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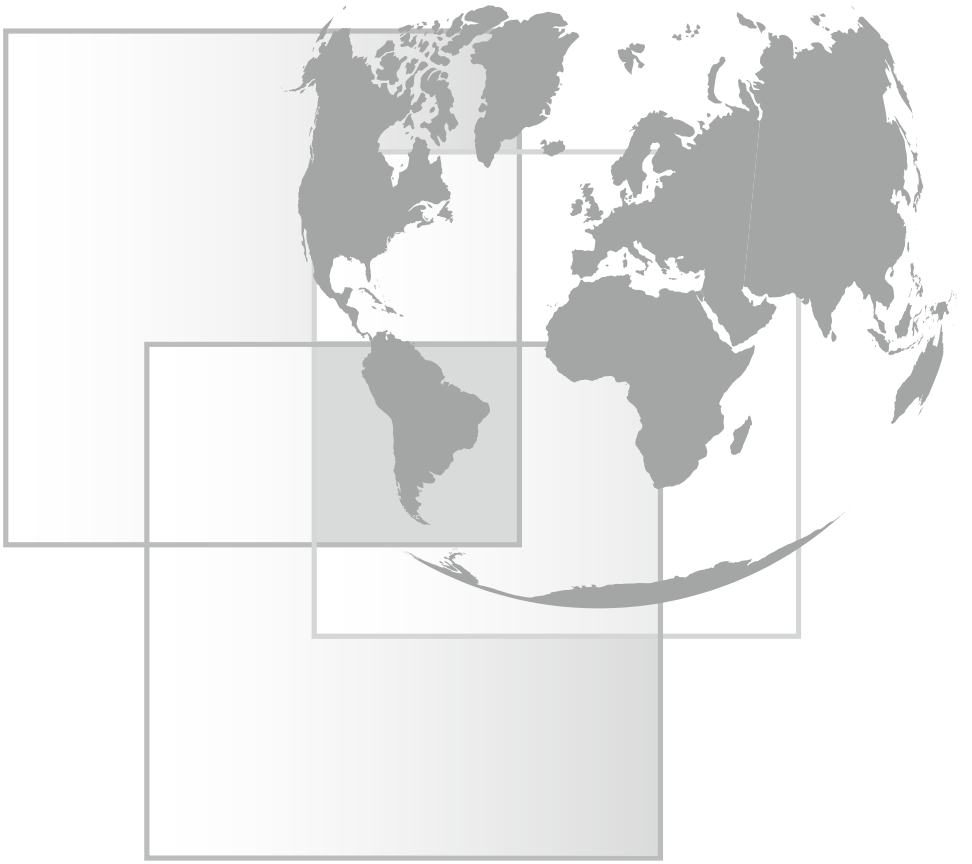
Handbook of procedures relating to international **labour Conventions** and **Recommendations**



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Handbook of procedures relating to international labour Conventions and Recommendations

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Introduction

This Handbook describes the procedures operating within the International Labour Organization in relation to the adoption and implementation of Conventions and Recommendations. The present edition takes account of the adjustments to the system for the supervision of international labour standards decided on by the Governing Body of the International Labour Office up to its October–November 2018 session. [1]

The Handbook is designed in the first place to help officials of national administrations responsible within their governments for the discharge of obligations under the ILO Constitution relating to international labour standards, by setting out the provisions laying down the procedures to follow and the practice established within the Organization for giving effect to those provisions. It is also intended for use by organizations of workers and employers, which have their own distinct roles to play in the procedures.

The International Labour Office's functions include that of providing information and training for officials of governments and employers' and workers' organizations on all aspects of the procedures described in this Handbook. This is done in part through seminars held in the various regions, at ILO headquarters in Geneva, at the ILO's International Training Centre in Turin (Italy), and in members States, as well as through advisory missions carried out by officials of the International Labour Standards Department and the standards specialists in the field. The Office is in any event at the disposal of the governments and organizations for further explanations of any of the matters dealt with here. This Handbook is issued and further assistance and advice are given by the International Labour Office on the understanding that the Office has no special authority under the ILO Constitution to give interpretations of the Constitution or instruments adopted by the Conference. [2]

The International Labour Standards website (www.ilo.org/normes) contains numerous information and links to relevant documents. In particular, it hosts the NORMLEX database, which brings together information on the ILO standards system (such as the list of standards, information on ratification and on reporting obligations, comments of the ILO's supervisory bodies, etc.) as well as information on national labour legislation.

[1] See GB.334/INS/5 and GB.332/INS/5(Rev.), as well as GB.334/INS/PV.

[2] See Chapter VIII of this Handbook.

I. Adoption of international labour standards

Nature and constitutional basis of Conventions and Recommendations

1. Conventions are instruments which on ratification create legal obligations. Recommendations are not open to ratification, but give guidance as to policy, legislation and practice. Both kinds of instrument are adopted by the International Labour Conference, [1] and article 19 of the Constitution provides:

> 1. When the Conference has decided on the adoption of proposals with regard to an item on the agenda, it will rest with the Conference to determine whether these proposals should take the form: (a) of an international Convention, or (b) of a Recommendation to meet circumstances where the subject, or aspect of it, dealt with is not considered suitable or appropriate at that time for a Convention.
>
> 2. In either case a majority of two-thirds of the votes cast by the delegates present shall be necessary on the final vote for the adoption of the Convention or Recommendation, as the case may be, by the Conference.

Placing an item on the Conference agenda

2. The agenda of the Conference is settled by the Governing Body (Constitution, article 14). In cases of special urgency or other special circumstances (this has been the case, for example, where a draft Protocol is being considered) the Governing Body may decide to refer a question to the Conference with a view to a single discussion (Standing Orders (SO), [2] article 34(5)); but otherwise there will be a double discussion (i.e. discussion at two sessions of the Conference) (SO, article 34(4)). The Governing Body may also decide to refer a question to a preparatory technical conference (Constitution, article 14(2); SO, articles 34(3) and 36). The Conference itself may also, by two-thirds of the votes cast by the delegates present, decide to include a subject on the agenda of the following session (Constitution, article 16(3)).

Double discussion procedure

3. These are the stages in a *double discussion*: [3]

(a) The Office prepares a report on law and practice in the different countries, together with a questionnaire. The report and questionnaire request governments to consult the most representative organizations of employers and workers before finalizing their

[1] As, occasionally, are Protocols, which are partial and optional revisions or amendments of earlier Conventions.

[2] Standing Orders of the International Labour Conference, incorporating relevant Standing Orders of the Governing Body.

[3] The normal time limits for the various stages in this procedure may be varied where a question has been included on the agenda less than 18 months before the opening of the session at which the first discussion is to take place or where less than 11 months separate the two sessions concerned (SO, article 39(5) and (8)).

replies and are communicated to governments at least 18 months before the relevant session of the Conference (SO, article 39(1)).

(b) To be reflected in the report, governments' replies must reach the Office not less than 11 months before the relevant session (SO, article 39(2)). In the case of federal countries and countries where it is necessary to translate questionnaires into the national language, the period of seven months allowed for the preparation of replies shall be extended to eight months if the government concerned so requests.

(c) The Office prepares a further report on the basis of replies received, indicating the principal questions for consideration by the Conference. This report is communicated to governments normally not less than four months before the relevant session (SO, article 39(3)).

(d) These reports are considered by the Conference – usually in committee – and if the Conference decides the matter is suitable for a Convention or Recommendation it adopts conclusions and either decides to include the question on the agenda of its following session or asks the Governing Body to include it on the agenda of a later session (SO, article 39(4)(a), (b)).

(e) On the basis of both the replies and the first Conference discussion, the Office drafts Conventions or Recommendations and communicates them to governments within two months of the end of the Conference session (SO, article 39(6)). [4]

(f) Governments are again asked to consult the most representative organizations of employers and workers and have three months to suggest amendments and make comments (SO, article 39(6)).

(g) On the basis of further government replies, a final report containing the amended text of Conventions or Recommendations is communicated to governments at least three months before the session of the Conference at which they are to be discussed (SO, article 39(7)).

(h) The Conference decides whether to base its second discussion on the Conventions or Recommendations drafted by the Office and how to consider them – usually in committee in the first place. Each clause of a Convention or Recommendation is placed before the Conference for adoption, and the drafts thus adopted are referred to the Drafting Committee for preparation of final texts. [5] Texts of instruments approved by the Drafting Committee are submitted to the Conference for final adoption in accordance with article 19 of the Constitution (see paragraph 1 above and SO, article 40).

(i) The Conference may, if it rejects a Convention contained in the report of a committee, refer it again to the committee for transformation into a Recommendation (SO, article 40(6)).

[4] If there is less than 11 months between the two sessions, a programme of reduced intervals may be approved by the Governing Body or its Officers (SO, article 39(8)). At the same time as it asks governments for their comments on proposed Conventions and Recommendations, the Office consults the United Nations and other specialized agencies as to any proposed provisions affecting their activities and brings any comments they make before the Conference together with the government replies (SO, article 39bis).

[5] See SO, article 6.

(j) If a Convention fails on a final vote to obtain the necessary two-thirds majority but does obtain a simple majority, the Conference decides whether to refer it to the Drafting Committee for redrafting as a Recommendation (SO, article 41).

Single discussion procedure

4. These are the stages in a *single discussion*: [6]

(a) The Office prepares a summary report on law and practice in the different countries, together with a questionnaire with a view to the preparation of Conventions or Recommendations, [7] for communication to governments at least 18 months before the relevant Conference session. Governments are requested to consult the most representative organizations of employers and workers (SO, article 38(1)). [8]

(b) Governments' replies must reach the Office not less than 11 months before the relevant session (SO, article 38(1)).

(c) On the basis of governments' replies, a final report containing the text of Conventions or Recommendations [9] is communicated to governments at least four months before the opening of the Conference session (SO, article 38(2)).

(d) If the question has been considered at a preparatory technical conference, the Office may either, according to Governing Body decision, communicate to governments a summary report and questionnaire (see (a) and (b) above); or, on the basis of the work of the preparatory technical conference, draft a final report (see (c) above – SO, article 38(4)).

(e) The final consideration and adoption of Conventions and Recommendations under the single-discussion procedure follow paragraph 3(h) to (j) above.

Review of international labour standards

5. The Standards Review Mechanism Tripartite Working Group (SRM TWG) was established in 2015 with a mandate to review the international labour standards to ensure that the body of standards is robust and responsive to the constantly changing patterns of the world of work, for the purpose of the protection of workers and taking into account the needs of sustainable enterprises.[10] Its initial programme of work is composed of 235 international

[6] The normal time limits for the various stages in this procedure may be varied where a question has been included on the agenda less than 26 months before the opening of the session at which the discussion is to take place, and a programme of reduced intervals may be approved by the Governing Body or its Officers (SO, article 38(3)).

[7] Or a Protocol.

[8] At the same time as it asks governments for their comments on proposed Conventions and Recommendations, the Office consults the United Nations and other specialized agencies as to any proposed provisions affecting their activities and brings any comments they make before the Conference together with the government replies (SO, article 39bis).

[9] Or Protocols.

[10] See the terms of reference of the SRM TWG: GB.325/LILS/3.

labour standards, [11] 68 of which were referred to the Special Tripartite Committee established for addressing matters relating to the Maritime Labour Convention (MLC, 2006). [12] Pursuant to its terms of reference, the SRM TWG's mandate is to review standards with a view to making recommendations to the Governing Body on: [13]

(a) the status of the standards examined, including up-to-date standards, standards in need of revision, outdated standards, and possible other classifications;

(b) the identification of gaps in coverage, including those requiring new standards;

(c) practical and time-bound follow-up action, as appropriate.

Revision of Conventions and Recommendations [14]

6. Separate procedures for the revision of Conventions and Recommendations are included in articles 43–45 of the Standing Orders. However, they are substantially the same as those described in paragraphs 3 and 4 above, and in practice reference is made to the same articles of the Standing Orders.

Abrogation or withdrawal of Conventions and Recommendations

7. At its 85th Session (June 1997), the Conference adopted amendments to the Constitution of the Organization adding a ninth paragraph to article 19 and to the Standing Orders of the Conference (a new article 11 and a new article 45bis of the Standing Orders). A Convention is considered as being obsolete "if it appears that the Convention has lost its purpose or that it no longer makes a useful contribution to attaining the objectives of the Organisation" (article 19, paragraph 9, of the Constitution). [15] The abrogation procedure applies to Conventions that are in force. Withdrawal applies to Conventions that are not in force and to Recommendations. Abrogation and withdrawal are covered by the same procedural guarantees and have the same legal effect of removing the standard in question from the body of international labour standards. [16]

[11] Note that the number of instruments included in the SRM TWG's initial programme of work was amended from 231 to 235 at the second meeting of the SRM TWG.

[12] GB.326/LILS/3/2.

[13] Para. 9 of the terms of reference of the SRM TWG.

[14] See also Chapter IX of this Handbook.

[15] See also section 5.4 of the Standing Orders of the Governing Body establishing the procedure for the placing of an item on the agenda of the Conference concerning the abrogation or withdrawal of instruments.

[16] For information on abrogation and withdrawal of specific instruments, see NORMLEX.

Languages

8. French and English authentic texts of Conventions and Recommendations [17] are adopted. Official translations may be drawn up by the Office and considered by governments concerned as authoritative (SO, article 42).

Special circumstances taken into account

9. Article 19 of the Constitution also provides:

> 3. In framing any Convention or Recommendation of general application the Conference shall have due regard to those countries in which climatic conditions, the imperfect development of industrial organization, or other special circumstances make the industrial conditions substantially different and shall suggest the modifications, if any, which it considers may be required to meet the case of such countries.

For this reason the law and practice reports and questionnaires, prepared by the Office in accordance with paragraphs 3 and 4 above, request governments to indicate national particularities which might make practical application of instruments envisaged difficult; and to suggest ways of dealing with this. Employers', workers' and governments' delegates at the Conference are also able to draw attention to special national conditions which should be taken into account when new standards are drafted.

Flexibility devices

10. Various means have been used by the Conference to ensure the flexibility of international labour standards. For example:

(a) clauses laying down modified standards for named countries. [18] These have not been used recently by the Conference;

(b) adoption of a Convention laying down principles together with (or later supplemented by) a Recommendation giving guidance on technical and practical details of implementation;

(c) definition of standards in broad wording – for example, fixing aims of social policy – which leaves it to national conditions and practices, often after consultation of employers' and workers' organizations, to determine the methods of application (laws, regulations, collective agreements, etc.);

(d) division of Conventions into Parts or Articles, the obligations of only some of which need to be accepted at the time of ratification, thus allowing future extension of obligations as social legislation and ability to implement improve; [19]

[17] And Protocols.

[18] See, for example, Articles 9 to 13 of the Hours of Work (Industry) Convention, 1919 (No. 1).

[19] See, for example, Article 2 of the Social Security (Minimum Standards) Convention, 1952 (No. 102).

(e) division of Conventions into alternative Parts, the extent or level of obligation varying according to which Parts are accepted; [20]

(f) clauses allowing (sometimes temporarily) acceptance of a specified lower standard by countries where, for example, no legislation on the subject in question existed prior to ratification or where the economy or administrative or medical facilities are insufficiently developed; [21]

(g) clauses allowing exclusion of, for example, specified categories of occupations or enterprises or sparsely populated or undeveloped areas; [22]

(h) clauses allowing separate acceptance of obligations in respect of persons employed in specified economic sectors; [23]

(i) clauses designed to keep abreast of advances of medical science by referring to the most recent edition of a reference work, or keeping a matter under review in the light of current knowledge; [24]

(j) adoption of an optional Protocol to a Convention, either enabling ratification of the Convention itself with increased flexibility or extending the obligations of the Convention; [25]

(k) clauses in a Convention which partially revise an earlier Convention, by introducing alternative and more modern obligations, while leaving the Convention open to ratification still in its unrevised form. [26]

Conventions and Recommendations as minimum standards

11. Article 19 of the Constitution further provides:

> 8. In no case shall the adoption of any Convention or Recommendation by the Conference, or the ratification of any Convention by any Member, be deemed to affect any law, award, custom or agreement which ensures more favourable conditions to the workers concerned than those provided for in the Convention or Recommendation.

[20] See, for example, Article 2 of the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96).

[21] See, for example, Article 2 of the Minimum Age Convention, 1973 (No. 138).

[22] See, for example, Article 17 of the Protection of Wages Convention, 1949 (No. 95).

[23] See, for example, Article 3 of the Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106).

[24] See, for example, Guideline B4.1.1, paragraph 2, of the Maritime Labour Convention, 2006, as amended (MLC, 2006).

[25] See, for example, the Protocol of 1982 to the Plantations Convention, 1958 and the Protocol of 1995 to the Labour Inspection Convention, 1947.

[26] See, for example, Article 3(6) and (7) of the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173).

Consultation of employers' and workers' organizations

12. In addition to the provisions of the Standing Orders referred to under paragraphs 3 and 4 above, Article 5(1)(a) of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144) and Paragraph 5(a) of the Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152), provide that consultations of employers' and workers' representatives should be held on government replies to questionnaires concerning items on the agenda of the Conference and government comments on proposed texts to be discussed.

Calendar of action – Adoption of Conventions and Recommendations
(this describes the double-discussion procedure and will be simplified in cases of single discussion)

Period	ILO action	Action by national administrations
November (year 1) and March (year 2)	ILO Governing Body considers and decides agenda of ILO Conference in *year 4*	
November–December (year 2)	ILO circulates report on law and practice, with questionnaire on content of possible new instrument	Consult employers' and workers' organizations on replies (articles 38 and 39 of Conference Standing Orders and – for States parties to it – C.144)
By 30 June (year 3)		Prepare replies to questionnaire and send to the ILO by *30 June (year 3)*, at the latest
January–February (year 4)	ILO circulates report analysing replies, with proposed conclusions	Prepare position for Conference discussion
June (year 4)	International Labour Conference – *first discussion* of item	Participate in work of technical committee, as appropriate
August–September (year 4)	ILO circulates draft texts on basis of first discussion	Consult employers' and workers' organizations on comments (articles 38 and 39 of the Conference Standing Orders and – for States parties to it – C.144)
By 30 November (year 4)		Send any comments to the ILO by *30 November (year 4)*, at the latest
February–March (year 5)	ILO circulates revised texts, in light of comments received	Prepare position for Conference discussion
June (year 5)	International Labour Conference – *second discussion* and adoption	Participate in work of technical committee, as appropriate

II. Submission to the competent authorities

Constitutional obligations

13. Conventions come into force for any State only through an act of ratification duly registered by the Director-General of the ILO. However, all member States have an obligation to submit Conventions and Recommendations [27] to the competent national authorities. The relevant provisions of article 19 of the Constitution are as follows:

> 5. In the case of a Convention:
>
> (a) the Convention will be communicated to all Members for ratification;
>
> (b) each of the Members undertakes that it will, within the period of one year at most from the closing of the session of the Conference, or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than 18 months from the closing of the session of the Conference, bring the Convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action;
>
> (c) Members shall inform the Director-General of the International Labour Office of the measures taken in accordance with this article to bring the Convention before the said competent authority or authorities, with particulars of the authority or authorities regarded as competent, and of the action taken by them;
>
> ...
>
> 6. In the case of a Recommendation:
>
> (a) the Recommendation will be communicated to all Members for their consideration with a view to effect being given to it by national legislation or otherwise;
>
> (b) each of the Members undertakes that it will, within a period of one year at most from the closing of the session of the Conference or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than 18 months after the closing of the Conference, bring the Recommendation before the authority or authorities within whose competence the matter lies for the enactment of legislation or other action;
>
> (c) the Members shall inform the Director-General of the International Labour Office of the measures taken in accordance with this article to bring the Recommendation before the said competent authority or authorities with particulars of the authority or authorities regarded as competent, and of the action taken by them;
>
> ...
>
> 7. In the case of a federal State, the following provisions shall apply:
>
> (a) in respect of Conventions and Recommendations which the federal government regards as appropriate under its constitutional system for federal action, the obligations of the federal State shall be the same as those of Members which are not federal States;
>
> (b) in respect of Conventions and Recommendations which the federal government regards as appropriate under its constitutional system in whole or in part, for action by the constituent states provinces, or cantons rather than for federal action, the federal government shall –
>
> (i) make, in accordance with its Constitution and the Constitutions of the states, provinces or cantons concerned, effective arrangements for the reference of such Conventions and Recommendations not later than 18 months from the closing of the

[27] And Protocols in as much as they constitute partial revisions of and can thus be assimilated to Conventions.

session of the Conference to the appropriate federal, state provincial or cantonal authorities for the enactment of legislation or other action;

(ii) arrange, subject to the concurrence of the state, provincial or cantonal governments concerned, for periodical consultations between the federal and the state, provincial or cantonal authorities with a view to promoting within the federal State coordinated action to give effect to the provisions of such Conventions and Recommendations;

(iii) inform the Director-General of the International Labour Office of the measures taken in accordance with this article to bring such Conventions and Recommendations before the appropriate federal state, provincial or cantonal authorities with particulars of the authorities regarded as appropriate and of the action taken by them. [28]

…

Governing Body Memorandum

14. In order to facilitate the uniform presentation of information supplied by governments as to measures taken to comply with the provisions cited in paragraph 12 above, the Governing Body adopted a *Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities*. A revised version of the Memorandum was adopted by the Governing Body in March 2005. [29] The Memorandum recalls the relevant provisions of the Constitution and cites extracts from reports of the Committee of Experts on the Application of Conventions and Recommendations and the Conference Committee on the Application of Standards intended to clarify the aims and objectives of submission, the nature of the obligation and a series of requests for information. The tripartite consultations that should be held in relation to the obligation of the submission to national competent authorities of the instruments adopted by the Conference are also recalled. The content of the Memorandum [30] is as follows:

I. AIMS AND OBJECTIVES OF SUBMISSION

(a) The main aim of submission is to promote measures at the domestic level for the implementation of Conventions and Recommendations. Furthermore, in the case of Conventions, the procedure also aims to promote ratification.

(b) Governments remain entirely free to propose any action which they may judge appropriate in respect of Conventions or Recommendations. The aim of submission is to encourage a rapid and responsible decision by each member State on instruments adopted by the Conference.

(c) The obligation of submission is a fundamental element of the standards system of the ILO. One purpose of this obligation was, and still is, that the instruments adopted by the Conference are brought to the knowledge of the public through their submission to a parliamentary body.

(d) The obligation of submission reinforces the relations between the Organization and the competent authorities and stimulates tripartite dialogue at the national level.

