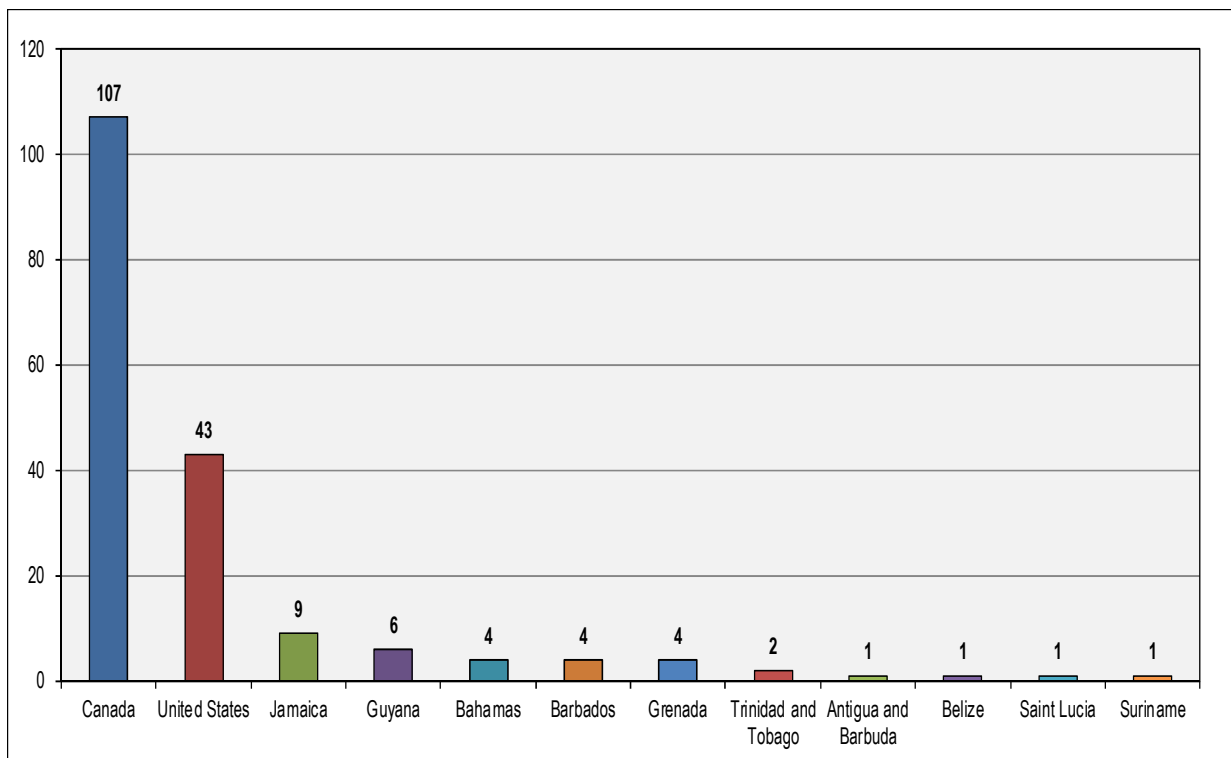


Figure 13. Complaints presented before the Committee on Freedom of Association, by region (1995–2015)