[28] In addition, article 35, para. 4, of the Constitution provides: "Where the subject-matter of the Convention is within the self-governing powers of any non-metropolitan territory the Member responsible for the international relations of that territory shall bring the Convention to the notice of the government of the territory as soon as possible with a view to the enactment of legislation or other action by such government ...".

[29] GB.292/LILS/1(Rev.) and GB.292/10(Rev.), Appendix I.

[30] *Memorandum concerning the obligation of submission to the competent authorities*, ILO, Geneva 2005.

II. NATURE OF THE COMPETENT AUTHORITY

(a) The competent authority is the authority which, under the Constitution of each State, has power to legislate or to take other action in order to implement Conventions and Recommendations.

(b) The competent national authority should normally be the legislature.

(c) Even in cases where, under the terms of the Constitution of the Member, legislative power is held by the executive, it is in conformity with the spirit of the provisions of article 19 of the Constitution of the ILO and of practice to arrange for the examination of the instruments adopted by the Conference by a deliberative body, where one exists. Discussion in a deliberative assembly, or at least information of the assembly, can constitute an important factor in the complete examination of a question and in a possible improvement of the measures taken at the domestic level to give effect to the instruments adopted by the Conference. With respect to Conventions, it could lead to a decision as to their ratification.

(d) In the absence of a parliamentary body, informing a consultative body makes it possible to carry out a full examination of the issues addressed by the Conference. This process ensures that the instruments are widely disseminated among the public, which is one of the purposes of the obligation of submission.

III. EXTENT OF THE OBLIGATION TO SUBMIT

(a) Article 19 of the Constitution lays down the obligation to place before the competent authorities *all* instruments adopted by the Conference without exception and without distinction between Conventions and Recommendations.

(b) Governments have complete freedom as to the nature of the proposals to be made when submitting the instruments and on the effect that they consider it appropriate to give to the instruments adopted by the Conference. The obligation to submit the instruments does not imply any obligation to propose the ratification of Conventions or to accept the Recommendations.

IV. FORM OF SUBMISSION

(a) Since article 19 of the Constitution is clearly aimed at obtaining a decision from the competent authorities, the submission of Conventions and Recommendations to these authorities should always be accompanied or followed by a statement or proposals setting out the Government's views as to the action to be taken on the instruments.

(b) The essential points to bear in mind are: (a) that, at the time of or subsequent to the submission of Conventions and Recommendations to the legislative authorities, Governments should either indicate what measures might be taken to give effect to these instruments or propose that no action should be taken or that a decision should be postponed; and (b) that there should be an opportunity to take up the matter for debate within the legislature.

V. TIME LIMITS

(a) In order that the competent national authorities may be kept up to date on the standards adopted at the international level which may require action by each State to give effect to them at the national level, submission should be made as early as possible and in any case within the time limits set by article 19 of the Constitution.

(b) In virtue of the formal provisions of article 19 of the Constitution, the submission of texts adopted by the Conference to the competent authorities must be effected within one year or, in exceptional circumstances, not longer than 18 months from the close of the session of the Conference. This provision applies not only to non-federal but also to federal States; in the case of the latter, the period of 18 months is applicable only in respect of Conventions and Recommendations which the federal Government considers to be appropriate for action by the constituent states, provinces or cantons. In order that it may be possible to ascertain that States Members have respected the prescribed time limits, the Committee considers that it would be advisable for the date on which the decisions of the Conference have been submitted to the competent authorities to be indicated in the communication to the Director-General.

VI. OBLIGATIONS OF FEDERAL STATES

As regards federal States, the Committee wishes to point out that under article 19 of the Constitution, paragraph 7(b)(i), whenever action by the constituent states, provinces or cantons is considered "appropriate", the Government must make effective arrangements for the reference of Conventions and Recommendations adopted by the Conference to the "appropriate authorities" of the constituent states, provinces or cantons for the enactment of legislation or other action.

VII. TRIPARTITE CONSULTATIONS

(a) For those States which have already ratified the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), effective consultations have to be held on the proposals made to the competent authorities when submitting the instruments adopted by the Conference (Article 5, paragraph 1(b), of Convention No. 144).

(b) The representative organizations of employers and workers must be consulted beforehand. The effectiveness of consultations presupposes that the representatives of employers and of workers have at their disposal sufficiently in advance all the elements necessary for them to reach their opinions before the Government finalizes its definitive decision.

(c) Members which have not ratified Convention No. 144 may refer to the relevant provisions of that Convention and to those of the Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152).

(d) The representative organizations of employers and workers will be requested to make known their point of view on the action to be taken with regard to new instruments independently. Fulfilment of the submission procedure is an important moment of dialogue among government authorities, the social partners and parliamentarians.

VIII. COMMUNICATION TO THE REPRESENTATIVE ORGANIZATIONS OF EMPLOYERS AND WORKERS

(a) Under article 23, paragraph 2, of the Constitution, the information communicated to the Director-General on submission to the competent authorities must be sent also to the representative organizations of employers and workers.

(b) This provision is designed to enable the representative organizations of employers and workers to formulate their own observations on the action that has been taken or is to be taken with regard to the instruments in question.

Office procedures

15. (a) Copies of Conventions and Recommendations are sent to governments, immediately after the Conference adopts them, by letter or email communication recalling the obligations as to submission under article 19 of the Constitution. The Governing Body Memorandum is attached to this communication. Copies of the same documents are also transmitted to the most representative organizations of employers and workers.

(b) One year after the close of the session of the Conference at which the instruments were adopted, a reminder is addressed to all governments which have not supplied the information requested.

(c) When 18 months have elapsed since the close of the relevant session of the Conference and the information has still not been supplied, a further reminder is sent.

(d) In response to the Committee of Experts' request, the Office, when it receives information as to submission of instruments to the competent authorities, checks to see whether the information and documents requested in the Governing Body Memorandum – including replies to any observations or direct requests of the Committee of Experts or to observations made by the Conference Committee – have been supplied. If they have not been transmitted, the Office will, as a routine

administrative step, request the government concerned to convey the requested information. The information supplied is then examined by the relevant supervisory bodies.

Consultation of employers' and workers' organizations

16. Article 5, paragraph 1(b), of Convention No. 144 and Paragraph 5(b) of Recommendation No. 152 require consultation of representatives of employers' and workers' organizations on the proposals to be made to the competent authorities in connection with the submission of Conventions and Recommendations. Part V of the questionnaire at the end of the revised Memorandum asks the governments concerned to indicate whether prior consultations took place and, if applicable, the nature and scope of those consultations.

Communication to representative organizations and observations received from them

17. Article 23, paragraph 2, of the Constitution provides that all governments must communicate to the most representative organizations of employers and workers copies of the information supplied under article 19. Moreover, under Part VI of the questionnaire at the end of the Governing Body's Memorandum, governments should inform the Office of the organizations to which copies of the information have been transmitted. The Memorandum also requests governments to provide information concerning any observations received from employers' or workers' organizations as to the effect given or to be given to the instruments submitted.

Summary

18. Article 23, paragraph 1, of the Constitution provides for summaries of the information supplied under article 19 to be presented to the next meeting of the Conference. Those summaries appear in Appendices IV, V and VI to Report III (Part A).

Office assistance

19. Governments and representative organizations of employers and workers may, on request, obtain from the International Labour Office information and sample documents showing the manner in which other countries fulfil their submission obligation.

Calendar of action – Submission of Conventions, Protocols, and Recommendations to the competent authorities

Period	ILO action	Action by national administrations
August	ILO circulates newly adopted standards, with Governing Body Memorandum on submission to the competent authorities	Study instruments and compare national legislation and practice. States parties to C.144: consult employers' and workers' organizations on the proposals to be made
		Prepare document summarizing the position and proposals for further national action (if appropriate) and on possible ratification of Conventions
By June (or, exceptionally, December) of following year		Submit to the competent legislative authorities by *June* (or, exceptionally, *December*) of following year
		Report to the ILO, in accordance with questionnaire in Governing Body Memorandum, on measures taken to submit the instruments to the competent authorities. Send copies to employers' and workers' organizations

III. Ratification of Conventions and acceptance of obligations

Procedure

20. Article 19 of the Constitution provides:

> 5.
>
> …
>
> (d) if the Member obtains the consent of the authority or authorities within whose competence the matter lies, it will communicate the formal ratification of the Convention to the Director-General and will take such action as may be necessary to make effective the provisions of such Convention.

Form of communication of ratifications [31]

21. No specific requirements as to form are laid down in the Constitution. Each State will have its own constitutional provisions and practice. In order to be registered, an instrument of ratification must nevertheless:

(a) clearly identify the Convention being ratified;

(b) be an original document (on paper, not a facsimile or photocopy) signed by a person with authority to engage the State (such as the Head of State, Prime Minister, Minister responsible for Foreign Affairs or Labour);

(c) clearly convey the Government's intention that the State should be bound by the Convention concerned and its undertaking to fulfil the Convention's provisions, preferably with a specific reference to article 19(5)(d) of the ILO Constitution.

> An instrument of ratification must always be communicated to the Director-General of the ILO, in order for the ratification to become effective in *international* law. If this is not done, it may be that a Convention is regarded by a State as "ratified" in its *internal* legal system, but this will be of no effect in the *international* legal system. An instrument of ratification might thus contain the following statement: "The Government of ... hereby ratifies the ... Convention and undertakes, in accordance with article 19, para. 5(d), of the Constitution of the ILO, to fulfil its obligations in this respect".

Compulsory declarations to be included in or accompany the instrument of ratification

22. Several Conventions require *declarations* to be made either in the instrument of ratification itself or in an accompanying document. If no such *declaration* is received by the Office, the ratification cannot be registered. In some cases, a compulsory *declaration* will define the scope of the obligations accepted or give other essential specifications. In all these cases, the substance of the *declaration* has to be considered before the instrument of ratification is prepared and the necessary indications either included in or attached to the instrument of ratification. The Conventions in question that are open for ratification are as follows:

[31] See Appendix I for a model instrument.

(i) Convention No. 102: Social Security (Minimum Standards), 1952 – Article 2(b);

(ii) Convention No. 115: Radiation Protection, 1960 – Article 3, paragraph 3(c);

(iii) Convention No. 118: Equality of Treatment (Social Security), 1962 – Article 2, paragraph 3; [32]

(iv) Convention No. 123: Minimum Age (Underground Work), 1965 – Article 2, paragraph 2;

(v) Convention No. 128: Invalidity, Old-Age and Survivors' Benefit, 1967 – Article 2, paragraph 2;

(vi) Convention No. 132: Holidays with Pay (Revised), 1970 – Article 3, paragraphs 2 and 3, and Article 15, paragraph 2;

(vii) Convention No. 138: Minimum Age, 1973 – Article 2;

(viii) Convention No. 160: Labour Statistics, 1985 – Article 16, paragraph 2;

(ix) Convention No. 173: Protection of Workers' Claims (Employer's Insolvency), 1992 – Article 3, paragraph 1;

(x) Convention No. 183: Maternity Protection, 2000 – Article 4, paragraph 2;

(xi) Maritime Labour Convention, 2006, as amended (MLC, 2006) – Standard A4.5, paragraph 10.

Optional declarations to be included in or to accompany ratifications

23. In the case of some Conventions (and Protocols) a *declaration* is needed only where the ratifying State wishes to make use of permitted exclusions, exceptions or modifications. When this applies, the *declaration* must be included in or attached to the instrument of ratification: if the instrument of ratification is received by the Office without any qualifying *declaration*, the ratification will be duly registered as it stands and the exclusion, exception or modification will no longer be available. The Conventions in question that are open for ratification are as follows:

(i) Convention No. 77: Medical Examination of Young Persons (Industry), 1946 – Article 9, paragraph 1;

[32] (a) When a member State ratifies this Convention, it should also communicate to the Office a confirmation in terms of Article 2, para. 1, that it has "in effective operation legislation covering its own nationals within its own territory" in the branch or branches of social security in respect of which it is accepting the obligations of the Convention. A similar confirmation should be given in the case of a notification of acceptance of further obligations under Article 2, para. 4. (b) Each Member accepting the obligations of the Convention in respect of *any* branch of social security which has legislation providing for benefits of the type indicated in Article 2, para. 6(a) or (b), must at the time of ratification communicate to the Office a *statement* indicating such benefits. Under Article 2, para. 7, a similar statement should be made on any subsequent notification of acceptance of the Convention's obligations under Article 2, para. 4, or within three months of the adoption of relevant legislation. Though such *statements* are compulsory, they are for information purposes and failure to make them does not invalidate the ratification or notification.

(ii) Convention No. 78: Medical Examination of Young Persons (Non-Industrial Occupations), 1946 – Article 9, paragraph 1;

(iii) Convention No. 79: Night Work of Young Persons (Non-Industrial Occupations), 1946 – Article 7, paragraph 1;

(iv) Convention No. 81: Labour Inspection, 1947 – Article 25, paragraph 1; Protocol of 1995 – Article 2, paragraph 1;

(v) Convention No. 90: Night Work of Young Persons (Industry) (Revised), 1948 – Article 7, paragraph 1;

(vi) Convention No. 97: Migration for Employment (Revised), 1949 – Article 14, paragraph 1;

(vii) Convention No. 102: Social Security (Minimum Standards), 1952 – Article 3, paragraph 1;

(viii) Convention No. 106: Weekly Rest (Commerce and Offices), 1957 – Article 3, paragraph 1;

(ix) (a) Convention No. 110: Plantations, 1958 – Article 3, paragraph 1(b);

(b) Protocol to Convention No. 110 – Article 1;

(x) Convention No. 119: Guarding of Machinery, 1963 – Article 17, paragraph 1;

(xi) Convention No. 121: Employment Injury Benefits, 1964 – Article 2, paragraph 1, and Article 3, paragraph 1;

(xii) Convention No. 128: Invalidity, Old-Age and Survivors' Benefits, 1967 – Article 4, paragraph 1, Article 38 and Article 39;

(xiii) Convention No. 130: Medical Care and Sickness Benefits, 1969 – Article 2, paragraph 1, Article 3, paragraph 1, and Article 4, paragraph 1;

(xiv) Convention No. 138: Minimum Age, 1973 – Article 5, paragraph 2;

(xv) Convention No. 143: Migrant Workers (Supplementary Provisions), 1975 – Article 16, paragraph 1;

(xvi) Convention No. 148: Working Environment (Air Pollution, Noise and Vibration), 1977 – Article 2;

(xvii) Convention No. 153: Hours of Work and Rest Periods (Road Transport), 1979 – Article 9, paragraph 2;

(xviii) Convention No. 168: Employment Promotion and Protection (Unemployment), 1988 – Article 4, paragraph 1, and Article 5, paragraphs 1 and 2;

(xix) Convention No. 173: Protection of Workers' Claims (Employer's Insolvency), 1992 – Article 3, paragraph 3;

(xx) Convention No. 185: Seafarers' Identity Documents (Revised), 2003 – Article 9.

Optional declarations concerning the scope of a Convention

24. For all the cases referred to in paragraphs 21 and 22 above, a Member which has made use of the option to limit the scope of the Convention's application to it may subsequently modify, cancel or withdraw such limitation: this is done by a further *declaration, notification or statement of renunciation in a report under article 22 of the Constitution*, as the case may be according to each Convention. In addition, the following provide for *declarations* to extend the scope of the Convention's application by the State concerned either at the time of ratification or at any subsequent time: [33]

(i) Convention No. 129: Labour Inspection (Agriculture), 1969 – Article 5, paragraph 1;

(ii) Convention No. 146: Seafarers' Annual Leave with Pay, 1976 – Article 2, paragraphs 4, 5 and 6;

(iii) Convention No. 172: Working Conditions (Hotels and Restaurants), 1991 – Article 1, paragraphs 2 and 3;

(iv) Protocol of 1996 to Convention No. 147: Merchant Shipping (Minimum Standards), 1976 – Article 3;

(v) Convention No. 176: Safety and Health in Mines, 1995 – Article 2;

(vi) Convention No. 181: Private Employment Agencies, 1997 – Article 2, paragraph 5;

(vii) Convention No. 183: Maternity Protection, 2000 – Article 2, paragraph 3;

(viii) Convention No. 184: Safety and Health in Agriculture, 2001 – Article 3;

(ix) Convention No. 188: Work in Fishing, 2007– Article 3.

Ratification of Protocols

25. A Protocol is an instrument which partially revises a Convention. It is open to ratification by a State already bound by or simultaneously ratifying and becoming bound by the Convention in question. Two Protocols so far adopted by the Conference effectively introduce greater flexibility into the two respective Conventions. They are:

(i) P089 – Protocol of 1990 to the Night Work (Women) Revised Convention, 1948;

(ii) P110 – Protocol of 1982 to the Plantations Convention, 1958.

Four other Protocols extend the obligations under the corresponding Conventions:

(iii) P081 – Protocol of 1995 to the Labour Inspection Convention, 1947;

(iv) P147 – Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976;

[33] This does not include cases where *determinations* by a member may have the effect of extending the obligations of a Convention, although there is no provision for a formal *declaration*, such as in the case of Convention No. 111, Article 1, para. 1(b).

(v) P155 – Protocol of 2002 to the Occupational Safety and Health Convention, 1981;

(vi) P029 – Protocol of 2014 to the Forced Labour Convention, 1930.

Inadmissibility of reservations

26. Conventions contain various provisions ensuring flexibility (see paragraphs 8 and 9 above), including some specifically enabling ratifying States to limit or qualify the obligations assumed on ratification (paragraphs 21–24). However, no limitations on the obligations of a Convention other than those specifically provided for (i.e. no *reservations*) are possible.

Registration of ratifications and acceptances of obligations

27. The final provisions of all Conventions contain Articles on the registration of ratifications by the Director-General, their notification to member States and the communication of particulars to the Secretary-General of the United Nations for registration in accordance with article 102 of the United Nations Charter. All ratifications are reported to the Governing Body and are notified to member States through publication in the *Official Bulletin*. *Declarations* and other acts accepting or modifying obligations referred to in paragraphs 21–24 above are dealt with in the same way.

Entry into force

28. Each Convention contains a provision as to how it comes into force. Most often, since 1928, Conventions come into force 12 months after registration of the second ratification and afterwards for each State 12 months after its ratification. Several maritime and some other Conventions contain different provisions. For instance, to come into force, the MLC, 2006, had to be ratified by at least 30 member States with a total share in the world gross tonnage of ships of 33 per cent. Until a Convention comes into force, it can have no effect in international law.

Obligations arising out of ratification

29. The obligation under article 19, paragraph 5(d), of the Constitution is to "take such action as may be necessary to make effective the provisions" of a ratified Convention. [34] This means ensuring their implementation in practice, as well as giving them effect in law or other means that are in accordance with national practice (such as court decisions, arbitration awards or collective agreements).

Incorporation in internal law

30. In some countries, the Constitution gives the force of internal law to ratified Conventions. In those cases, it will still be necessary to take specific measures:

[34] See also the obligation to report under article 22 of the Constitution (paras 35–46 below). With regard to the termination of obligations under a ratified Convention through *denunciation*, see paras 79–83 below.

(a) to eliminate any conflict between the provisions of the Convention and earlier national law and practice;

(b) to give effect to any provisions of the Convention which are not *self-executing* (e.g. provisions requiring given matters to be prescribed by national laws or regulations or determined by the competent authorities, or requiring special administrative arrangements);

(c) to prescribe penalties, where appropriate;

(d) to ensure that all interested persons and authorities (e.g. employers, workers, labour inspectors, courts, tribunals, other administrative bodies) are informed of the incorporation of the Convention into internal law and where necessary given guidance.

Consultation of employers' and workers' organizations

31. Paragraph 5(c) of Recommendation No. 152 provides for consultation of representatives of employers' and workers' organizations, subject to national practice, on the preparation and implementation of legislative or other measures to give effect to Conventions – especially when ratified – and Recommendations. This applies in particular as regards measures implementing provisions as to consultation and collaboration with employers' and workers' representatives.

Non-metropolitan territories

32. Article 35 of the Constitution provides for *declarations* to be made by member States as to the application of Conventions to non-metropolitan territories for whose international relations they are responsible.

Effect of withdrawal from the ILO

33. Article 1, paragraph 5 (last sentence), of the Constitution provides:

> ... When a Member has ratified any international labour Convention, ... withdrawal (from the Organization) shall not affect the continued validity for the period provided for in the Convention of all obligations arising thereunder or relating thereto.

Information on ratifications

34. Regularly updated information on ratifications and denunciations is available on the Office's website (NORMLEX database).

IV. Reports on ratified Conventions

Obligation to report

35. Article 22 of the Constitution provides: [35]

> 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.

Reporting system

36. Over the years, [36] the Governing Body has approved the following arrangements for the submission of article 22 reports:

(a) *Types of reports*. *Detailed* reports drawn up in accordance with the report form approved by the Governing Body of the ILO for each Convention are required in the following cases: [37]

(i) in the case of the first report which is requested the year following the entry into force of a Convention for a particular country;

(ii) at member States' own initiative if there have been significant changes in the application of a ratified Convention (for example, the adoption of substantial new legislation or other changes affecting the application of a Convention); and

(iii) where they are explicitly requested by the supervisory bodies, in particular the Committee of Experts on the Application of Conventions and Recommendations (by means of a footnote in an observation or direct request) [38] or the Conference Committee on the Application of Standards (when adopting its conclusions).

[35] The obligation under article 22 to report on the application of ratified Conventions is distinct from various other obligations laid down by individual Conventions, requiring information (such as statistics or labour inspection reports) to be regularly supplied to the International Labour Office. The obligations under individual Conventions are independent and remain unaffected by changes in the article 22 reporting system described here.

[36] The most recent Governing Body decisions on the reporting system were adopted in November 2018 (see GB.334/INS/5 and GB.332/INS/5(Rev.), as well as GB.334/INS/PV, para. 288). For previous decisions, see in particular: GB.310/LILS/3/2 and GB.310/11/2(Rev.) (2011); GB.298/LILS/4 and GB.298/9(Rev.) (2007); and GB.282/LILS/5, GB.282/8/2 and GB.283/LILS/6 (2001 and 2002).

[37] For the content of a *detailed* report, see para. 37 below.

[38] *Report of the Committee of Experts on the Application of Conventions and Recommendations*, Report III (Part A), General Report, International Labour Conference, 108th (Centenary) Session, Geneva, 2019, paras 75–79.

Except where a *detailed* report is expected, *simplified* reports can be submitted in accordance with the report form for simplified reports adopted by the Governing Body at its November 2018 session (see Appendix II of GB.334/INS/5). [39]

(b) *Reporting cycle*. [40] Reports are requested periodically on one of the following bases, on the understanding that the supervisory bodies may request reports outside the regular reporting cycle:

(i) *Three-year cycle*. Reports are requested every three years for the following 12 Conventions, which are considered to be *fundamental or governance Conventions*. [41]

Fundamental Conventions:

- *freedom of association and collective bargaining:* Conventions Nos 87 and 98;
- *abolition of forced labour:* Convention No. 29 and its Protocol, and Convention No. 105;
- *equality of opportunity and treatment:* Conventions Nos 100 and 111;
- *child labour:* Conventions Nos 138 and 182.

Governance Conventions:

- *employment policy:* Convention No. 122;
- *labour inspection:* Convention No. 81 and its Protocol, and Convention No. 129;
- *tripartite consultations:* Convention No. 144.

(ii) *Six-year cycle.* Reports are requested every six years for the other Conventions, in accordance with their arrangement by subject matter:

- *freedom of association (agriculture, non-metropolitan territories):* Conventions Nos 11, 84 and 141;
- *industrial relations:* Conventions Nos 135, 151 and 154;
- *protection of children and young persons:* Conventions Nos 5, 6, 10, 33, 59, 77, 78, 79, 90, 123 and 124;
- *employment promotion:* Conventions Nos 2, 88, 96, 159 and 181;
- *vocational guidance and training (skills):* Conventions Nos 140 and 142;

[39] For the content of a *simplified* report, see para. 38 below.

[40] See Appendix II (reporting cycle, as adopted in November 2018).

[41] The Governing Body may periodically review the list of Conventions for which reports are required every three years.

- *security of employment:* Convention No. 158;
- *social policy:* Conventions Nos 82, 94 and 117;
- *wages:* Conventions Nos 26, 95, 99, 131 and 173;
- *working time:* Conventions Nos 1, 14, 30, 47, 52, 89, 101, 106, 132, 153, 171 and 175;
- *workers with family responsibilities:* Convention No. 156;
- *migrant workers:* Conventions Nos 97 and 143;
- *occupational safety and health:* Conventions Nos 13, 45, 62, 115, 119, 120, 127, 136, 139, 148, 155, 161, 162, 167, 170, 174, 176, 184 and 187;
- *social security:* Conventions Nos 12, 17, 18, 19, 24, 25, 42, 102, 118, 121, 128, 130, 157 and 168;
- *maternity protection:* Conventions Nos 3, 103 and 183;
- *labour administration:* Conventions Nos 63, 85, 150 and 160;
- *seafarers:* Conventions Nos 7, 8, 9, 16, 22, 23, 53, 55, 56, 58, 68, 69, 71, 73, 74, 92, 108, 133, 134, 145, 146, 147, 163, 164, 165, 166, 178, 179, 180, 185 and the MLC, 2006;
- *fishers:* Conventions Nos 112, 113, 114, 125, 126 and 188;
- *dockworkers:* Conventions Nos 27, 32, 137 and 152;
- *indigenous and tribal peoples:* Conventions Nos 107 and 169;
- *other specific categories of workers:* Conventions Nos 110, 149, 172, 177 and 189.

(iii) *Non-periodic reports.* Reports on the application of a ratified Convention may be requested outside of the regular reporting cycle in the following cases:

– when the Committee of Experts (by means of a footnote in an observation or direct request) [42] or the Conference Committee (when adopting its conclusions) so requests;

– when the Governing Body so requests, following proceedings instituted under articles 24 or 26 of the Constitution or before the Committee on Freedom of Association; [43]

– when a report requested is not submitted or when no reply is provided to comments made by the supervisory bodies (it should be noted that compliance with reporting obligations is supervised by the Committee of Experts and the Conference Committee and that failure to supply reports or information does not

[42] *Report of the Committee of Experts on the Application of Conventions and Recommendations*, op. cit., paras 75–79.

[43] In this respect, see paras 84–95 below.

prevent examination of the application of ratified Conventions by the supervisory bodies, as explained in paragraph 38 below).

(c) *Exemption from reporting*. The following Conventions are not subject to reporting under article 22 of the Constitution: Conventions which have been abrogated (Conventions Nos 4, 15, 21, 41, 50, 64, 65, 67, 86 and 104); Conventions which have been withdrawn (Conventions Nos 31, 46, 51, 61 and 66); Conventions which have not entered into force (Conventions Nos 54, 57, 70, 72, 75, 76, 93 and 109); and Conventions on the final Articles (Conventions Nos 80 and 116). Moreover, subject to the conditions and safeguards laid down by the Governing Body, [44] no reports are requested on certain Conventions, particularly those which have been shelved. [45]

Detailed reports

37. A *detailed* report should be in the form approved by the Governing Body for each Convention. The form sets out the substantive provisions of the Convention, information on which has to be supplied. It includes specific questions as to some of the substantive provisions, designed to aid in the preparation of information which will enable the supervisory bodies to appreciate the manner in which the Convention is applied. A typical report form also contains questions on the following matters:

(a) *Laws, regulations, etc*. All relevant legislation or similar provisions should be listed and – unless this has already been done – copies supplied.

(b) *Permitted exclusions, exceptions or other limitations*. Several Conventions allow given categories of people, economic activities or geographical areas to be exempted from application, but require a ratifying State which intends to make use of such limitations to indicate *in its first article 22 report* the extent to which it has recourse to them. It is therefore essential for the first report to include indications in this respect, since, if it does not, the limitations will no longer be possible. The same Conventions may call for information to be included in subsequent article 22 reports indicating the extent to

[44] In March 1996, the Governing Body confirmed the suspension of requests for reports on certain Conventions which no longer appeared to be up-to-date, subject to the conditions and safeguards established at its 229th Session (February–March 1985). Para. 4 of document GB.229/10/9 reads as follows:

"(a) Should circumstances change so as to give renewed importance to any of the Conventions concerned, the Governing Body could again require detailed reports to be presented on their application.

(b) Employers' and workers' organizations would remain free to present comments on problems encountered in the fields covered by the Conventions concerned. In accordance with established procedures, these comments would be considered by the Committee of Experts on the Application of Conventions and Recommendations, which could request such information (including a detailed report) as it might deem appropriate.

(c) On the basis of information given in the general reports or otherwise at its disposal (for example, legislative texts), the Committee of Experts would be free at any time to make comments and to request information concerning the application of the Conventions concerned, including the possibility to ask for a detailed report.

(d) The right to invoke the constitutional provisions relating to representations and complaints (articles 24 and 26) in respect of the Conventions concerned would remain unaffected."

[45] The following Conventions have been shelved and reports are no longer requested on them on a regular basis: Conventions Nos 20, 28, 34, 35, 36, 37, 38, 39, 40, 43, 44, 48, 49, 60 and 91. The shelving of Conventions is without incidence as to their effects on the legal systems of the member States which have ratified them.

which effect is nevertheless given to the Convention in respect of the excluded persons, activities or areas.

(c) *Implementation of the Convention*. Detailed information should be given *for each Article* on the provisions of legislation or other measures applying it. Some Conventions ask for particular information to be included in reports (as to the practical application of the Convention or certain Articles).

(d) *Effect of ratification*. Information is asked for as to any constitutional provisions giving the ratified Convention the force of national law and any additional measures taken to make the Convention effective.

(e) *Comments by the supervisory bodies*. The report must contain replies to any comments regarding the application of the Convention which have been made by the Committee of Experts (observations or direct requests) or by the Conference Committee (in its conclusions). Where follow-up to other supervisory procedures (articles 24 or 26 of the Constitution; CFA) is sent to the Committee of Experts, the requested information should also be provided.

(f) *Enforcement*. Governments are asked to indicate the authorities responsible for administration and enforcement of the relevant laws, regulations, etc., and to supply information on their activities. Copies of the authorities' own reports may be appended or – if they have already been supplied – referred to.

(g) *Judicial or administrative decisions*. Governments are asked to supply either a copy or a summary of relevant decisions.

(h) *General appreciation*. Governments are asked to give a general assessment of how the Convention is applied, with extracts from any official reports, statistics of workers covered by the legislation or collective agreements, details of contraventions of the legislation, prosecutions, etc.

(i) *Observations by employers' and workers' organizations*. Any observations made by or received from these organizations should be provided with any government response.

(j) *Communication of copies of reports to employers' and workers' organizations*. The names of the organizations to which copies of the report are sent should be given.

Simplified reports

38. In November 2018, the Governing Body adopted a new report form for simplified reports. [46] Simplified reports will contain only:

(a) *Replies to the comments of the supervisory bodies*. The report must contain replies to any comments regarding the application of the Convention which have been made by the Committee of Experts (observations or direct requests) or by the Conference Committee (in its conclusions). Where follow-up to other supervisory procedures (article 24 or 26 of the Constitution; CFA) is sent to the Committee of Experts, the requested information should also be provided.

(b) *Laws, regulations, etc.* Information on whether any changes have occurred in legislation and practice affecting the application of the Convention and on the nature

[46] See Appendix III.

and effect of such changes (if the changes are significant, a *detailed* report should be provided).

(c) *Implementation of the Convention.* Statistical or other information and communications prescribed by the Convention in question (including required information on any permitted exclusions).

(d) *Communication of copies of reports to employers' and workers' organizations*. The names of the employers' and workers' organizations to which copies of the simplified report have been addressed should be given.

(e) *Observations of employers' and workers' organizations*. Any observations made by or received from these organizations should be provided with any government response.

Addressing failure to report

39. Both the Committee of Experts and the Conference Committee supervise the respect by member States of their reporting obligations.

40. Each year, based on the information contained in the report of the Committee of Experts, as updated at the time of the Conference, the Conference Committee examines cases of failure to comply with reporting obligations, with particular reference to:

– failure to supply reports for the past two years or more on the application of ratified Conventions;

– failure to supply first reports on the application of ratified Conventions;

– failure to supply information in reply to the comments of the Committee of Experts;

– failure to submit to the competent authorities the instruments adopted by the Conference during at least seven sessions;

– failure to supply reports for the past five years on unratified Conventions and Recommendations.

41. During its 88th (2017) and 89th (2018) sessions, the CEACR examined the way in which the question of serious failure to report was being addressed with a view to strengthening the supervision of ratified Conventions. The Committee decided to implement a new practice of "urgent appeals" where reports are not sent for a number of years. In all cases where article 22 reports have not been received for three consecutive years, the Committee of Experts will be issuing urgent appeals to the governments concerned. As a result, repetitions of previous comments will be limited to a maximum of three years, following which the Convention's application will be examined in substance by the Committee on the basis of publicly available information, even if the government has not sent a report, thus ensuring a review of the application of ratified Conventions at least once within the regular reporting cycle. [47] The Conference Committee will have its attention drawn to the serious reporting failure and the urgent appeal when examining compliance with reporting obligations in June.

[47] *Report of the Committee of Experts on the Application of Conventions and Recommendations*, op. cit., para. 10.

Consultation of employers' and workers' organizations

42. Article 5, paragraph 1(d), of Convention No. 144 and Paragraph 5(e) of Recommendation No. 152 provide for consultation of representatives of employers' and workers' organizations on questions arising out of reports to be made on ratified Conventions.

Communication of reports to employers' and workers' organizations

43. Under article 23, paragraph 2, of the Constitution, copies of all reports on the application of ratified Conventions should be communicated to representative organizations of employers and workers. This may be done either prior to finalization of the report, inviting comments which can yet be taken into account, or at the same time as the reports are sent to the ILO. In any event, when forwarding their reports to the ILO, governments should indicate the organizations to which communication has been made. Those organizations may make any observations they wish on the application of ratified Conventions.

Observations of employers' and workers' organizations

44. Where observations from employers' and workers' organizations on the application of ratified Conventions are received by a government, full details – including, normally, a copy of the observations – should be sent in the government's report, together with the government's response, if any. Employers' and workers' organizations may also send observations directly to the Office for submission to the Committee of Experts; in this case, the Office acknowledges receipt and simultaneously forwards a copy to the government concerned, so that it might respond. Detailed information on the treatment of observations from employers' and workers' organizations received directly by the Office can be found in the General Report of the Committee of Experts. [48]

> Employers' and workers' organizations wishing to transmit their observations directly to the Office should use the following contact: **ORGS-CEACR@ilo.org.**

Office procedures for requesting reports

45. (a) At the beginning of each year (usually in February/March), the Office sends a communication to each government requesting the reports due on the application of ratified Conventions for the year in question, clearly indicating whether the reports due are *detailed* or *simplified* reports. Copies of the requests for reports are also sent to national organizations of employers and workers.

> Detailed reports should follow the report form adopted for each individual Convention. In November 2018, the Governing Body adopted a new report form for simplified reports.

[48] *Report of the Committee of Experts on the Application of Conventions and Recommendations*, op. cit., paras 94–104.

(b) In accordance with the Governing Body decision, reports are requested to reach the Office between 1 June and 1 September at the latest each year. [49] Reminders are sent to governments which do not transmit their reports on time. ILO field offices and standards specialists in the field may also be asked to assist by contacting governments concerned. With a view to reinforcing the deadlines for receipt of article 22 reports, the Committee of Experts decided to distinguish more clearly between article 22 reports received after the 1 September deadline, the examination of which might be deferred due to the late arrival, and reports received by this deadline, the examination of which might be deferred for other reasons (for example, need for translation into the ILO working languages). [50]

Reports should be sent to the following contact: NORM_REPORT@ilo.org.

(c) When it receives governments' reports, the Office verifies whether reports are accompanied by copies of relevant legislation or other documentation and, if not and these are not otherwise available, asks them to send such documentation. The same applies in case of failure to indicate the names of the employers' and workers' organizations to which copies of the report have been addressed, pursuant to article 23, paragraph 2, of the Constitution. The substantive content of the report is examined by the Committee of Experts.

Summary

46. Under article 23, paragraph 1, of the Constitution, a summary of reports on the application of ratified Conventions has to be laid before the next meeting of the Conference. Such summary appears in an abbreviated, tabular form in Report III (Part A). In addition, the Office (through the secretariat of the Committee on the Application of Standards) makes copies of reports on ratified Conventions available for consultation at the Conference, if required.

Calendar of action – Reports on ratified Conventions

Period	ILO action	Action by national administrations
February/March	ILO sends request for reports due that year	
From March		Prepare reports States parties to C.144: consult employers' and workers' organizations on questions arising out of reports to be made Send copies of reports to employers' and workers' organizations
Between 1 June and 1 September		Send reports to reach the ILO between *1 June* and *1 September* at the latest
November–December	Committee of Experts on the Application of Conventions and Recommendations meets	

[49] Governments may transmit their reports all together or in batches. The reports should cover the period up to the time when they are transmitted.

[50] *Report of the Committee of Experts on the Application of Conventions and Recommendations*, op. cit., para. 11.

Period	ILO action	Action by national administrations
February/March of the following year	Publication of the report of the Committee of Experts	Study with a view to initiating measures needed to ensure compliance, as well as in preparation for Conference Committee
30 days before Conference	Publication of preliminary list of cases	Prepare information (as appropriate) for Conference Committee, in writing or to be given orally
June	Conference Committee on the Application of Standards meets	Participate in proceedings and, as appropriate, in discussion of any cases concerning own country selected for consideration
Following CAS		If case examined by the Conference Committee, review conclusions with a view to considering any action called for, including reporting to the CEACR

V. Reports on unratified Conventions and on Recommendations – General Surveys

Obligation to report on unratified Conventions

47. Under article 19, paragraph 5(e), of the Constitution, a member State undertakes, in respect of any Convention which it has not ratified, to:

> … report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of its law and practice in regard to the matters dealt with in the Convention, showing the extent to which effect has been given, or is proposed to be given, to any of the provisions of the Convention by legislation, administrative action, collective agreement or otherwise and stating the difficulties which prevent or delay the ratification of such Convention.

Obligation to report on Recommendations

48. Under article 19, paragraph 6(d), of the Constitution, member States undertake to:

> … report to the Director-General of the International Labour Office, at appropriate intervals as requested by the Governing Body, the position of the law and practice in their country in regard to the matters dealt with in the Recommendation, showing the extent to which effect has been given or is proposed to be given, to the provisions of the Recommendation and such modifications of these provisions as it has been found or may be found necessary to make in adopting or applying them.

Federal States

49. Special provisions in respect of federal States as to the obligation to report on unratified Conventions and on Recommendations are laid down in article 19, paragraph 7(b)(iv) and (v), of the Constitution.

Choice of instruments for reports under article 19 (General Surveys) [51]

50. Article 19 reports submitted by member States are the basis for the preparation by the Committee of Experts of annual General Surveys which are then discussed by the Conference Committee. The General Surveys and the results of their examination by the Conference Committee are helpful in many respects, including when drawing up the Organization's programme of work, particularly in relation to the adoption of any new or revised standards, in assessing the impact and continuing usefulness of the instruments to be reviewed and in providing governments and the social partners with the opportunity to review their policies and implement other measures in areas of major interest, as well as deciding on new ratifications, where appropriate. The Governing Body selects the instruments on which reports are to be requested each year. Following the adoption of the

[51] In practice, the article 19 reporting procedure described here has been used by the Governing Body rather than the separate clause included in the final provisions of all Conventions, whereby the Governing Body may at any time present to the Conference a report on the working of the Convention and examine the desirability of placing on the Conference agenda the question of its revision in whole or in part.

2008 ILO Declaration on Social Justice for a Fair Globalization and the setting up of recurrent item discussions on the ILO strategic objectives on the agenda of the Conference, the Governing Body aims at aligning the topic of the General Survey with that of the corresponding recurrent item discussion so as to ensure that General Surveys and the related discussion by the Committee on the Application of Standards contribute to the recurrent discussions as appropriate.

51. In the framework of the Standards Initiative, the Governing Body has been examining the use of article 19, paragraphs 5(e) and 6(d), of the Constitution. In November 2018, it decided to continue to explore concrete and practical measures to improve the use of this, including with the purpose of enhancing the functions of General Surveys and improving the quality of their discussion and follow-up. [52]

Report forms

52. When deciding the theme for the annual General Survey, the Governing Body also adopts a specific questionnaire for reports on the instruments selected.

Office procedures for requesting reports

53. Upon the Governing Body's decision on the General Survey and the adoption of the corresponding report form, the Office sends a communication to governments requesting the reports due under article 19. Copies of the requests are sent to national organizations of employers and workers. By decision of the Governing Body, reports are requested to reach the Office by the end of February of the year of their examination by the Committee of Experts, at the latest. Reminders are sent to governments which do not transmit their reports by the due date.

Reports should be sent to the following contact: NORM_REPORT@ilo.org.

Consultation of employers' and workers' organizations

54. Paragraph 5(e) of Recommendation No. 152 calls for consultation of representatives of employers' and workers' organizations on questions arising out of reports to be made on unratified Conventions and on Recommendations. In addition, Article 5, paragraph 1(c), of Convention No. 144 and Paragraph 5(d) of Recommendation No. 152 provide for tripartite consultations at appropriate intervals to consider what measures might be taken to promote implementation and ratification as appropriate of Conventions which have not been ratified and Recommendations to which effect has not been given.

Communication of reports to employers' and workers' organizations

55. Under article 23, paragraph 2, of the Constitution, governments have to communicate copies of all reports on unratified Conventions and on Recommendations to representative organizations of employers and workers and indicate, when forwarding their reports to the ILO, the organizations to which communication has been made. Those or any other employers' or workers' organizations may make any observations they wish on the subjects

[52] See GB.334/INS/5 and GB.332/INS/5(Rev.), as well as GB.334/INS/PV, para. 288.

in question. Employers' and workers' organizations may send observations directly to the Office for submission to the Committee of Experts; in this case, the Office acknowledges receipt and simultaneously forwards a copy to the government concerned.

Summary

56. Under article 23, paragraph 1, of the Constitution, a summary of reports on unratified Conventions and on Recommendations has to be laid before the next meeting of the Conference. Such summary appears in an abbreviated form in Report III (Part A), as a list of reports received. In addition, the Office (through the secretariat of the Committee on the Application of Standards) makes copies of the reports available for consultation at the Conference, if required.

Calendar of action – Reports on unratified Conventions and Recommendations

Period	ILO action	Action by national administrations
July	ILO sends request for reports, with report forms	Prepare reports Send copies to employers' and workers' organizations
By end of February of the following year		Send report to ILO by *end of February* of the following year, at the latest
November–December	Committee of Experts on the Application of Conventions and Recommendations prepares General Survey	
February/March of the following year	Publication of Committee of Experts' General Survey	Study, in preparation for discussions in Conference Committee and consideration of general issues and comments
June	Conference Committee on the Application of Standards discusses the General Survey	Participate in proceedings

VI. Reports on the follow-up of the 1998 Declaration

57. The follow-up of the ILO Declaration on Fundamental Principles and Rights at Work, adopted by the International Labour Conference on 19 June 1998, is based on reports requested from member States under article 19, paragraph 5(e), of the Constitution. The forms for these reports are designed to obtain information on any changes in their law and practice from governments which have not ratified one or more of the fundamental Conventions, including the Protocol of 2014 to the Forced Labour Convention. [53] The organizations of employers and workers may voice their opinions on the reports. The information received is examined by the Governing Body and published in the Introduction to the Annual Review of reports, focusing on new developments and trends.

58. In the framework of the Standards Initiative, the Governing Body has been examining the use of article 19, paragraphs 5(e) and 6(d), of the Constitution, including in relation to the Annual Review under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work. [54]

[53] The eight fundamental Conventions concern freedom of association (Conventions Nos 87 and 98), the abolition of forced labour (Convention No. 29 and its Protocol, and Convention No. 105), equality of opportunity and treatment (Conventions Nos 100 and 111) and child labour (Conventions Nos 138 and 182). Member States which have ratified fundamental Conventions have to provide reports on their application every three years under article 22 of the Constitution.

[54] See GB.334/INS/5 and GB.332/INS/5(Rev.), as well as GB.334/INS/PV, para. 288.

VII. Regular machinery for supervising the observance of obligations deriving from Conventions and Recommendations

Regular supervisory bodies

59. On the basis of a resolution adopted by the Eighth Session of the International Labour Conference in 1926, the Committee of Experts on the Application of Conventions and Recommendations and the Conference Committee on the Application of Standards were given responsibility for regular supervision of the observance by member States of their standards-related obligations.

A. Committee of Experts

Composition and terms of reference [55]

60. The Committee of Experts is composed of 20 members appointed by the Governing Body on the proposal of the Director-General for renewable periods of three years. Appointments are made in a personal capacity among completely impartial persons of technical competence and independent standing. They are drawn from all parts of the world, in order that the Committee may enjoy first-hand experience of different legal, economic and social systems. The Committee's fundamental principles are those of independence, impartiality and objectivity in noting the extent to which the position in each State appears to conform to the terms of the Conventions and the obligations accepted under the ILO Constitution. In this spirit, the Committee is called on to examine:

(i) the annual reports under article 22 of the Constitution on the measures taken by Members to give effect to the provisions of Conventions to which they are parties, and the information furnished by Members concerning the results of inspection;

(ii) the information and reports concerning Conventions and Recommendations communicated by Members in accordance with article 19 of the Constitution;

(iii) information and reports on the measures taken by Members in accordance with article 35 of the Constitution.

Organization of the Committee's work

61. (a) The Committee meets on dates determined by the Governing Body. [56]

(b) The Committee meets in private. Its documents and deliberations are confidential.

(c) The Committee assigns to each of its members initial responsibility for groups of Conventions or subjects. Their preliminary findings are then submitted to the Committee as a whole in the form of draft observations and direct requests.

[55] *Report of the Committee of Experts on the Application of Conventions and Recommendations*, op. cit.

[56] The meetings are held at the end of Nov.–beginning of Dec. each year.

(d) The Committee may appoint working parties to deal with general or especially complex questions, such as General Surveys. Working parties include members with knowledge of different legal, economic and social systems. Their preliminary findings are submitted to the Committee as a whole.

(e) Documentation available to the Committee includes the information supplied by governments in their reports or in the Conference Committee on the Application of Standards; relevant legislation, collective agreements and court decisions; information supplied by States on the results of inspections; observations of employers' and workers' organizations; reports of other ILO bodies (such as commissions of inquiry or the Committee on Freedom of Association) and reports of technical assistance activities.

(f) The comments of the Committee are traditionally adopted by consensus.

(g) The secretariat which is necessary to the work of the Committee is placed at its disposal by the Director-General of the ILO.

The Committee's report

62. The results of the work of the Committee of Experts are published in February/March on the ILO website. The final findings take the form of: [57]

– a *general report* (giving an overview of the Committee's work and drawing the attention of the Governing Body, the Conference and member States to matters of general interest or special concern);

– individual *observations* on: [58] (i) the application of ratified Conventions in member States; (ii) the fulfilment of reporting obligations; and (iii) the submission of Conventions and Recommendations to the competent national authorities;

– a series of *direct requests*: [59] further individual comments addressed to governments by the Committee of Experts;

[57] The General Report (Part I) and the individual observations (Part II) appear in a single volume, Report III (Part A), submitted to the subsequent session of the International Labour Conference.

[58] *Observations* are generally used in more serious or long-standing cases of failure to fulfil obligations (see para. 70 of the *Report of the Committee of Experts on the Application of Conventions and Recommendations*, op. cit.).

[59] *Direct requests* are available on NORMLEX. They are also listed in the Committee's report, after the individual observations for each group of Conventions, but their full texts do not appear in the report of the Committee of Experts to the Conference. They allow the Committee to be engaged in a continuing dialogue with governments often when the questions raised are primarily of a technical nature. They can also be used for the clarification of certain points when the information available does not enable a full appreciation of the extent to which the obligations are fulfilled. Direct requests are also used to examine the first reports supplied by governments on the application of Conventions (see para. 70 of the *Report of the Committee of Experts on the Application of Conventions and Recommendations*, op. cit.).

– a series of *replies received to the issues raised in a direct request which do not give rise to further comments*: [60] when a government has given a reply to a direct request and there is no need for further comment;

– *a General Survey* of national law and practice in regard to the instruments on which reports have been supplied on unratified Conventions and on Recommendations under article 19 of the Constitution. [61]

63. The report of the Committee of Experts is in the first place submitted to the Governing Body for information (at its session in March). It is then submitted to the Conference (which usually meets in June each year). [62]

B. Conference Committee on the Application of Standards

Composition and officers

64. The Committee is set up under article 7 of the Standing Orders of the Conference. It is tripartite, consisting of representatives of governments, employers and workers. [63] The Committee holds elections from among each of the three groups to the Chairperson and two Vice-Chairpersons and to the office of the Reporter. [64]

Terms of reference [65]

65. (i) The Committee has to consider:

(a) the measures taken by Members to give effect to the provisions of Conventions to which they are parties and the information furnished by Members concerning the results of inspections;

(b) the information and reports concerning Conventions and Recommendations communicated by Members in accordance with article 19 of the Constitution;

(c) the measures taken by Members in accordance with article 35 of the Constitution.

[60] *Replies received to the issues raised in a direct request which do not give rise to further comments* are registered in NORMLEX. They are also listed in the Committee's report after the observations for each group of Conventions.

[61] This forms a separate volume, Report III (Part B). The *General Survey* also covers information received under article 22 from countries which have ratified the Conventions in question. *General Surveys* allow the Committee, in addition to reviewing national law and practice in member States, to examine difficulties raised by governments as standing in the way of the application of instruments, clarify their scope and indicate possible means of overcoming obstacles to their implementation.

[62] The Office posts on the ILO website the General Report of the Committee of Experts and its observations on the application of Conventions. The entire findings of the Committee of Experts, including *direct requests*, are accessible on the ILO website (NORMLEX database).

[63] Any voting is weighted so as to yield equal strength for each group (SO, article 65, and the standing practice of the Conference).

[64] SO, article 57.

[65] SO, article 7.

(ii) The Committee has to submit a report to the Conference.

Organization of the Committee's work [66]

66. Following the independent, technical examination of documentation carried out by the Committee of Experts, the proceedings of the Conference Committee present an opportunity for representatives of governments, employers and workers to meet and review the manner in which States are discharging their obligations under and relating to Conventions and Recommendations. Governments are able to amplify information previously supplied; indicate further measures proposed; draw attention to difficulties met with in the discharge of obligations; and seek guidance as to how to overcome such difficulties.

(a) *Documents before the Committee*. The Committee has to consider Report III (Parts A and B), which is the report of the Committee of Experts. It may also receive written information from the governments on the list of cases selected for examination. It also takes into account information received by the Office since the meeting of the Committee of Experts. [67]

(b) *General discussion*. In an opening general discussion, the Committee reviews the matters covered by the General Report of the Committee of Experts. It then discusses the *General Survey* published in Report III (Part B). [68]

(c) *Consideration of individual cases*

(i) The Officers of the Committee prepare a list of observations contained in the Committee of Experts' report, in respect of which they consider it desirable to invite governments to supply information to the Committee. The list is submitted to the Committee for adoption. [69]

(ii) The governments concerned have an opportunity to submit written information to the Committee.

(iii) The Committee invites representatives of the governments concerned to attend one of its sittings to discuss the observations in question. Governments which are not members of the Committee are kept informed of its agenda and the date on which it wishes to hear statements from their representatives through the Conference *Daily Bulletin*.

[66] For detailed information, see document C.App./D.1 (Work of the Committee) reproduced in Annex 1 of the report of the Conference Committee on the Application of Standards (107th Session of the Conference, 2018).

[67] In addition, subject to the decision of the Governing Body and the Conference, the Committee may have before it a report of the Joint ILO–UNESCO Committee of Experts on the Application of the Recommendation concerning the Status of Teachers.

[68] And, as the case may be, the report of the Joint ILO–UNESCO Committee.

[69] Since 2006, an early communication to governments of a preliminary list of individual cases for possible discussion by the Committee concerning the application of ratified Conventions has been instituted. Since 2015, the preliminary list of cases has been made available 30 days before the opening of the International Labour Conference.

(iv) Following statements of government representatives, members of the Committee may put questions or make comments, and the Committee may reach conclusions on the case.

(d) *Cases of serious failure by member States to respect their reporting and other standards-related obligations:* The Committee also examines cases of serious failure to respect reporting or other standards-related obligations. The discussion of the Committee, including any explanations of difficulties that may have been provided by the governments concerned, and the conclusions adopted by the Committee under each criterion are reflected in its report.

(e) *Report of the Conference Committee*: [70] the Committee's report is submitted to the Conference and discussed in plenary, which gives delegates a further opportunity to draw attention to particular aspects of the Committee's work. The report is published in the *Record of Proceedings* of the Conference and as a separate publication.

[70] The content and structure of the Committee's report is being examined in the context of the informal tripartite consultations on the working methods of the Committee on the Application of Standards (see the summary of the discussions and decisions of the meeting held in November 2018: GB.334/INS/12(Rev.), appendix).

VIII. Role of employers' and workers' organizations

Communication of reports and information to employers' and workers' organizations

67. By virtue of the constitutional obligations on all member States, representative organizations of employers and workers have to receive copies of:

(a) information communicated to the Office concerning measures taken to submit Conventions and Recommendations to the competent national authorities;

(b) reports on the application of ratified Conventions;

(c) reports on unratified Conventions and on Recommendations.

In addition, the Office procedures in relation to these obligations endeavour to ensure that national organizations receive copies of relevant comments of the supervisory bodies and the requests for reports.

Consultation of representative organizations

68. Convention No. 144 and Recommendation No. 152 provide for tripartite consultations on:

(a) government replies to questionnaires and comments on proposed new instruments to be discussed at the Conference;

(b) proposals to be made to the competent authorities when Conventions and Recommendations are submitted to them;

(c) questions arising out of reports on ratified Conventions; [71]

(d) measures relating to unratified Conventions and Recommendations; [72]

(e) denunciation of Conventions.

Transmission of observations by employers' and workers' organizations

69. Any employers' or workers' organization, whether or not it has received copies of government reports, may at any time transmit its observations on any of the matters arising in connection with the implementation of international labour standards. The Committee of Experts and the Conference Committee have emphasized the value of such contribution as

[71] Under Recommendation No. 152, consultations should also take place on questions arising out of article 19 reports (on submission to the competent authorities and on unratified Conventions and Recommendations); and, subject to national practice, on questions of legislation to give effect to Conventions (particularly when ratified) and Recommendations.

[72] This question should be re-examined "at appropriate intervals".

a means of assisting them, in particular, in assessing the effective application of ratified Conventions.

Participation in the Conference

70. Through their presence at the International Labour Conference, and particularly in the Committee on the Application of Standards, representatives of employers' and workers' organizations may raise matters concerning the discharge of standards-related obligations.

IX. Interpretation of Conventions and Recommendations

Constitutional provisions

71. The International Court of Justice is, by virtue of article 37, paragraph 1, of the Constitution, considered to be the only body competent to give authoritative interpretations of ILO Conventions and Recommendations. It reads as follows:

> Any question or dispute relating to the interpretation of this Constitution or of any subsequent Convention concluded by the Members in pursuance of the provisions of this Constitution shall be referred for decision to the International Court of Justice.

72. Furthermore, according to article 37, paragraph 2, of the Constitution, the Governing Body can, after approval of the Conference, set up a tribunal in order to settle a dispute related to the interpretation of a Convention:

> Notwithstanding the provisions of paragraph 1 of this article the Governing Body may make and submit to the Conference for approval rules providing for the appointment of a tribunal for the expeditious determination of any dispute or question relating to the interpretation of a Convention which may be referred thereto by the Governing Body or in accordance with the terms of the Convention. Any applicable judgement or advisory opinion of the International Court of Justice shall be binding upon any tribunal established in virtue of this paragraph. Any award made by such a tribunal shall be circulated to the Members of the Organization and any observations which they may make thereon shall be brought before the Conference.

73. While no such tribunal has ever been set up, it should be noted that the possible implementation of article 37, paragraph 2, of the Constitution is part of the Governing Body discussions in the framework of the Standards Initiative. [73]

Informal opinion of the International Labour Office

74. Governments which are in doubt as to the meaning of particular provisions of an ILO Convention or Recommendation may request the Office to provide an informal opinion. The Office, always with the reservation that it has no special authority under the Constitution to interpret Conventions and Recommendations, has assisted governments when asked for an opinion. [74] Where the request is for a formal or official opinion or the issue raised is likely to be of general interest, a *Memorandum by the International Labour Office* will be published in the *Official Bulletin*, containing the Office's opinion. A simple letter of reply will normally be sent by the Office in cases where a formal or official opinion is not specifically requested.

[73] See GB.334/INS/5 and GB.332/INS/5(Rev.), as well as GB.334/INS/PV, para. 288(7)(a).

[74] In practice, the Office endeavours to assist employers' and workers' organizations similarly.

Opinions and recommendations of the supervisory bodies

75. When examining the application of international labour standards, the supervisory bodies (Committee of Experts,[75] Conference Committee on the Application of Standards, commissions of inquiry appointed under article 26 of the Constitution, committees established under article 24 of the Constitution, Committee on Freedom of Association, Fact-Finding and Conciliation Commission on Freedom of Association) may be called upon to express opinions on the scope and meaning of ILO standards. Their reports therefore contain important guidance in this respect.

[75] On the mandate of the Committee of Experts, see its *Report of the Committee of Experts on the Application of Conventions and Recommendations*, op. cit., para. 32.

X. Revision of Conventions and Recommendations

Nature of revision of Conventions

76. The formal revision (including the *"partial"* revision) of one, or sometimes several Conventions, results in most cases in the adoption of an entirely new Convention. The Conference may also undertake the *partial* revision of a Convention through the adoption of a Protocol or of provisions in a new Convention, the acceptance of which brings to an end the obligations under the corresponding provisions of an earlier Convention. [76] Certain Conventions also provide for specific procedures for the amendment of annexes. [77] Finally, without formally constituting a revision, the updating of certain technical or scientific data is envisaged in certain Conventions through a technique of reference to the most recent data published on the subject. [78]

Method and effect of revision of Conventions

77. A Convention is not regarded as revising an earlier instrument unless the intention to revise is explicitly or implicitly stated in the title, preamble or operative provisions of the later Convention.

(a) *Conventions Nos 1–26*. These contain no provisions as to the consequences of the adoption or ratification of a revising Convention. The adoption of a revising Convention by the Conference in itself therefore neither closes the earlier one to further ratifications nor involves automatic denunciation of it. [79]

(b) *Conventions Nos 27 and after*. These contain a final Article specifying that, *unless the new revising Convention provides otherwise*, the following are the consequences of the ratification and coming into force of a later revising Convention:

(1) ratification by a Member of the revising Convention will involve the automatic denunciation by it of the earlier Convention from the date on which the revising Convention comes into force;

[76] For example: following the ratification of Conventions Nos 121, 128 and 130, and where appropriate the acceptance of certain parts of those Conventions, the corresponding provisions of Convention No. 102 cease to apply; however, the term "revision" is not explicitly used in this context. The Final Articles Revision Conventions (Nos 80 and 116) are other specific examples of *partial* revisions.

[77] See Conventions Nos 83, 97, 121 and 185. The procedure provided for in Convention No. 185 differs from that of the other Conventions.

[78] See, for example, Conventions Nos 102, 121, 128 and 130, which refer to the International Standard Industrial Classification of All Economic Activities, adopted by the Economic and Social Council of the United Nations, "as at any time further amended", and Convention No. 139, which refers to "the latest information contained in the codes of practice or guides which may be established by the International Labour Office".

[79] A revising Convention may provide that ratification, under given conditions, constitutes an act of denunciation of the earlier Convention (e.g. Convention No. 138 (Article 10, para. 5), as regards Conventions Nos 5, 7, 10 and 15, and Convention No. 179 (Article 9) in relation to Convention No. 9).

(2) from the date when the new revising Convention comes into force, the earlier Convention will be closed to further ratification;

(3) the earlier Convention, once it has come into force, will remain in force as it stands for Members which have ratified it but not the later revising Convention.

(c) *Alternative provisions*. The final Articles of each Convention have to be referred to in order to determine whether the above provisions apply.

Revision of Recommendations

78. The revision or replacement (the two terms have been used synonymously) of a Recommendation, or sometimes several Recommendations, has given rise in almost all cases to the adoption of a new Recommendation. Moreover, certain Recommendations envisage specific procedures for the amendment of annexes. As Recommendations do not have the binding force of Conventions, their revision or replacement has lesser consequences. Nevertheless, a Recommendation which revises or replaces one or more earlier Recommendations replaces the earlier instrument(s). In such cases, reference should only be made to the new Recommendation.

XI. Denunciation of Conventions

Conditions for denunciation

79. Every Convention [80] contains an Article determining the conditions in which States which have ratified it may denounce it (i.e. terminate their obligations). [81] Each Convention's precise terms have to be referred to, but in general:

(a) *Conventions Nos 1–25*. Denunciation is possible *at any time* after an initial period of five or ten years (as indicated) of the Convention first coming into force;

(b) *Conventions Nos 26 and after*. Denunciation is possible after an initial period of five or (more often) ten years (as indicated) of the Convention first coming into force, but only *during an interval of one year*. Denunciation similarly becomes possible again after subsequent periods of five or ten years, as indicated.

Consultation of employers' and workers' organizations

80. (a) The Governing Body has stated as a general principle that, in any case in which the denunciation of a ratified Convention may be contemplated, it is desirable for the government, before taking a decision, fully to consult the representative organizations of employers and workers on the problems encountered and the measures to be taken to resolve them. [82]

(b) Article 5, paragraph 1(e), of Convention No. 144 requires the consultation of representatives of employers' and workers' organizations on any proposals for the denunciation of ratified Conventions. [83]

Form of communication of denunciation

81. Denunciation, according to the relevant Article in each Convention, is effected by an act communicated to the Director-General of the International Labour Office for registration. The instrument of denunciation must:

(a) clearly identify the Convention being denounced;

(b) be an original document (on paper, not a facsimile or photocopy) signed by a person with authority to engage the State (such as the Head of State, Prime Minister, Minister responsible for Foreign Affairs or Labour);

(c) clearly indicate that it constitutes a formal denunciation of the Convention concerned.

[80] Except the Final Articles Revision Conventions Nos 80 and 116.

[81] Such an Article is additional to one providing for automatic denunciation by virtue of the ratification of a revising Convention. In three cases (Conventions Nos 102, 128 and 148), denunciation is possible also in respect of separate Parts only.

[82] *Minutes of the Governing Body*, 184th Session (November 1971), pp. 95 and 210.

[83] For States which have not ratified Convention No. 144, see Para. 5 of the Tripartite Consultation (Activities of the International Labour Organisation) Recommendation, 1976 (No. 152).

Office procedures

82. (a) On becoming aware of any case in which the denunciation of a Convention is contemplated, the Office will draw the attention of the government concerned to the general principle as to consultation referred to in paragraph 70(a) above.

(b) In any case in which a government communicates the denunciation of a Convention without any indication of the reasons which have led to its decision, the Office will request the government concerned to provide such indications for the information of the Governing Body. States which have ratified Convention No. 144 are under the obligation to include information on the tripartite consultations held prior to a denunciation in the reports provided under article 22 of the Constitution.

(c) *Registration of denunciations*. Every denunciation registered by the Director-General is notified to the Secretary-General of the United Nations, reported to the Governing Body and published in the *Official Bulletin*.

Effect of denunciation

83. Denunciations take effect in accordance with the final Articles of each Convention (usually one year after they are registered by the Director-General).

XII. Special procedures

A. Representations as to the observance of ratified Conventions

Constitutional provisions

84. Articles 24 and 25 of the Constitution read as follows:

Article 24

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

Article 25

If no statement is received within a reasonable time from the government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.

Procedure for the examination of representations

85. When adopting amendments to the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the International Labour Organization in November 2004, the Governing Body decided that the Standing Orders should be preceded by an Introductory note summarizing the various stages of the procedure and indicating the options available to the Governing Body at each stage: [84]

(a) the Office acknowledges receipt of communications submitted under article 24 of the Constitution and informs the government concerned;

(b) the matter is brought before the Officers of the Governing Body;

(c) the Officers report to the Governing Body on the receivability of the representation; the criteria for receivability, as contained in article 2 of the Standing Orders, provide that the representation must:

(i) be communicated to the ILO in writing;

(ii) come from an industrial association of employers or workers;

(iii) make specific reference to article 24 of the Constitution;

[84] Document GB.291/9(Rev.) contains the text of the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the International Labour Organization and the Introductory note referred to above. The Standing Orders and the Introductory note are available on the ILO website. Offprints are also available.

(iv) concern a Member of the ILO; [85]

(v) refer to a Convention to which the Member in question is a party;

(vi) indicate in what respect it is alleged that that Member has failed to secure the effective observance within its jurisdiction of that Convention;

(d) the Governing Body reaches a decision on the receivability without discussing the substance of the matter;

(e) if the representation is receivable, the Governing Body either sets up a tripartite committee to examine the matter according to rules laid down in the Standing Orders; or, if the matter relates to a Convention dealing with trade union rights, it may refer it to the Committee on Freedom of Association; if the representation relates to matters and allegations similar to those which have been the subject of a previous representation, the Governing Body may decide to postpone the appointment of the committee to examine the new representation until the Committee of Experts has been able to examine the follow-up to the recommendations that were adopted by the Governing Body in relation to the previous representation;

(f) the Committee reports to the Governing Body, describing the steps taken to examine the representation and giving its conclusions and recommendations for decisions to be taken by the Governing Body;

(g) the government concerned is invited to be represented in the Governing Body consideration of the matter;

(h) the Governing Body decides whether to publish the representation and any government statement in reply and notifies the complainant organization and government concerned.

86. In November 2018, the Governing Body approved a number of measures concerning the operation of the representations procedure under article 24 of the Constitution, [86] including arrangements to allow for optional voluntary conciliation or other measures at the national level, leading to a temporary suspension for a maximum period of six months of the examination of the merits of a representation by the ad hoc committee. The suspension would be subject to the agreement of the complainant as expressed in the complaint form, [87] and the agreement of the government. These arrangements would be reviewed by the Governing Body after a two-year trial period.

[85] Or a former Member which remains bound by the Convention in question.

[86] GB.334/INS/PV, para. 288(1).

[87] See Appendix IV.

B. Complaints as to the observance of ratified Conventions

Main constitutional provisions

87. Article 26 of the Constitution reads as follows:

> 1. Any of the Members shall have the right to file a complaint with the International Labour Office if it is not satisfied that any other Member is securing the effective observance of any Convention which both have ratified in accordance with the foregoing articles.
>
> 2. The Governing Body may, if it thinks fit, before referring such a complaint to a Commission of Inquiry, as hereinafter provided for, communicate with the government in question in the manner described in article 24.
>
> 3. If the Governing Body does not think it necessary to communicate the complaint to the government in question, or if, when it has made such communication, no statement in reply has been received within a reasonable time which the Governing Body considers to be satisfactory, the Governing Body may appoint a Commission of Inquiry to consider the complaint and to report thereon.
>
> 4. The Governing Body may adopt the same procedure either of its own motion or on receipt of a complaint from a delegate to the Conference.
>
> 5. When any matter arising out of article 25 or 26 is being considered by the Governing Body, the government in question shall, if not already represented thereon, be entitled to send a representative to take part in the proceedings of the Governing Body while the matter is under consideration. Adequate notice of the date on which the matter will be considered shall be given to the government in question.

Other constitutional provisions

88. The following articles of the Constitution deal with other aspects of the complaints procedure:

Article 27: Members' cooperation with a Commission of Inquiry;

Article 28: report of the Commission of Inquiry, embodying its findings and recommendations;

Article 29: communication and publication of the report of a Commission of Inquiry, indication of governments concerned whether they accept its recommendations, and possible reference to the International Court of Justice (ICJ);

Article 31: decision of the ICJ to be final;

Article 32: power of the ICJ over the findings or recommendations of a Commission of Inquiry;

Article 33: Governing Body recommendation as to action by the Conference in the event of failure to carry out recommendations of the Commission of Inquiry or the ICJ;

Article 34: verification of compliance with recommendations of the Commission of Inquiry or the ICJ and subsequent Governing Body recommendation as to discontinuance of action by the Conference.

Commission of Inquiry procedure

89. At present, there are no standing orders for the procedure of Commissions of Inquiry: the Governing Body has in each case left the matter to the Commission of Inquiry itself, subject only to the Constitution's and its own general guidance. The reports of the respective Commissions of Inquiry describe the procedure followed for the examination of complaints, including the procedure for receiving communications from the parties and other interested persons or organizations, and holding hearings. [88]

90. However, it should be noted that, in the framework of the Standards Initiative, consideration is being given to the possible codification of the article 26 procedure. [89]

C. Complaints as to the infringement of freedom of association

1. Governing Body Committee on Freedom of Association [90]

Composition and terms of reference

91. The Committee is a tripartite organ of the Governing Body, comprising nine of its members and nine deputy members sitting in a personal capacity, plus an independent Chairperson. Its sittings are private, its working documents confidential and, in practice, its decisions are taken by consensus. The Committee examines complaints of infringement of freedom of association and collective bargaining principles and submits its conclusions and recommendations to the Governing Body. Complaints may be entertained regardless of whether the country concerned has ratified any of the Conventions in the field of freedom of association. [91]

Receivability of complaints

92. (a) Complaints must be in writing, signed and supported by proof of allegations relating to specific infringements of freedom of association and collective bargaining principles.

(b) Complaints must come from organizations of employers or workers [92] or from governments. An organization may be:

[88] See, for example, *Official Bulletin*, Vol. LXXIV (1991), Series B, Supplements 2 and 3.

[89] See GB.334/INS/5 and GB.332/INS/5(Rev.), as well as GB.334/INS/PV.

[90] The procedures of the Committee on Freedom of Association – in their most recent version approved by the Governing Body at its 306th Session (2009) – are set out in Annex II of the Compendium of rules applicable to the Governing Body of the ILO ("Special procedures for the examination in ILO of complaints alleging violations of freedom of association"). These procedures are also published as Annex I to the Compilation of decisions of the Committee on Freedom of Association. Furthermore, the Committee regularly adopts decisions concerning its working methods and reports to the Governing Body.

[91] This is because of the obligation on all member States, by virtue of their adherence to the ILO Constitution, to recognize the principle of freedom of association.

[92] The Committee itself decides whether a complainant may be deemed an organization for this purpose. The Office is authorized to request further information from a complainant organization in order to ascertain its precise nature.

(i) a national organization directly interested in the matter;

(ii) an international organization of employers or workers which has consultative status with the ILO; [93]

(iii) another international organization of employers or workers, where the allegations relate to matters directly affecting affiliated organizations.

93. The Committee has a full margin of appreciation to decide on the receivability of complaints regarding the applicant. In fact, according to the special procedures for the examination of complaints alleging violations of freedom of association, the Committee has full freedom to decide whether an organization may be deemed to be an employers' or workers' organization within the meaning of the ILO Constitution, and it does not consider itself bound by any national definition of the term. The fact that a trade union has not deposited its by-laws, as may be required by national laws, is not sufficient to make its complaint irreceivable since the principles of freedom of association provide precisely that the workers shall be able, without previous authorization, to establish organizations of their own choosing. Finally, the fact that an organization has not been officially recognized does not justify the rejection of allegations when it is clear from the complaints that this organization has at least a de facto existence. [94]

Organization of the Committee's work

94. (a) The Committee meets three times a year.

(b) The Office may at any time ask a complainant to specify what infringements are complained of, where a complaint is not sufficiently detailed.

(c) The Office informs complainants that they should supply any supplementary information intended to substantiate their complaints within one month. [95]

(d) The allegations are transmitted by the Office to the government concerned for reply within a given period.

(e) In cases concerning enterprises, the Office requests governments to seek information from the representative employers' organization concerned.

(f) The Committee decides whether to examine the complaint and reach a conclusion or ask the government concerned for additional information.

(g) The Committee may invite the Governing Body to draw the attention of the government concerned to the Committee's recommendations, which may include requests to take remedial measures and to keep it informed of developments.

(h) The Committee issues "definitive" reports when it feels that the matters do not call for further examination and are effectively closed, "interim" reports where it requires

[93] At the time of printing, the International Organisation of Employers; the International Trade Union Confederation; the Organization of African Trade Union Unity; and the World Federation of Trade Unions.

[94] Special procedures for the examination in the International Labour Organization of complaints alleging violations of freedom of association.

[95] Only new evidence which could not have been adduced within that month will subsequently be receivable.

further information from the parties to the complaint and "follow-up" reports where it requests to be kept informed of developments. Follow-up cases are subsequently "closed" when the matters have been resolved or the Committee considers that they do not call for further examination.

(i) The Committee may also recommend referral to the Fact-Finding and Conciliation Commission.

(j) The Committee's Report is published in the *Official Bulletin*.

(k) The Committee may invite its Chairperson to hold consultations with a governmental delegation, to draw their attention to the seriousness of some problems and to discuss the various means that would allow their resolution.

(l) If a country has ratified the relevant Conventions on freedom of association, the Committee can draw the legislative aspects of the case to the attention of the Committee of Experts on the Application of Conventions and Recommendations.

(m) In the course of the procedure, it is possible to undertake various missions (direct contacts, technical assistance, etc.) with the government's consent.

(n) The Governing Body has instructed the Committee on Freedom of Association to examine representations referred to it according to the procedures set out in the Standing Orders for the examination of article 24 representations, to ensure that representations referred to it be examined according to the modalities set out in the Standing Orders. [96]

2. *Fact-Finding and Conciliation Commission on Freedom of Association*

Composition, terms of reference and procedure

95. The Commission is composed of nine independent persons appointed by the Governing Body, who normally work in panels of three. It examines complaints of infringements of freedom of association referred to it by the Governing Body, including on the request of a government against which allegations are made. [97] The Commission's procedure is comparable to that of a Commission of Inquiry, and its reports are published.

[96] See GB.334/INS/PV.

[97] These may relate to: (i) Members which have ratified the Conventions on freedom of association; (ii) Members which have not ratified the relevant Conventions and which consent to the referral; (iii) non-members of the ILO which are member States of the United Nations, where the Economic and Social Council of the UN has transmitted the matter to the ILO and the State has consented to the referral.

XIII. Assistance available from the International Labour Office in relation to international labour standards

International labour standards and technical assistance

96. The International Labour Office undertakes various kinds of activities designed to assist governments and employers' and workers' organizations in fulfilling their obligations and roles in the standard-setting and supervisory system.

Informal advisory services

97. The International Labour Standards Department of the International Labour Office in Geneva works together with the regional and subregional offices, and especially the specialists in international labour standards in those offices, in the field, to give all kinds of training, explanations, advice and assistance on the matters dealt with in this Handbook. These services are offered both in response to specific requests received from governments or employers' or workers' organizations and through routine advisory missions and informal discussions initiated by the Office. Matters which may be dealt with include questionnaires on items on the agenda of the Conference for possible new standards; comments of the supervisory bodies and measures they might call for; new legislation; government reports to be drafted; documents prepared for submission to the competent authorities; arrangements for consultations between governments and employers' and workers' organizations in relation to labour standards and ILO activities; ways in which employers' and workers' organizations might fully participate in standard-setting and supervisory procedures.

Direct contacts

98. Direct contacts missions are undertaken in support of the procedures of the supervisory bodies (Committee of Experts, Committee on the Application of Standards, Committee on Freedom of Association and ad hoc committees established under article 24 of the Constitution).

99. They consist of sending a representative of the ILO Director-General to a country involved in a supervisory procedure with a view to seeking a solution to the difficulties encountered in relation to the application of ratified Conventions or compliance with the recommendations of the supervisory bodies. When the issues raised concern questions of practice, the direct contacts mission focuses in particular on determining the situation in practice. Direct contacts have also been used on many occasions to provide countries with technical assistance in the form of advice on the type of measures to be taken and assistance in the drafting of amendments to the national legislation, as well as in the establishment of procedures to facilitate compliance with the obligations deriving from the ILO's standards-related activities.

100. The representative of the Director-General may be an ILO official or an independent person appointed by the Director-General (magistrates of supreme courts, professors, a member of the Committee of Experts, etc.) and her or his mission consists of ascertaining the facts, as well as examining on the spot the possibilities for resolving the problems in question.

101. The representative of the Director-General and the composition of the mission have to give all the necessary guarantees of objectivity and impartiality and, following the completion of the mission, a report has to be submitted to the corresponding supervisory body.

102. Direct contacts can only be established at the invitation of the government concerned, or at least with its consent. The government may request them directly, or they may be proposed by the supervisory bodies. The representative of the Director-General must be able to interview freely all the parties concerned, so as to be fully and objectively informed of all the aspects of the case or the situation in question. The principal counterpart of the mission is normally the Ministry of Labour and the confederations of workers and employers, although with a certain regularity, and depending on the nature of the problems raised, the mission may interview the legislative authorities, the judicial authorities or even the Head of State. The national organizations of employers and workers are also associated with this process through interviews with the mission, as well as through tripartite meetings.

103. Direct contacts are an effective means of dialogue, negotiation and establishing the facts. The objective is to create a climate of confidence so as to be able to find a rapid and positive solution to the problems.

Appendix I

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MODEL INSTRUMENT

CONCERNING THE RATIFICATION OF AN ILO CONVENTION [1]

Whereas the …….. **(title of the Convention)** ……was adopted by the International Labour Conference at its ……..Session in **(place)** ……..on **(date)** …… ……

The Government of ……., having considered the aforesaid Convention, hereby confirm and ratify the same and undertake, in accordance with Article 19, paragraph 5 (d) of the Constitution of the International Labour Organisation, faithfully to perform and carry out all the stipulations therein contained.

(signed) _____
President of the Republic

_____
Minister of Foreign Affairs

---

[1] This model may call for adaptation to take account particularly of:

(a) any provisions in the Convention concerned requiring specified indications to be included in the ratification;

(b) national provisions and practice concerning ratification on international instruments.

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Appendix II

Regular reporting cycle under article 22 of the ILO Consititution

2019	2020	2021	2022	2023	2024	2025
Fundamental and governance Conventions (three-year reporting cycle)						
C.87, C.98 (countries A–F)	C.87, C.98 (countries G–N)	C.87, C.98 (countries O–Z)	C.87, C.98 (countries A–F)	C.87, C.98 (countries G–N)	C.87, C.98 (countries O–Z)	C.87, C.98 (countries A–F)
C.100, C.111 (countries G–N)	C.100, C.111 (countries O–Z)	C.100, C.111 (countries A–F)	C.100, C.111 (countries G–N)	C.100, C.111 (countries O–Z)	C.100, C.111 (countries A–F)	C.100, C.111 (countries G–N)
C.29, C.105, C.138, C.182 (countries O–Z)	C.29, C.105, C.138, C.182 (countries A–F)	C.29, C.105, C.138, C.182 (countries G–N)	C.29, C.105, C.138, C.182 (countries O–Z)	C.29, C.105, C.138, C.182 (countries A–F)	C.29, C.105, C.138, C.182 (countries G–N)	C.29, C.105, C.138, C.182 (countries O–Z)
C.144 (countries A–F)	C.144 (countries G–N)	C.144 (countries O–Z)	C.144 (countries A–F)	C.144 (countries G–N)	C.144 (countries O–Z)	C.144 (countries A–F)
C.81, C.129 (countries O–Z)	C.81, C.129 (countries G–N)	C.81, C.129 (countries A–F)	C.81, C.129 (countries O–Z)	C.81, C.129 (countries G–N)	C.81, C.129 (countries A–F)	C.81, C.129 (countries O–Z)
C122 (countries G–N)	C.122 (countries A–F)	C.122 (countries O–Z)	C.122 (countries G–N)	C.122 (countries A–F)	C.122 (countries O–Z)	C122 (countries G–N)
Technical Conventions (six-year reporting cycle)						
Freedom of association and collective bargaining (A-B)	Freedom of association and collective bargaining (G-K)	Freedom of association and collective bargaining (O-S)	Freedom of association and collective bargaining (C-F)	Freedom of association and collective bargaining (L–N)	Freedom of association and collective bargaining (T-Z)	Freedom of association and collective bargaining (A-B)
Industrial relations (A-B)	Industrial relations (G-K)	Industrial relations (O-S)	Industrial relations (C-F)	Industrial relations (L-N)	Industrial relations (T-Z)	Industrial relations (A-B)
Protection of children (O–S)	Protection of children (A–B)	Protection of children (G–K)	Protection of children (T–Z)	Protection of children (C–F)	Protection of children (L–N)	Protection of children (O–S)
Workers with family responsibilities (G–K)	Workers with family responsibilities (O–S)	Workers with family responsibilities (A–B)	Workers with family responsibilities (L–N)	Workers with family responsibilities (T–Z)	Workers with family responsibilities (C–F)	Workers with family responsibilities (G–K)
Migrant workers (G–K)	Migrant workers (O–S)	Migrant workers (A–B)	Migrant workers (L–N)	Migrant workers (T–Z)	Migrant workers (C–F)	Migrant workers (G–K)
Indigenous and tribal peoples (G–K)	Indigenous and tribal peoples (O–S)	Indigenous and tribal peoples (A–B)	Indigenous and tribal peoples (L–N)	Indigenous and tribal peoples (T–Z)	Indigenous and tribal peoples (C–F)	Indigenous and tribal peoples (G–K)
Other specific categories of workers (G–K)	Other specific categories of workers (O–S)	Other specific categories of workers (A–B)	Other specific categories of workers (L–N)	Other specific categories of workers (T–Z)	Other specific categories of workers (C–F)	Other specific categories of workers (G–K)
Working time (T–Z)	Working time (L–N)	Working time (C–F)	Working time (O–S)	Working time (G–K)	Working time (A–B)	Working time (T–Z)
Wages (T–Z)	Wages (L–N)	Wages (C–F)	Wages (O–S)	Wages (G–K)	Wages (A–B)	Wages (T–Z)
OSH (T–Z)	OSH (L–N)	OSH (C–F)	OSH (O–S)	OSH (G–K)	OSH (A–B)	OSH (T–Z)
Maternity protection (T–Z)	Maternity protection (L–N)	Maternity protection (C–F)	Maternity protection (O–S)	Maternity protection (G–K)	Maternity protection (A–B)	Maternity protection (T–Z)
Social security (T–Z)	Social security (L–N)	Social security (C–F)	Social security (O–S)	Social security (G–K)	Social security (A–B)	Social security (T–Z)

2019	2020	2021	2022	2023	2024	2025
Labour administration and inspection (T–Z)	Labour administration and inspection (L–N)	Labour administration and inspection (C–F)	Labour administration and inspection (O–S)	Labour administration and inspection (G–K)	Labour administration and inspection (A–B)	Labour administration and inspection (T–Z)
Skills (L–N)	Skills (C–F)	Skills (T–Z)	Skills (G–K)	Skills (A–B)	Skills (O–S)	Skills (L–N)
Employment policy (L–N)	Employment policy (C–F)	Employment policy (T–Z)	Employment policy (G–K)	Employment policy (A–B)	Employment policy (O–S)	Employment policy (L–N)
Employment security (L–N)	Employment security (C–F)	Employment security (T–Z)	Employment security (G–K)	Employment security (A–B)	Employment security (O–S)	Employment security (L–N)
Social policy (L–N)	Social policy (C–F)	Social policy (T–Z)	Social policy (G–K)	Social policy (A–B)	Social policy (O–S)	Social policy (L–N)
Seafarers Fishers Dockworkers (C–F)	Seafarers Fishers Dockworkers (T–Z)	Seafarers Fishers Dockworkers (L–N)	Seafarers Fishers Dockworkers (A–B)	Seafarers Fishers Dockworkers (O–S)	Seafarers Fishers Dockworkers (G–K)	Seafarers Fishers Dockworkers (C–F)
Total number of reports requested						
1 270	**1 384**	**1 434**	**1 445**	**1 356**	**1 368**	**1 270**

Appendix III

Simplified reports to be sent under article 22 of the ILO Constitution for [name of country]

The present report form has been approved by the Governing Body of the International Labour Office, in accordance with article 22 of the ILO Constitution, which reads as follows: "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."

Every year, based on this report form, the Office sends to each member State a single request for all the simplified reports which are due that year. In addition, the Office communicates to each member State the list of detailed reports which may also be due the year in question.

(a) Please provide information on any new legislative or other measures affecting the application of ratified Conventions; where this has not already been done, please forward copies of any relevant texts to the International Labour Office with this report.

(b) Please reply to the comments which have been addressed to your government by the Committee of Experts on the Application of Conventions and Recommendations or by the Conference Committee on the Application of Standards, as contained in the annex to this form. [1]

(c) Insofar as it has not already been supplied in reply to question (b), please provide information on the practical application of the Conventions concerned (for example, copies or extracts from official documents including inspection reports, studies and inquiries, statistics); please also state whether courts of law or other tribunals have given decisions involving questions of principle relating to the application of the Conventions concerned. If so, please supply the text of these decisions.

(d) Please indicate the representative organizations of employers and workers to which copies of the present report have been communicated in accordance with article 23, paragraph 2, of the Constitution of the International Labour Organization. [2] If copies of the report have not been communicated to representative organizations of employers and/or workers, or if they have been communicated to bodies other than such organizations, please supply information on any particular circumstances existing in your country which explain the procedure followed.

(e) Please indicate whether you have received from the organizations of employers or workers concerned any observations, either of a general kind or in connection with the present or the previous report, regarding the practical application of the provisions of the Conventions concerned. If so, please communicate a copy of the observations received, together with any comments that you consider useful.

[1] The annex is established on the basis of the regular reporting cycle and any additional requests for reports addressed to your country by the supervisory bodies for the year in question. It also includes cases in which your country has failed to submit the simplified reports requested the previous year. It does not cover any simplified report due under the Maritime Labour Convention, 2006 (MLC, 2006), as amended, for which a specific form will be sent to your country, as appropriate.

[2] Article 23, paragraph 2, of the Constitution reads as follows: "Each Member shall communicate to the representative organisations recognised for the purpose of article 3 copies of the information and reports communicated to the Director-General in pursuance of articles 19 and 22."

Appendix IV

Model electronic form for the submission of a representation under article 24 of the ILO Constitution

Information and further instructions on the article 24 procedure and its implications, as well as on other available ILO supervisory mechanisms, may be found on the web page of NORMES. For further support you may contact: for employers' organizations – ACT/EMP (ACTEMP@ilo.org) and for workers' organizations – ACTRAV (ACTRAV@ilo.org).

(Please provide information on why you are submitting your allegations through an article 24 representation procedure, as opposed to other procedures

Receivability

1. Please indicate the name of the industrial association of employers or workers making the representation:

(Please provide information on the organization concerned, its statutes, contact details, etc.)

2. Please indicate the Member of the Organization against which the representation is made:

3. Please indicate the ratified Convention(s) of which non-observance is alleged:

(Please also specify the ratification date(s).)

4. Please use the [expandable] space below to inform the ILO Director-General in what respect it is alleged that the Member against which the representation is made has failed to secure the effective observance within its jurisdiction of the Convention(s) indicated above, making specific reference to article 24 of the ILO Constitution. Please provide any relevant information in support of your allegations:

Other information

5. Please indicate whether the issue has already been examined by, or submitted to, the national competent authorities (including national courts, social dialogue mechanisms or mechanisms to resolve disputes before the ILO that may exist in the country) and provide any information on the state and outcome of the procedures engaged. Exhaustion of national procedures is not a prerequisite for the submission of a representation. However, in certain cases, the procedure to examine the representation may allow for conciliation or other measures at the national level – see the following question:

6. Please indicate if: (i) your organization would wish to explore the possibility of seeking conciliation or other measures at the national level for a maximum period of six months from the date of the ad hoc tripartite committee's decision to suspend the examination of the merits of the representation in order to address the allegations (subject to the agreement of the government; with the possibility for your organization to request the procedure to resume at an earlier moment should the conciliation/other measures fail; and with the possibility for the tripartite committee to decide on a limited further extension of the suspension should the initial conciliation or other measures need a further period of time to successfully resolve the issues raised in the representation); (ii) if so, please indicate if you would wish to have recourse to the intervention or technical assistance of the Office or the secretariats of the Employers' or Workers' groups in this regard.

7. Please indicate whether, to your knowledge, the allegations have already been examined by or submitted to ILO supervisory bodies and, if so, in what respect any currently submitted allegations are different from those already examined or submitted.

Document No. 60

ILO, Rules of the Game: An introduction to the standards-related work of the International Labour Organization, 2019

International Labour Organization

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RULES OF THE GAME

An introduction to the standards-related work of the International Labour Organization

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CONTENTS

FOREWORD

The Rules of the Game: An introduction to the standards-related work of the ILO provides a brief presentation of the ILO's standards policy with a view to facilitating understanding and ownership by the ILO's traditional constituents, as well as the United Nations system, non-specialists and the broader public. In its first section, the publication recalls the underlying reasons for and utility of the ILO's standards-related action at both the national level and in the current context of globalization. The content of international labour standards is then presented thematically in the second section. The third section consists of a description of the supervisory mechanisms of the application of international labour standards by ILO member States. The updating of this reference work, which was first published in 2005 and the most recent edition of which is dated 2014, bears witness to the dynamic nature of the ILO's standards policy. The new 2019 edition, which coincides with the ILO's centenary, describes recent developments, including the new instruments adopted, the launch of the Standards Centenary Initiative, which is intended to strengthen the supervisory system, and the establishment of the Standards Review Mechanism. It also places in perspective the essential contribution of international labour standards to the 2030 Sustainable Development Agenda adopted by the Member States of the United Nations in 2015, and the more general reflection on the Future of Work. This edition, prepared by Eric Gravel, of the International Labour Standards Department, contributes to promoting the Organization's standards-related action and disseminating more broadly information on its standards-related mandate.

Corinne Vargha
Director, International Labour Standards Department,
ILO, Geneva

Building a global economy with social justice
What are international labour standards?
How are international labour standards created?
How are international labour standards used?

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INTERNATIONAL LABOUR STANDARDS: RULES OF THE GAME FOR A GLOBAL ECONOMY

> The ILO's mandate to strive for a better future for all in the world of work requires it […] to understand and anticipate the transformational drivers of change which are already in operation; and to be ready to respond rapidly to events and challenges which cannot reasonably be predicted. […] it seems inconceivable that the ILO's quest for social justice could be carried out satisfactorily if the Organization did not continue to reach out to the most vulnerable. […] the ILO […] will rightly be judged by what we do for the weakest and most disadvantaged, for those in poverty, without work, without opportunity, prospects or hope, for those suffering denial of fundamental rights and freedoms.[1]

Guy Ryder, Director-General of the ILO, 2016

Since 1919, the International Labour Organization has established and developed a system of international labour standards aimed at promoting opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and dignity. In today's globalized economy, international labour standards are an essential component of the international framework for ensuring that the growth of the global economy provides benefits for all.

BUILDING A GLOBAL ECONOMY WITH SOCIAL JUSTICE

The aspiration for social justice, through which every working man and woman can claim freely and on the basis of equality of opportunity their fair share of the wealth that they have helped to generate, is as great today as it was when the ILO was created in 1919. As the ILO celebrates its 100th anniversary in 2019, the importance of achieving social justice is ever more pressing, with the rise in inequality and exclusion, which is a threat to social cohesion, economic growth and human progress. With climate change, demographic changes, technological development and, more generally, globalization, we are witnessing a world of work that is changing at an unprecedented pace and scale. How can these challenges be addressed to offer possibilities for the achievement of social justice in an ever more complex world of work?

Towards a fair globalization

The most salient characteristic of the global economy over recent years has probably been globalization. New technology has meant that persons, goods and capital are moving ever more rapidly between countries, giving rise to an interdependent global economic network that is affecting almost everyone on the planet. Globalization today means the internationalization of production, finance, trade, and also migration.

The issue of whether contemporary globalization is a source of prosperity or is aggravating inequality and injustice is still hotly debated. The ILO has always occupied a prominent place in this debate in view of its mission to promote a fairer and more equitable globalization. The ILO Declaration on Social Justice for a Fair Globalization (see section 3 below), adopted by governments, workers and employers in June 2008, is designed to strengthen the ILO's capacity to promote the Decent Work Agenda and to forge an effective response to the increasingly significant challenges of globalization. The Decent Work Agenda, which is based on four pillars (employment promotion, social protection, fundamental rights at work and social dialogue), covers many of the challenges that the Organization was already facing when it was first created, and is intended to allow everyone to obtain decent work through the promotion of social dialogue, social protection and employment creation, as well as respect for international labour standards.

Globalization has certainly caused upheaval in global production structures, with important effects on enterprises and employment. Global supply chains, which account for one-in-five jobs throughout the world, show the growing diversification of production. While they have created jobs and opened up prospects for economic growth, employment relations and the pace of production may have had in certain cases negative effects on conditions of work. For example, following the fires in factories in Pakistan and Bangladesh in 2012 and the collapse of the Rana Plaza building in 2013, which cost the lives of over 1500 persons, voices were once again raised, particularly in light of the local failings of surveillance and good governance, calling for action at the global level. What is at stake for the actors in the world of work is to improve the governance of supply chains and ensure respect for international labour standards, and particularly for fundamental rights. It was in this context that the 105th Session of the International Labour Conference adopted a resolution concerning "decent work in global supply chains".

Another symbolic aspect of the contemporary economy lies in the financialization of trade, with emphasis being placed on financial return to the detriment of real investment. In the absence of appropriate regulation, such financialization has the effect of increasing the volatility and vulnerability of the economy and the labour market through the focus on short-term profit and has harmful effects on redistribution, with consequences for employment creation, productivity and enterprise sustainability. The reasons for the financial and economic crisis of 2008, and its devastating effects on the real economy, are known, and include in particular shortcomings in the governance and regulation of financial markets. But it is still uncertain whether these lessons have really been heeded.

Vulnerability in the world of work

Despite its undeniable benefits, globalization has clearly not resulted in a new era of prosperity for all. Some progress has been made in terms of development and the recognition of rights: the reduction of extreme poverty, the increased presence of women in the labour market, the development of social protection systems, the creation of sustainable jobs in the private sector, etc. But today's globalized economy has also resulted in major social upheavals, including high unemployment in certain parts of the world, the delocalization of workers and enterprises, and financial instability. The current situation on the global employment market remains particularly fragile.

Despite several recessions, including the 2008 global financial and economic crisis, the total number of jobs worldwide in 2016 was 3.2 billion (or almost one billion more than in 1990), emphasizing the positive trend of job creation. But unemployment rates remained high: in 2017, there were around 198 million persons actively seeking employment throughout the world, three quarters of whom lived in emerging countries. The vulnerability of employment has also increased (nearly 1.4 billion workers were engaged in vulnerable jobs in 2017, affecting three in four workers in developing countries), as has income inequality, which has increased dramatically in most regions of the world.[2]

The deepening of inequality seems to be becoming one of the principal characteristics of the contemporary world. The distribution of wages at the individual level has also become more unequal, with the gap growing between the highest 10 per cent of the wage scale and the lowest 10 per cent. In practice, with the exception of Latin America, all the other regions have experienced a widening of income inequality, accompanied by a decline in the proportion of income from labour. Inequalities not only lead to a fall in productivity, but also give rise to poverty, social instability and even conflict. It was precisely for this reason that the international community recognized the continued need to establish fundamental rules of the game in order to ensure that globalization would give everyone the same opportunity to achieve prosperity.

The Future of Work at stake

Since the 1980s, a series of global changes have profoundly transformed employment and work: the accelerated globalization of trade, technological change, the rise in the activity rate of women, the fragmentation of value chains and subcontracting, changes in demand, individual aspirations, the skills of the active population, etc. But today, with climate change, demographic growth and technological transformation, new challenges have emerged for everyone, and particularly for the world of work, including: the diversification of types of employment, the development of the digital economy, and particularly platforms, a new relationship with the meaning of work, and the reconciliation of work and personal life.

One of the most symbolic controversies relating to the future of work lies in the issue of whether technological progress will result in the destruction or creation of jobs. The ILO is well versed in this debate, which re-emerged throughout the XXth century in various forms, but which is taking on a new dimension in the era of robotization and artificial intelligence. Over and above the pessimistic and optimistic scenarios, the real challenge to which technicological progress gives rise is to identify how, in this transitional context, assistance can be provided to enterprises and workers to help them adapt to new jobs (both physically and in terms of skills) as this will likely be an ongoing and dynamic process throughout a person's professional life.

To understand and offer an effective response to these new challenges, the ILO launched a "Future of Work Initiative" and in August 2017 set up the Global Commission on the Future of Work. Six thematic clusters focus on the main issues that need to be considered if work tomorrow is to provide security, equality and prosperity: the role of work for individuals and society; the pervasive inequality of women in the world of work at the global level; technology for social, environmental and economic development; skills development over the life cycle; new models of inclusive growth; and the future governance of work. The Global Commision delivered its report in January 2019.

The energy transition as an opportunity?

Action to combat climate change is now high on the international agenda, with the long-term objective of the 2015 Paris Agreement to contain the rise in the global temperature below 2°C in relation to pre-industrial levels. The challenge for the ILO is to respond to the repercussions on the world of work, where the negative effects are starting to make themselves felt: the disturbance of trade, the destruction of workplaces and its impact on the means of subsistence of individuals. A total of 1.2 billion jobs currently depend directly on the effective management and sustainability of a healthy environment.[3] The potential impact of climate change on enterprises and workers, labour markets, income, social protection and poverty mean that attenuation of climate change and adaptation are a major element of the ILO's mandate and action. The transition to a green economy will inevitably result in job losses in certain sectors, but these losses will be more than compensated by new job opportunities,

on condition that policies are adopted that are conducive to decent work and the redeployment of workers.

The ever crucial role of international labour standards

It is important to recall, in order to place the current challenges in perspective, that in 1919 the signatory nations to the Treaty of Versailles created the International Labour Organization (ILO) in recognition of the fact that "conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled." To address this problem, the newly founded Organization established a system of international labour standards – international Conventions and Recommendations drawn up by representatives of governments, employers and workers from around the world – covering all matters related to work. What the ILO's founders recognized in 1919 was that the global economy needed clear rules in order to ensure that economic progress would go hand in hand with social justice, prosperity and peace for all. This principle has not lost any of its relevance: in the future, even more than today, labour standards will be a source of social cohesion and economic stability in an era of great changes affecting work.

International labour standards were also developed to provide a global system of instruments on labour and social policy, backed up by a system of supervision to address all the types of problems arising in their application at the national level. They are the legal component of the ILO's strategy for governing globalization, promoting sustainable development, eradicating poverty and ensuring that everyone can work in dignity and safety. The Declaration on Social Justice for a Fair Globalization emphasizes that, in order to achieve the ILO's objectives in the context of globalization, the Organization must "promote the ILO's standard-setting policy as a cornerstone of ILO activities by enhancing its relevance in the world of work, and ensure the role of standards as a useful means of achieving the constitutional objectives of the Organization".

The challenges of globalization have made international labour standards more relevant than ever. What benefits do they provide today?

A path to full and productive employment and decent work for all: The 2030 goals

International labour standards are first and foremost about the development of people as human beings. In the Declaration of Philadelphia (1944), the international community recognized that "labour is not a commodity". Labour is not an inanimate product, like an apple or a television set, that can be negotiated for the highest profit or the lowest price. Work is part of everyone's daily life and is crucial to a person's dignity, well-being and development as a human being. Economic development should include the creation of jobs and working conditions in which people can work in freedom, safety and dignity. In short, economic development is not undertaken for its own sake, but to improve the lives of human beings. International labour standards are there to ensure that it remains focused on improving the life and dignity of men and women.

Decent work resumes the aspirations of humans in relation to work. It brings together access to productive and suitably remunerated work, safety at the workplace and social protection for families, better prospects for personal development and social integration, freedom for individuals to set out their claims, to organize and to participate in decisions that affect their lives, and equality of opportunity and treatment for all men and women.

Decent work is not merely an objective, it is a means of achieving the specific targets of the new international programme of sustainable development. At the United Nations General Assembly in September 2015, decent work and the four pillars of the Decent Work Agenda – employment creation, social protection, rights at work and social dialogue – became the central elements of the new Sustainable Development Agenda 2030. Goal 8 of the 2030 Agenda calls for the promotion of sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all. Moreover, the principal elements of decent work are broadly incorporated into the targets of a large number of the 16 Goals of the United Nations new vision of development.

An international legal framework for fair and stable globalization

Achieving the goal of decent work in the globalized economy requires action at the international level. The world community is responding to this challenge in part by developing international legal instruments on trade, finance, the environment, human rights and labour. The ILO contributes to this legal framework by elaborating and promoting international labour standards aimed at making sure that economic growth and development go hand-in-hand with the creation of decent work. The ILO's unique tripartite structure ensures that these standards are backed by governments, employers and workers alike. International labour standards therefore lay down the basic minimum social standards agreed upon by all the players in the global economy.

A level playing field for all

An international legal framework on social standards ensures a level playing field in the global economy. It helps governments and employers to avoid the temptation of lowering labour standards in the hope that this could give them a greater comparative advantage in international trade. In the long run, such practices do not benefit anyone. Lowering labour standards can encourage the spread of low-wage, low-skill and high-turnover industries and prevent a country from developing more stable high-skilled employment, while at the same time slowing the economic growth of trade partners. Because international labour standards are minimum standards adopted by governments and the social partners, it is in everyone's interest to see these rules applied across the board, so that those who do not put them into practice do not undermine the efforts of those who do.

A means of improving economic performance

International labour standards have been sometimes perceived as being costly and therefore hindering economic development. However, a growing body of research has indicated that compliance with international labour standards is often accompanied by improvements in productivity and economic performance.

Minimum wage and working-time standards, and respect for equality, can translate into greater satisfaction and improved performance for workers and reduced staff turnover. Investment in vocational training can result in a better trained workforce and higher employment levels. Safety standards can reduce costly accidents and expenditure on health care. Employment protection can encourage workers to take risks and to innovate. Social protection, such as unemployment schemes, and active labour market policies can facilitate labour market flexibility, and make economic liberalization and privatization sustainable and more acceptable to the public. Freedom of association and collective bargaining can lead to better labour–management consultation and cooperation, thereby improving working conditions, reducing the number of costly labour conflicts and enhancing social stability.

The beneficial effects of labour standards do not go unnoticed by foreign investors. Studies have shown that in their criteria for choosing countries in which to invest, foreign investors rank workforce quality and political and social stability above low labour costs. At the same time, there is little evidence that countries which do not respect labour standards are more competitive in the global economy. International labour standards not only respond to changes in the world of work for the protection of workers, but also take into account the needs of sustainable enterprises.

A safety net in times of economic crisis

Even fast-growing economies with high-skilled workers can experience unforeseen economic downturns. The Asian financial crisis of 1997, the 2000 dot-com bubble burst and the 2008 financial and economic crisis showed how decades of economic growth can be undone by dramatic currency devaluations or falling market prices. For instance, during the 1997 Asian crisis, as well as the 2008 crisis, unemployment increased significantly in many of the countries affected. The disastrous effects of these crises on workers were compounded by the fact that in many of these countries social protection systems, notably unemployment and health insurance, active labour market policies and social dialogue were barely developed.

The adoption of an approach that balances macroeconomic and employment goals, while at the same time taking social impacts into account, can help to address these challenges.

A strategy for reducing poverty

Economic development has always depended on the acceptance of rules. Legislation and functioning legal institutions ensure property rights, the enforcement of contracts, respect for procedure and protection from crime – all legal elements of good governance without which no economy can operate. A market governed by a fair set of rules and institutions is more efficient and brings benefit to everyone. The labour market is no different. Fair labour practices set out in international labour standards and applied through a national legal system ensure an efficient and stable labour market for workers and employers alike.

In many developing and transition economies, a large part of the workforce is engaged in the informal economy. Moreover, such countries often lack the capacity to provide effective social justice. Yet international labour standards can also be effective tools in these situations. Most ILO standards apply to all workers, not just those working under formal employment arrangements. Some standards, such as those dealing with homeworkers, migrant and rural workers, and indigenous and tribal peoples, deal specifically with certain areas of the informal economy. The reinforcement of freedom of association, the extension of social protection, the improvement of occupational safety and health, the development of vocational training, and other measures required by international labour standards have proved to be effective strategies in reducing poverty and bringing workers into the formal economy. Furthermore, international labour standards call for the creation of institutions and mechanisms which can enforce labour rights. In combination with a set of defined rights and rules, functioning legal institutions can help formalize the economy and create a climate of trust and order which is essential for economic growth and development.[4]

The sum of international experience and knowledge

International labour standards are the result of discussions among governments, employers and workers, in consultation with experts from around the world. They represent the international consensus on how a particular labour problem could be addressed at the global level and reflect knowledge and experience from all corners of the world. Governments, employers' and workers' organizations, international institutions, multinational enterprises and non-governmental organizations can benefit from this knowledge by incorporating the standards in their policies, operational objectives and day-to-day action. The legal nature of the standards means that they can be used in legal systems and administrations at the national level, and as part of the corpus of international law which can bring about greater integration of the international community.

About the ILO

The International Labour Organization was founded in 1919 and became a specialized agency of the United Nations in 1946. It currently has 187 member States. The ILO has a unique "tripartite" structure, which brings together representatives of governments, employers and workers on an equal footing to address issues related to labour and social policy. The ILO's broad policies are set by the **International Labour Conference**, which meets once a year and brings together its constituents. The Conference also adopts new international labour standards and the ILO's work plan and budget.

Between the sessions of the Conference, the ILO is guided by the **Governing Body**, which is composed of 28 Government members, as well as 14 Employer members and 14 Worker members. The ILO's Secretariat, the International Labour Office, has its headquarters in Geneva, Switzerland, and maintains field offices in more than 40 countries. On its 50th anniversary in 1969, the ILO was awarded the Nobel Peace Prize. The current Director-General of the ILO is Guy Ryder, who was re-elected in 2017 for a second five-year term. The ILO is celebrating its 100th anniversary in 2019.

WHAT ARE INTERNATIONAL LABOUR STANDARDS?

International labour standards are legal instruments drawn up by the ILO's constituents (governments, employers and workers) setting out basic principles and rights at work. They are either ***Conventions (or Protocols)***, which are legally binding international treaties that can be ratified by member States, or ***Recommendations***, which serve as non-binding guidelines. In many cases, a Convention lays down the basic principles to be implemented by ratifying countries, while a related Recommendation supplements the Convention by providing more detailed guidance on how it could be applied. Recommendations can also be autonomous, i.e not linked to a Convention.

Conventions and Recommendations are drawn up by representatives of governments, employers and workers and are adopted at the annual International Labour Conference. Once a standard is adopted, member States are required, under article 19(6) of the ILO Constitution, to ***submit*** it to their competent authority (normally Parliament) within a period of twelve months for consideration. In the case of Conventions, this means consideration for ***ratification***. If it is ratified, a Convention generally comes into force for that country one year after the date of ratification. Ratifying countries undertake to apply the Convention in national law and practice and to report on its application at regular intervals. Technical assistance is provided by the ILO, if necessary. In addition, representation and complaint procedures can be initiated against countries for violations of a Convention that they have ratified (see section 3).

Fundamental Conventions

The ILO Governing Body has identified eight "fundamental" Conventions, covering subjects that are considered to be fundamental principles and rights at work: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. These principles are also covered by the ILO Declaration on Fundamental Principles and Rights at Work (1998) (see section 3). As of 1st January 2019, there were 1,376 ratifications of these Conventions, representing 92 per cent of the possible number of ratifications. At that date, a further 121 ratifications were still required to meet the objective of universal ratification of all the fundamental Conventions.

The eight fundamental Conventions are:

- the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
- the Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
- the Forced Labour Convention, 1930 (No. 29) (and its 2014 Protocol)
- the Abolition of Forced Labour Convention, 1957 (No. 105)
- the Minimum Age Convention, 1973 (No. 138)
- the Worst Forms of Child Labour Convention, 1999 (No. 182)
- the Equal Remuneration Convention, 1951 (No. 100)
- the Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

Governance (priority) Conventions

The ILO Governing Body has also designated another four Conventions as governance (or priority) instruments, thereby encouraging member States to ratify them because of their importance for the functioning of the international labour standards system. The ILO Declaration on Social Justice for a Fair Globalization, in its Follow-up, emphasizes the significance of these Conventions from the viewpoint of governance.

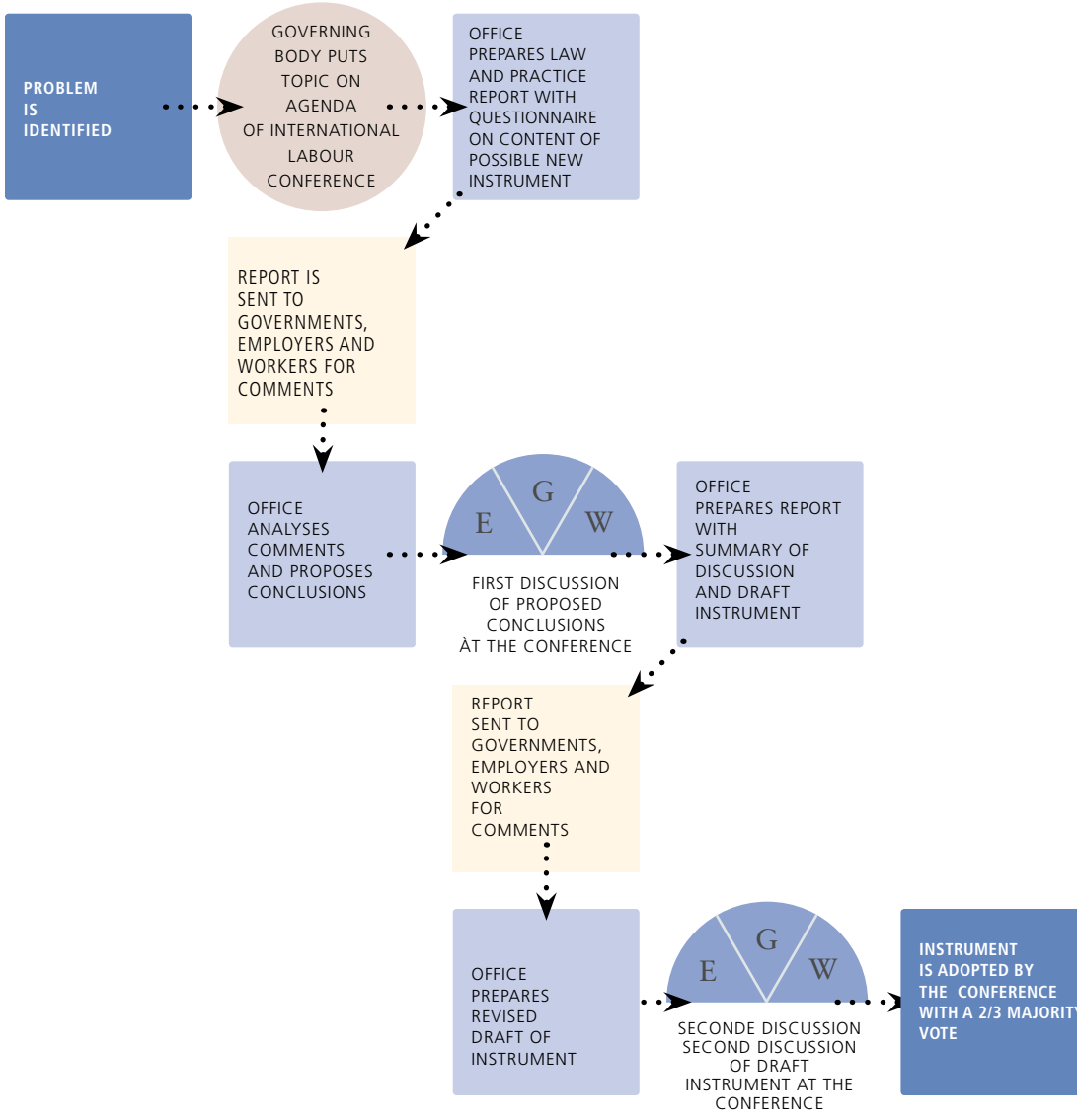
The four governance Conventions are:

- the Labour Inspection Convention, 1947 (No. 81) (and its Protocol of 1995)
- the Labour Inspection (Agriculture) Convention, 1969 (No. 129)
- the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)
- the Employment Policy Convention, 1964 (No. 122)

HOW ARE INTERNATIONAL LABOUR STANDARDS CREATED?

International labour standards evolve from a growing international concern that action needs to be taken on a particular issue, such as providing working women with maternity protection, or ensuring safe working conditions for agricultural workers. The development of international labour standards at the ILO is a unique legislative process involving representatives of governments, workers and employers from throughout the world. As a first step, the Governing Body agrees to put an issue on the agenda of a future International Labour Conference. The International Labour Office prepares a report that analyses the law and practice of member States with regard to the issue at stake. The report is communicated to member States and to workers' and employers' organizations for comments and is then submitted to the International Labour Conference for a first discussion. A second report is then prepared by the Office with a draft instrument, which is also sent for comments and submitted for discussion at the following session of the Conference, where the draft instrument is discussed, amended as necessary and proposed for adoption. This "double discussion" procedure gives Conference participants sufficient time to examine the draft instrument and make comments on it. A two-thirds majority of votes is required for a standard to be adopted.

Adoption of an international labour standard



Who adopts international labour standards?
The International Labour Conference brings together delegations from all ILO member
States. Each delegation comprises:
2 Government delegates
1 Employer delegate
1 Worker delegate
Government, Employer and Worker delegates each have on vote in plenary.

Ratification of Conventions and Protocols

ILO member States are required to submit any Convention or Protocol adopted by the International Labour Conference to their competent national authority for the enactment of relevant legislation or other action, including ratification. An adopted Convention or Protocol normally comes into force 12 months after being ratified by two member States. Ratification is a formal procedure whereby a State accepts the Convention or Protocol as a legally binding instrument. Once it has ratified a Convention or Protocol, a country is subject to the ILO regular supervisory system, which is responsible for ensuring that the instrument is applied. For more on the ILO supervisory system, see section 3.

Universality and flexibility

Standards are adopted by a two-thirds majority vote of ILO constituents and are therefore an expression of universally acknowledged principles. At the same time, they reflect the fact that countries have diverse cultural and historical backgrounds, legal systems and levels of economic development. Indeed, most standards have been formulated in a manner that makes them flexible enough to be translated into national law and practice with due consideration of these differences. For example, standards on minimum wages do not require member States to set a specific minimum wage, but to establish a system and the machinery to fix minimum wage rates appropriate to their level of economic development. Other standards contain so-called "flexibility clauses" allowing States to lay down temporary standards that are lower than those normally prescribed, to exclude certain categories of workers from the application of a Convention, or to apply only certain parts of the instrument. Ratifying countries are usually required to make a declaration to the Director-General of the ILO if they exercise any of the flexibility options, and to make use of such clauses only in consultation with the social partners. However, reservations to ILO Conventions are not permitted.

Updating international labour standards

There are currently 189 Conventions and 205 Recommendations, some dating back as far as 1919, and six Protocols. As may be expected, some of these instruments no longer correspond to today's needs. To address this problem, the ILO adopts revising Conventions that replace older ones, or Protocols, which add new provisions to older Conventions.

Standards Review Mechanism (SRM)

The SRM is a mechanism that is integral to the ILO's standards policy with a view to ensuring that the ILO has a clear, robust and up-to-date body of standards that respond to the changing patterns of the world of work, for the purpose of the protection of workers and taking into account the needs of sustainable enterprises.

The SRM was set up by the Governing Body in November 2011, but became operational later, in 2015, as a result of two decisions:

- a decision by the Governing Body in March 2015 to establish under the SRM a tripartite working group composed of 32 members (16 representing Governments, eight representing Employers and eight representing Workers);
- a decision taken in November 2015 to approve the terms of reference of the Tripartite Working Group of the SRM.

The Tripartite Working Group of the SRM is mandated to review the ILO's international labour standards with a view to making recommendations to the Governing Body on:

- the status of the standards examined, including up-to-date standards, standards in need of revision and outdated standards;
- the review of gaps in coverage, including those requiring new standards;
- practical and time-bound follow-up action, as appropriate.

The SRM Tripartite Working Group meets once a year and reviews the different instruments based on a thematic approach. In parallel with the launching of the SRM, the entry into force of the Instrument of Amendment of the Constitution of the International Labour Organization of 1997 reinforced the ILO's efforts to ensure that it has a clear and up-to-date body of international labour standards that can serve as a global point of reference. With the entry into force of the Instrument of Amendment of the Constitution, the Conference is now empowered, by a majority of two-thirds and on the recommendation of the Governing Body, to abrogate a Convention that is in force if it appears that the Convention has lost its purpose or that it no longer makes a useful contribution to attaining the objectives of the Organization. At its Session in June 2017, the Conference held its first discussion following the entry into force of the Instrument of Amendment and examined and decided to abrogate two international labour Conventions. At its Session in June 2018, the Conference decided to abrogate six other Conventions and withdraw three Recommendations. In addition, on the basis of the work of the SRM, the Governing Body decided to place an item on the agenda of the 2021 session of International Labour Conference regarding the possibility of a new standard on apprenticeship in order the fill the gap at the international level in this regard.

Models and targets for labour law

International labour standards are primarily tools for governments which, in consultation with employers and workers, are seeking to draft and implement labour law and social policy in conformity with internationally accepted standards. For many countries, this process begins with a decision to consider ratifying an ILO Convention. Countries often go through a period of examining and, if necessary, revising their legislation and policies in order to achieve compliance with the instrument they wish to ratify. International labour standards thus serve as targets for harmonizing national law and practice in a particular field; the actual ratification may come further along the path of implementing the standard. Some countries decide not to ratify a Convention but to bring their legislation into line with it anyway; such countries use ILO standards as models for drafting their law and policy. Others ratify ILO Conventions fairly quickly and then work to bring their national law and practice into line after ratification. The comments of the ILO supervisory bodies and technical assistance (see section 3) can guide them in this process. For such countries, ratification is the first step on the path to implementing a standard.

Sources of international law applied at the national level

In numerous countries, ratified international treaties apply automatically at the national level. Their courts are thus able to use international labour standards to decide cases on which national law is inadequate or silent, or to draw on definitions set out in the standards, such as of "forced labour" or "discrimination". Alongside voluntary initiatives and non-statutory rules, the legal system is one of the means through which international standards are disseminated. The use of these standards by the highest courts of certain countries, as observed by the ILO for over a decade, bears witness to their increasing acceptance and use at the national level. In this way, national and international systems for the regulation of labour are a mutual source of inspiration. International labour standards there appear to be a universal point of reference for an increasing number of

actors at the international level, thereby reinforcing international labour law, which is becoming an essential resource in the denunciation of inequalities in the world of work and the regulation of labour relations, conditions and disputes, as reflected in more widespread respect for the values defended by the ILO.

Guidelines for social policy

In addition to shaping law, international labour standards can provide guidance for developing national and local policies, such as employment, work and family policies. They can also be used to improve various administrative structures, such as labour administration, labour inspection, social security and employment services. Standards can also serve as a source of good industrial relations applied by labour dispute resolution bodies, and as models for collective agreements.

Other areas of influence

While ILO constituents are the main users of international labour standards, other actors have also found them to be useful tools. Indeed, new actors are using international labour standards and therefore participating in their diffusion at the international level.

- **Corporate social responsibility (CSR) – the promotion of inclusive, responsible and sustainable practices in the workplace**
  The ILO defines CSR as a way in which enterprises give consideration to the impact of their operations on society and affirm their principles and values, both in their own internal methods and procedures and in their interactions with other actors. Increasing consumer interest in the ethical dimension of products and the working conditions in which they are produced has led multinational enterprises to adopt voluntary codes of conduct governing labour conditions in their production sites and supply chains. The majority of the top 500 companies in the United States and United Kingdom have adopted some sort of code of conduct, many of them referring to principles derived from ILO standards. While these codes are no substitute for binding international instruments, they play

an important role in helping to spread the principles contained in international labour standards.

The ILO can play an important role in CSR through two main reference points: the ILO Declaration on Fundamental Principles and Rights at Work (1998) and the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (the "MNE Declaration"), a revised version of which was adopted by the Governing Body in 2017 in response to new economic realities, and particularly the increase in international investment and trade, and the growth in global supply chains. This revision reinforced the MNE Declaration through the inclusion of principles addressing specific aspects of decent work, such as social security, forced labour, the transition from the informal to the formal economy, wages, the access of victims to remedies and compensation. It also contains guidance on the process of "due diligence" for the achievement of decent work, the creation of decent jobs, sustainable enterprises, more inclusive growth and an improved sharing of the benefits of foreign direct investment which are particularly relevant to the achievement of Sustainable Development Goal (SDG) 8. Moreover, many initiatives that promote inclusive, responsible and sustainable enterprise practices make reference to ILO instruments, including the Guiding Principles for Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework, the United Nations Global Compact and the OECD Guidelines for Multinational Enterprises.

In 2009, the ILO launched a Helpdesk that provides constituents and enterprises with easy access to information, assistance, referral and advice regarding CSR and the implementation of labour standards with a view to aligning enterprise practices with international labour standards.[5]

- **Other international organizations**
  The ILO Declaration on Social Justice for a Fair Globalization emphasizes that other international and regional organizations with mandates in closely related fields can make an important contribution, especially through the objectives of the Decent Work Agenda. Other international institutions regularly use international labour standards in their activities. Reports on the application of international labour standards are regularly

submitted to the United Nations human rights bodies and other international entities. International financial institutions (IFIs), such as the World Bank, Asian Development Bank and African Development Bank (AfDB), have integrated certain aspects of labour standards into some of their activities. For example, in 2013 the AfDB introduced into its environmental and social safeguards policy an operational safeguard on labour conditions and safety and health (Operational safeguard 5), setting out the requirements of the AfDB in relation to its borrowers and clients, which makes explicit reference to ILO international labour standards. In so doing, the AfDB joins other international donors which have adopted similar approaches in their safeguards policy or other strategy documents, including: the World Bank in its Poverty Reduction Strategy Papers process and Performance Standard 2 of the International Finance Corporation (IFC) (part of the World Bank Group), which recognizes that the pursuit of economic growth through employment creation must also comply with the protection of the basic rights of workers. Moreover, international labour standards have a direct impact on such globalized sectors as maritime transport. They are used not only for the design of national maritime legislation in member States, but also as a reference for inspections of ships by port States, and have a direct effect on the regulations and codes of other international organizations, such as the International Maritime Organization.

- **Free trade agreements**

  A growing number of bilateral and multilateral free trade agreements, as well as regional economic integration arrangements, contain social and labour provisions related to workers' rights. Indeed, the number of free trade agreements with labour provisions has increased significantly over the past two decades: 70 trade agreements included labour provisions in 2016, compared with 58 in 2013, 21 in 2005 and four in 1995.[6] Free trade agreements increasingly refer to ILO instruments in their labour clauses, and particularly the Declaration on Fundamental Principles and Rights at Work (1998) and, in the case of recent European Union agreements, also to ILO Conventions. Since 2013, 80 per cent of the agreements which have entered into force contain such clauses, starting with the agreements involving the European Union, the United States and Canada. However, such clauses made their appearance very early. For example, in the context of the European Union, the special incentive arrangement for sustainable development and good governance (the Generalized System of Preferences/GSP+) provides additional benefits for countries implementing certain international standards in relation to

human and labour rights. Since the North American Free Trade Agreement (NAFTA) was signed in 1992 and was supplemented in 1994 by the North American Agreement on Labour Cooperation (NAALC) (this agreement was completely renegotiated in October 2018), several free trade agreements have been signed by the United States with countries such as Chile, Jordan, Republic of Korea, Morocco, Singapore and Central American countries. In these agreements, the signatory countries reaffirm their commitment to the ILO, and particularly to the respect and promotion of the ILO Declaration on Fundamental Principles and Rights at Work. More recently, the free trade agreement between Japan and the European Union, signed in 2017, makes reference to the Decent Work Agenda and the ILO Declaration on Social Justice for a Fair Globalization (2008) as standards that are binding on the parties, which should also endeavour to ratify the eight fundamental ILO Conventions. The agreement also contains clauses on corporate social responsibility with references to the MNE Declaration.

- **Civil society**
  Advocacy groups and non-governmental organizations draw on international labour standards to call for changes in policy, law or practice.

The role of employers' and workers' organizations

Representative employers' and workers' organizations play an essential role in the international labour standards system, not only as users of the system, but also as constituents of the Organization. They participate in choosing subjects for new ILO standards and in drafting the texts, and their votes determine whether or not the International Labour Conference adopts a newly drafted standard. If a Convention is adopted, employers and workers can encourage a government to ratify it. If the Convention is ratified, governments are required to report periodically to the ILO on how they are applying it in law and practice (the same applies to Protocols). Government reports must also be submitted to the most representative employers' and workers' organizations, which may comment on their content. Employers' and workers' organizations can also supply information on the application of Conventions directly to the ILO under article 23(2) of the ILO Constitution. They can initiate representations under article 24 of the ILO Constitution. As constituents of the Organization, they also participate in the tripartite committees set up to examine representations. Moreover, an Employer or Worker delegate to the International Labour Conference can also file a complaint under

article 26 of the Constitution. If a member State has ratified the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), as 145 countries had done on 1st January 2019, it is required to hold national tripartite consultations on proposed new instruments to be dis-cussed at the Conference, the submission of instruments to the competent authorities, reports concerning ratified Conventions, measures related to unratified Conventions and to Recommendations, and proposals regard-ing the denunciation of Conventions.

Freedom of association Collective bargaining Forced labour
Child labour
Equality of opportunity and treatment Tripartite consultation
Labour administration
Labour inspection
Employment policy Employment promotion
Vocational guidance and training
Employment security
Social policy
Wages
Working time
Occupational safety and health Social security
Maternity protection Domestic workers
Migrant workers
Seafarers
Fishers
Dockworkers
Indigenous and tribal peoples
Other specific categories of worker

2

SUBJECTS COVERED BY INTERNATIONAL LABOUR STANDARDS

International labour standards respond to the ever increasing needs and challenges faced by workers and employers in the global economy. This section presents the subjects covered by international labour standards and introduces certain Conventions and Recommendations. It also explains the problems that exist in a particular field today and how international labour standards can help to provide solutions. Finally, some examples are highlighted where the application of international labour standards or of the principles they embody has made a positive contribution in a particular situation.

This section summarizes a selection of relevant ILO Conventions and Recommendations. The summaries are intended for information purposes and do not replace consultation of the authoritative text. Numerous other Conventions and Recommendations have not been summarized, even though many are relevant and in force. The complete list of ILO standards by subject and status may be consulted on the ILO website at www.ilo.org/ normes. The examples have been selected for illustrative purposes and are not intended to single out a specific country or situation.

FREEDOM OF ASSOCIATION

The principle of freedom of association is at the core of the ILO's values: it is enshrined in the ILO Constitution (1919), the ILO Declaration of Philadelphia (1944) and the ILO Declaration on Fundamental Principles and Rights at Work (1998). It is also a right proclaimed in the Universal Declaration of Human Rights (1948). The right to organize and form employers' and workers' organizations is the prerequisite for sound collective bargaining and social dialogue. Nevertheless, there continue to be challenges in applying these principles in many countries. In some countries, certain categories of workers (for example public servants, seafarers, workers in export processing zones) are denied the right of association, workers' and employers' organizations are illegally suspended or subject to acts of interference, and in some extreme cases trade unionists are arrested or killed. ILO standards, in conjunction with the work of the Committee on Freedom of Association and the other supervisory mechanisms (see section 3), contribute to resolving these difficulties and ensuring that this fundamental human right is respected the world over.

Relevant ILO instruments

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)
This fundamental Convention sets forth the right of workers and employers to establish and join organizations of their own choosing without previous authorization. Workers' and employers' organizations shall organize freely and not be liable to be dissolved or suspended by administrative authority, and they shall have the right to establish and join federations and confederations, which may in turn affiliate with international organizations of workers and employers.

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
This fundamental Convention provides that workers shall enjoy adequate protection against acts of anti-union discrimination, including the requirement that a worker not join a union or relinquish trade union membership for employment, or the dismissal of a worker because of union membership or participation in union activities. Workers' and employers' organizations shall enjoy adequate protection against any acts of interference by each other, in particular the establishment of workers' organizations under the domination of employers or employers' organizations, or the support of workers' organizations by financial or other means with the

object of placing such organizations under the control of employers or employers' organizations. The Convention also enshrines the right to collective bargaining (see also under collective bargaining).

Workers' Representatives Convention, 1971 (No. 135)
Workers' representatives in an undertaking shall enjoy effective protection against any act prejudicial to them, including dismissal, based on their status or activities as a workers' representative or on union membership or participation in union activities, in so far as they act in conformity with existing laws or collective agreements or other jointly agreed arrangements. Facilities in the undertaking shall be afforded to workers' representatives as may be appropriate in order to enable them to carry out their functions promptly and efficiently.

Rural Workers' Organisations Convention, 1975 (No. 141)
All categories of rural workers, whether they are wage earners or self-employed, shall have the right to establish and, subject only to the rules of the organization concerned, to join organizations of their own choosing without previous authorization. The principles of freedom of association shall be fully respected; rural workers' organizations shall be independent and voluntary in character and shall remain free from all interference, coercion or repression. National policy shall facilitate the establishment and growth, on a voluntary basis, of strong and independent organizations of rural workers as an effective means of ensuring the participation of these workers in economic and social development.

Labour Relations (Public Service) Convention, 1978 (No. 151)
Public employees as defined by the Convention shall enjoy adequate protection against acts of anti-union discrimination in respect of their employment, and their organizations shall enjoy complete independence from public authorities, as well as adequate protection against any acts of interference by a public authority in their establishment, functioning or administration (see also under collective bargaining).

Freedom of association under fire[7]

Although freedom of association is recognized as a fundamental right at work, unions and their members are still exposed to severe violations of their rights. In its recent flagship publication on violations of trade unionists rights (2017), the International Trade Union Confederation (ITUC) estimated that union members faced violence in 59 out of 139 countries (for which information is available). In 2017, trade unionists were murdered in the following 11 countries: Bangladesh, Brazil, Colombia, Guatemala, Honduras, Italy, Mauritania, Mexico, Peru, Phillippines and Bolivarian Republic of Venezuela. Also in 2017, freedom of expression and freedom of assembly were severely restricted in 50 countries. In addition, in 84 countries, certain categories of workers are excluded from the labour legislation. In 2014, the ITUC launched a "Global Rights Index" ranking 139 countries against 97 internationally recognized indicators to assess where workers' rights are best protected in law and practice. According to this ranking, in 46 countries, compared with 32 in 2014, trade union rights are not guaranteed, for example due to the absence of the rule of law, and workers are exposed to unfair labour practices. Freedom of association is by no means just an issue for workers. Employers have also lodged complaints over the years with the ILO Committee on Freedom of Association regarding, for example, unlawful interference with the activities of their organizations.

COLLECTIVE BARGAINING

Freedom of association ensures that workers and employers can associate to negotiate work relations effectively. Combined with strong freedom of association, sound collective bargaining practices ensure that employers and workers have an equal voice in negotiations and that the outcome is fair and equitable. Collective bargaining allows both sides to negotiate a fair employment relationship and prevents costly labour disputes. Indeed, some research has indicated that countries with highly coordinated collective bargaining tend to have less inequality in wages, lower and less persistent unemployment, and fewer and shorter strikes than countries where collective bargaining is less established. Good collective bargaining practices have sometimes been an element that has allowed certain countries to overcome passing financial crises. ILO standards promote collective bargaining and help to ensure that good labour relations benefit everyone.

Relevant ILO instruments

Right to Organise and Collective Bargaining Convention, 1949 (No. 98)
This fundamental Convention provides that measures appropriate to national conditions shall be taken, where necessary, to encourage and promote the full development and utilization of machinery for voluntary negotiation between employers or employers' organizations and workers' organizations, with a view to the regulation of terms and conditions of employment by means of collective agreements (see also under freedom of association).

Labour Relations (Public Service) Convention, 1978 (No. 151)
The Convention promotes collective bargaining for public employees, as well as other methods allowing public employees' representatives to participate in the determination of their conditions of employment. It also provides that disputes shall be settled through negotiation between the parties or through independent and impartial machinery, such as mediation, conciliation and arbitration.

Collective Bargaining Convention, 1981 (No. 154)
The Convention defines collective bargaining and calls for its promotion in all branches of economic activity, including the public service.

Collective bargaining in the apparel sector in Jordan[8]

Some 65 000 workers are employed in the apparel sector in Jordan, three quarters of whom are migrant workers, mainly from South and South-East Asia. Following a series of collective disputes concerning living and working conditions, a sectoral collective agreement was signed in May 2013. This two-year global agreement, the first of its type in Jordan, which has ratified Convention No. 98, marked important progress in the utilization of voluntary collective bargaining to determine working conditions in the apparel sector. The collective agreement has been revised and renewed twice, first in 2015 and then in 2017. Concluded between two employers' associations (the Jordan Garments, Accessories and Textiles Association (JGATE) and the Association of Owners of Factories, Workshops and Garments), and the General Trade Union of Workers in the Textile, Garment and Clothing Industries, the agreement has resulted in significant and tangible changes in the apparel sector, including: the introduction of a seniority bonus, the harmonization of key conditions of work and employment (wages, social security benefits and the payment of overtime hours) between migrant workers and Jordanian nationals, and the provision of emergency medical care. The inclusion in the agreement of clauses allowing unions access to factories and dormitories has facilitated the establishment of workers' committees, the election of leaders and workers' education and information on their rights and responsibilities. As a sectoral agreement, it covers all workers and all enterprises in the apparel industry.[9]

Right of association (agriculture) and rural workers' organizations: Giving voice to rural workers

In 2015, the General Survey prepared by the Committee of Experts covered the Right of Association (Agriculture) Convention, 1921 (No. 11), and the Rural Workers' Organizations Convention (No. 141) and Recommendation (No. 149), 1975. By deciding to devote the General Survey to these instruments, the ILO wished to recall that agricultural workers are often denied the right to organize and to collective bargaining, and that rural workers are particularly vulnerable, as they are inadequately protected by law and have limited access to machinery for collective action. Despite the evident importance of agriculture and the rural economy at the global level, in view of its nature, there is little reliable and comparable information (and particularly data disaggregated by age and sex) on the nature, economic importance and real situation, and indeed scope, of the sector. In particular, definitions of the rural economy, agriculture and rural or agricultural workers differ considerably from one country to another, with the result that comparisons between countries are often not very reliable. According to ILO data, around 40 per cent of the working age population lives in rural areas, with important differences between countries.

Most of these workers are not engaged in salaried employment in the formal economy, but work on their own account or are engaged in unpaid family work, for example in agriculture, and particularly subsistence agriculture. In rural areas, informal work represents 82.1 per cent of total rural employment, and 96 per cent of agricultural employment. In comparison, only 24.5 per cent of workers in urban areas are engaged in informal work. Almost eight out of ten poor workers living on under US$ 1.25 a day are in rural areas, which shows that most jobs in rural areas do not secure sufficient income for workers to feed their families adequately, while the remuneration of salaried employees is generally lower than in urban areas. Finally, fewer than 20 per cent of agricultural workers have access to basic social protection.

FORCED LABOUR

Although forced labour is universally condemned, ILO estimates show that 24.9 million people around the world are still subjected to it. Of the total number of victims of forced labour, 20.8 million (83 per cent) are exploited in the private economy, by individuals or enterprises, and the remaining 4.1 million (17 per cent) are in State-imposed forms of forced labour. Among those exploited by private individuals or enterprises, 8 million (29 per cent) are victims of forced sexual exploitation and 12 million (64 per cent) of forced labour exploitation. Forced labour in the private economy generates some US$ 150 billion in illegal profits every year: two thirds of the estimated total (or US$ 99 billion) comes from commercial sexual exploitation, while another US$ 51 billion is a result from forced economic exploitation in domestic work, agriculture and other economic activities.[10]

Vestiges of slavery are still found in some parts of Africa, while forced labour in the form of coercive recruitment is present in many countries of Latin America, in certain areas of the Caribbean and in other parts of the world. In numerous countries, domestic workers are trapped in situations of forced labour, and in many cases they are restrained from leaving the employers' home through threats or violence. Bonded labour persists in South Asia, where millions of men, women and children are tied to their work through a vicious circle of debt. In Europe and North America, a considerable number of women and children are victims of traffickers, who sell them to networks of forced prostitution or clandestine sweatshops. Finally, forced labour is still used as a punishment for expressing political views.

For many governments around the world, the elimination of forced labour remains an important challenge in the 21st century. Not only is forced labour a serious violation of a fundamental human right, it is a leading cause of poverty and a hindrance to economic development. ILO standards on forced labour, associated with well-targeted technical assistance, are the main tools at the international level to combat this scourge.

Relevant ILO instruments

Forced Labour Convention, 1930 (No. 29)
This fundamental Convention prohibits all forms of forced or compulsory labour, which is defined as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily." Exceptions are provided for work required under compulsory military service, normal civic obligations, as a consequence of a conviction in a court of law (provided that the work or service in question is carried out under the supervision and control of a public authority and that the person is not hired to or placed at the disposal of private individuals, companies or associations), in cases of emergency, and for minor communal services performed by the members of the community in the direct interest of the community. The Convention also requires the exaction of forced labour to be punishable as a penal offence, and ratifying States to ensure that the relevant penalties imposed by law are adequate and strictly enforced.

Abolition of Forced Labour Convention, 1957 (No. 105)
This fundamental Convention prohibits forced or compulsory labour as a means of political coercion or education, or as a punishment for holding or expressing political views or views ideologically opposed to the established political, social or economic system; as a method of mobilizing and using labour for purposes of economic development; as a means of labour discipline; as a punishment for having participated in strikes; and as a means of racial, social, national or religious discrimination.

While these two instruments are among the most ratified, the persistence of practices of forced labour on a large scale reveals the existence of gaps in their implementation. This led the Governing Body to request the International Labour Conference to hold a discussion in June 2014 to examine the adoption of an instrument to supplement Convention No. 29. The result was the adoption of **the Protocol of 2014 to the Forced Labour Convention, 1930; and the Forced Labour (Supplementary Measures) Recommendation, 2014 (No. 203).**

The Protocol of 2014 on forced labour is a legally binding instrument that aims to advance prevention, protection and compensation measures, and to intensify efforts to eliminate contemporary forms of slavery. The Protocol entered into force in November 2016 and as of 30 November 2018 had already been ratified by 27 countries.

Forced labour in practice

The ILO supervisory bodies have emphasized on numerous occasions the importance of adopting an overall national strategy to combat forced labour with a view to ensuring that comprehensive and concerted action is taken by the various responsible public agencies, with particular reference to labour inspection, law enforcement and the investigation services. A clear national policy against forced labour provides a fundamental point of departure for action to prevent and suppress forced labour and protect its victims, with particular emphasis on identifying priority sectors and occupations, raising public awareness, developing institutional capacity and coordination, protecting victims and ensuring their access to justice and compensation. All of these aspects were developed in the Protocol of 2014 and States are beginning to report the measures taken in these various areas. The Committee of Experts has already noted the initiatives taken in a very large number of countries for the implementation of a coordinated multisectoral approach, particularly to combat trafficking in persons, including:

– In El Salvador, the adoption of a special Act to combat trafficking in persons (Decree No. 824 of 16 October 2014). The Act includes a broad definition of the crime of trafficking in persons and provides that the national policy to combat trafficking in persons shall be based on the following strategic elements: the detection, prevention and punishment of the crime of trafficking in persons, the comprehensive assistance and protection of victims and the restoration of their rights, as well as coordination and cooperation.
– In the United Kingdom, the adoption in 2015 of the Modern Slavery Act, which defines the elements that constitute the offences of slavery, servitude, forced and compulsory labour, and human trafficking. The Act also provides for the establishment of an Independent Anti-Slavery Commissioner; it strengthens the powers of the law enforcement authorities by allowing the courts to issue prevention orders, confiscate property, and issue compensation orders requiring offenders to pay compensation to victims; it requires businesses to publish an annual statement on the steps taken to ensure that modern slavery does not take place in their organization or their supply chains.

CHILD LABOUR

Child labour is a violation of fundamental human rights and has been shown to hinder children's development, potentially leading to lifelong physical or psychological damage. Evidence points to a strong link between household poverty and child labour, and child labour perpetuates poverty across generations by keeping the children of the poor out of school and limiting their prospects for upward social mobility. This lowering of human capital has been linked to slow economic growth and social development. Recent ILO studies have shown that the elimination of child labour in transition and developing economies could generate economic benefits much greater than the costs, which are mostly associated with investment in better schooling and social services. The fundamental ILO standards on child labour are the two legal pillars of global action to combat child labour.

Relevant ILO instruments

Minimum Age Convention, 1973 (No. 138)
This fundamental Convention sets the general minimum age for admission to employment or work at 15 years (13 for light work) and the minimum age for hazardous work at 18 (16 under certain strict conditions). It provides for the possibility of initially setting the general minimum age at 14 (12 for light work) where the economy and educational facilities of the country are insufficiently developed.

Worst Forms of Child Labour Convention, 1999 (No. 182)
This fundamental Convention defines a "child" as any person under 18 years of age. It requires ratifying States to eliminate the worst forms of child labour, including: all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict; child prostitution and pornography; the use of children for illicit activities, in particular for the production and trafficking of drugs; and work which is likely to harm the health, safety or morals of children. The Convention requires ratifying States to provide the necessary and appropriate direct assistance for the removal of children from the worst forms of child labour and for their rehabilitation and social integration. It also requires States to ensure access to free basic education and, wherever possible and appropriate, vocational training for children removed from the worst forms of child labour.

On 1st January 2019, 171 countries had ratified Convention No. 138 and 182 countries had ratified Convention No. 182. Only five further ratifications were therefore required to achieve the universal ratification of Convention No. 182.

Child labour in numbers

The ILO estimates that 152 million children worldwide are engaged in child labour, accounting for almost 10 per cent of the child population as a whole. Approximately 73 million children between the ages of 5 and 17 are engaged in hazardous work: 35.4 million children between the ages of 5 and 14, and 37.1 million between the ages of 14 and 17. Child labour is most prevalent in the agricultural sector, which accounts for 71 per cent of all those in child labour, representing around 108 million children. While much remains to be done, progress has been achieved: the number of child labourers fell by over one-third between 2000 and 2016, with a reduction of approximately 94 million children.[11]

By region, there remain:

72.1 million child labourers (between the ages of 5 à 17) in Africa

62.1 million in Asia and the Pacific

10.7 million in the Americas

1.2 million in the Arab States

5.5 million in Europe and Central Asia

The fight against child labour is by no means limited to the poorest countries. While the incidence of child labour is highest in the poorer countries (19.4 per cent of children in low-income countries are engaged in child labour, compared with 8.5 per cent in lower middle-income countries, 6.6 per cent in upper middle-income countries and 1.2 per cent in higher-income countries), middle-income countries account for the largest number of child labourers.

The latest ILO estimates of global child labour rates show that middle-income countries represent a total of 84 million child labourers, compared with 65 million in low-income countries. These statistics show clearly that, while poorer countries require particular attention, the fight against child labour will not be won by focusing solely on the poorest countries.

Child labour standards in practice: Action to combat child labour in Uzbekistan and Brazil

Convention No. 182 constitutes a commitment to eliminating the worst forms of child labour, including the use of children in armed conflict. In 2008, Uzbekistan ratified Convention No. 182. For several years, both the Committee of Experts and the Conference Committee on the Application of Standards had been drawing the Government's attention to the situation of children subjected to forced labour under hazardous conditions in cotton production. In 2013, the Government adopted and implemented a plan of supplementary measures for the implementation of Conventions Nos 29 and 182. In 2015, the National Coordination Council on Child Labour established a monitoring mechanism which receives and investigates complaints. The employment of students under 18 years of age in the cotton harvest was also prohibited by the Cabinet of Ministers at its meeting in June 2016. The results of the joint monitoring and enterprise supervision undertaken by the ILO and the Government of Uzbekistan since 2013 show significant progress towards the full application of the Convention. In general, there is no longer any child labour during the cotton harvest. The Government of Uzbekistan has also undertaken to remain particularly vigilant concerning this situation. Convention No. 182 has now almost achieved universal ratification, reflecting the overwhelming consensus that certain forms of child labour demand urgent and immediate action for their elimination.

Since ratifying Convention No. 182 in 2000 and Convention No. 138 in 2001, Brazil has made tremendous strides towards the elimination of child labour. The rate of economic activity of children between the ages of 7 and 17 years fell from 19 to 5 per cent between 1992 and 2015, while school attendance rose from 80 to 95 per cent.[12] This progress was achieved through a systematic and integrated approach which encompassed policy reforms, a successful cash transfer programme conditional on school attendance and the strengthening of an equipped and trained labour inspectorate, including the establishment of special mobile inspection groups.

No society is free from discrimination. Indeed, discrimination in employment and occupation is a universal and permanently evolving phenomenon. Millions of women and men around the world are denied access to jobs and training, receive low wages or are restricted to certain occupations simply on the basis of their sex, skin colour, ethnicity or beliefs, without regard to their capabilities and skills. In a number of developed countries, for example, women workers still earn between 20 and 25 per cent less than male colleagues performing equal work or work of equal value, which shows how slow progress has been over recent years in this regard. Freedom from discrimination is a fundamental human right and is essential for workers to be able to choose their employment freely, develop their potential to the full and reap economic rewards on the basis of merit. Bringing equality to the workplace also has significant economic benefits. Employers who practice equality have access to a larger, more diverse and higher quality workforce. Workers who enjoy equality have greater access to training and often receive higher wages. The profits of a globalized economy are more fairly distributed in a society with equality, leading to greater social stability and broader public support for further economic development.[13] ILO standards on equality provide tools to eliminate discrimination in all aspects of work and in society as a whole. They also provide the basis upon which gender mainstreaming strategies can be applied in the field of labour.

Relevant ILO instruments

Equal Remuneration Convention, 1951 (No. 100)

This fundamental Convention requires ratifying countries to ensure the application of the principle of equal remuneration for men and women workers for work of equal value. The term "remuneration" is broadly defined to include the ordinary, basic or minimum wage or salary and any additional emoluments payable directly or indirectly, whether in cash or in kind, by the employer to the worker and arising out of the worker's employment.

In its 2012 General Survey on the fundamental Conventions concerning rights at work in light of the 2008 ILO Declaration on Social Justice for a Fair Globalization, the Committee of Experts reiterated the principles already set out in its 2007 General Observation on the Equal Remuneration Convention, 1951 (No, 100), with respect to the concept of "work of equal value", and recalled that: "While equal remuneration for men and women for work of equal value is a principle that is widely accepted, the scope of the concept and its application in practice have been more difficult to grasp and apply in some countries. […] The Committee has noted that difficulties in applying the Convention in law and practice result in particular from a lack of understanding of the concept of 'work of equal value'. […] The concept of 'work of equal value' lies at the heart of the fundamental right of equal remuneration for men and women for work of equal value, and the promotion of equality."

Noting that many countries still retain legal provisions that are narrower than the principle laid down in the Convention, as they do not give expression to the concept of "work of equal value", and that such provisions hinder progress in eradicating gender-based pay discrimination, the Committee of Experts again urged the governments of those countries to take the necessary steps to amend their legislation.

Such legislation should not only provide for equal remuneration for equal, the same or similar work, but should also address situations where men and women perform different work that is nevertheless of "equal value". In order to determine whether two jobs are of equal value, it is necessary to adopt some method to measure and compare their relative value taking into account factors such as skill, effort, responsibilities and working conditions. The Convention does not prescribe, however, a specific method to carry out this objective job evaluation.

Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
This fundamental Convention defines discrimination as "any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation". The Convention also provides for the possibility of extending the list of prohibited grounds of discrimination after consultation with representative employers' and workers' organizations, and relevant bodies. National legislation has included, in recent years, a broad range of additional prohibited grounds of discrimination, including real or perceived HIV status, age, disability, sexual orientation and gender identity. The Convention covers discrimination in relation to access to education and vocational training, access to employment and to particular occupations, as well as terms and conditions of employment. It requires ratifying States to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment and occupation, with a view to eliminating any discrimination in these fields. This policy and the measures adopted should be continually assessed and reviewed in order to ensure that they remain appropriate and effective in a regularly changing context.

In its General Survey of 2012, the Committee of Experts emphasized that the "Convention requires the national equality policy to be effective. It should therefore be clearly stated, which implies that programmes should be or have been set up, all discriminatory laws and administrative practices are repealed or modified, stereotyped behaviours and prejudicial attitudes are addressed and a climate of tolerance promoted, and monitoring put in place. Measures to address discrimination, in law and in practice, should be concrete and specific. They should make an effective contribution to the elimination of direct and indirect discrimination and the promotion of equality of opportunity and treatment for all categories of workers, in all aspects of employment and occupation and in respect of all the grounds covered by the Convention. Treating certain groups differently may be required to eliminate discrimination and to achieve substantive equality for all groups covered by the Convention."

Workers with Family Responsibilities Convention, 1981 (No. 156)
With a view to creating effective equality of opportunity and treatment for men and women workers, the Convention requires ratifying States to make it an aim of national policy to enable persons with family responsibilities who are engaged or wish to engage in employment to exercise their right to do so without being subject to discrimination and, to the extent possible, without conflict between their employment and family responsibilities. The Convention also requires governments to take into account the needs of workers with family responsibilities in community planning and to develop or promote community services, public or private, such as child-care and family services and facilities.

In addition to these standards, numerous other ILO standards include provisions on equality in relation to the specific topic that they cover.

TRIPARTITE CONSULTATION

The ILO is based on the principle of tripartism – dialogue and cooperation between governments, employers and workers – in the formulation of standards and policies dealing with labour matters. International labour standards are created and supervised through a tripartite structure that makes the ILO unique in the United Nations system. The tripartite approach to adopting standards ensures that they have broad support from all ILO constituents.

Tripartism with regard to ILO standards is also important at the national level. Through regular tripartite consultations, governments can ensure that ILO standards are formulated, applied and supervised with the participation of employers and workers. ILO standards on tripartite consultation set forth the framework for effective national tripartite consultations. Such consultations can ensure greater cooperation among the social partners and stronger awareness and participation in matters relating to international labour standards, and can lead to better governance and a greater culture of social dialogue on wider social and economic issues.

Because of the importance of tripartism, the ILO has made the ratification and implementation of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No.144), a priority. The 2008 Declaration on Social Justice for a Fair Globalization emphasizes the key role of this instrument (together with Conventions Nos 81, 122 and 129) from the viewpoint of governance.

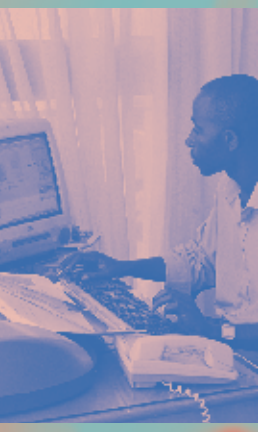
Relevant ILO instrument

Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)

This governance Convention defines the concept of "representative organisations of employers and workers" and requires ratifying States to operate procedures that ensure effective consultations between representatives of the government, of employers and of workers on matters concerning items on the agenda of the International Labour Conference, the submission to the competent national authorities of newly adopted ILO standards, the re-examination of unratified Conventions and of Recommendations, reports on ratified Conventions and proposals for the denunciation of ratified Conventions. Employers and workers shall be represented on an equal footing on any bodies through which consultations are undertaken, and consultations shall take place at least once a year.

ILO standards in practice: social dialogue in Tunisia, Djibouti and the Philippines
In February 2013, shortly after the adoption of its new Constitution and just over a year after the signing of the social contract between the Government of Tunisia, the Tunisian Union of Industry, Trade and Handicrafts (UTICA) and the Tunisian General Labour Union (UGTT), Tunisia became the 136th ILO member State to ratify Convention No. 144. A few years after the events of the "Arab Spring", this ratification foreshadowed the beginning of a new era for the development of tripartism and social dialogue as a key element of democracy in the country.
Following tripartite consultations in 2016, the tripartite partners in Djibouti took the decision unanimously to ratify the Maritime Labour Convention, 2006 (MLC, 2006), and the Protocol of 2014 to the Foreced Labour Convention, 1930, which were both ratified in 2018.
In the Philippines, broad tripartite consultation led to the ratification in 2017 of the Labour Relations (Public Service) Convention, 1978 (No. 151).

LABOUR ADMINISTRATION



International labour standards are usually applied through national law and policy. It is therefore vital for each country to maintain a viable and active labour administration system responsible for all aspects of national labour policy formulation and implementation. In addition to promoting labour administration systems in a variety of forms, ILO standards also encourage the collection of labour statistics, which are invaluable in identifying needs and formulating labour policy at both the national and international levels. While labour administrations exist in most countries around the world, many of them face financial and material difficulties. Adequate financing of labour administration systems is therefore necessary to maintain and strengthen this important development tool.

Relevant ILO instruments

Labour Adminstration Convention, 1978 (No. 150)
Ratifying countries are required to ensure, in a manner appropriate to national conditions, the organization and effective operation in their territory of a system of labour administration, the functions and responsibilities of which are properly coordinated. The labour administration system shall be responsible for the formulation, implementation and supervision of national labour standards; employment and human resources development; studies, research and statistics on labour; and shall provide support for labour relations. Participation by workers and employers and their respective organizations in relation to national labour policy shall also be ensured. Labour administration staff shall have the status, material means and financial resources necessary for the effective performance of their duties.

Labour Statistics Convention, 1985 (No. 160)
Ratifying countries are required to regularly collect, compile and publish basic labour statistics, which shall be progressively expanded, in accordance with their resources, to the economically active population, employment, unemployment and, where possible, visible underemployment; the structure and distribution of the economically active population; average earnings and hours of work (hours actually worked or hours paid for)

and, where appropriate, time rates of wages and normal hours of work; wage structure and distribution; labour cost; consumer price indices; household expenditure or, where appropriate, family expenditure and, where possible, household income or, where appropriate, family income; occupational injuries and, as far as possible, occupational diseases; and industrial disputes.

LABOUR INSPECTION

The proper application of labour legislation depends on an effective labour inspectorate. Labour inspectors examine how national labour standards are applied in the workplace and advise employers and workers on how to improve the application of national law in such areas as working time, wages, occupational safety and health, and child labour. In addition, labour inspectors bring to the notice of national authorities gaps and defects in national law. They play an important role in ensuring that labour law is applied equally to all employers and workers. Because the international community recognizes the importance of labour inspection, the ILO has made the promotion of the ratification of the two labour inspection Conventions (Nos 81 and 129) a priority. On 1st January 2019, 146 countries (nearly 80 per cent of ILO member States) had ratified the Labour Inspection Convention, 1947 (No. 81), and 53 had ratified Convention No. 129.

Nevertheless, challenges remain in countries where labour inspection systems are underfunded and understaffed, and consequently unable to do their job. Some estimates indicate that in certain developing countries less than 1 per cent of the national budget is allocated to labour administration, of which labour inspection systems receive only a small fraction. Other studies show that the costs resulting from occupational accidents and illnesses, absenteeism, abuse of workers and labour disputes can be much higher. Labour inspection can help prevent these problems and thereby enhance productivity and economic development.

Relevant ILO instruments

Labour Inspection Convention, 1947 (No. 81)
This governance Convention requires ratifying States to maintain a system of labour inspection for workplaces in industry and commerce; States can make exceptions with regard to mining and transport. It sets out a series of principles respecting the determination of the fields of legislation covered by labour inspection, the functions and organization of the system of inspection, recruitment criteria, the status and terms and conditions of service of labour inspectors, and their powers and obligations. The labour inspectorate has to publish and communicate to the ILO an annual report indicating the general functioning of its services on a number of issues.

Protocol of 1995 to the Labour Inspection Convention, 1947

Each State that ratifies this protocol undertakes to extend the application of the provisions of the Labour Inspection Convention, 1947 (No. 81), to workplaces considered as non-commercial, which means neither industrial nor commercial within the meaning of the Convention. It also allows ratifying States to make special arrangements for the inspection of enumerated public services.

Labour Inspection (Agriculture) Convention, 1969 (No. 129)

This governance Convention, similar in content to Convention No. 81, requires ratifying States to establish and maintain a system of labour inspection in agriculture. Labour inspection coverage may also be extended to tenants who do not engage outside help, sharecroppers and similar categories of agricultural workers; persons participating in a collective economic enterprise, such as members of a cooperative; or members of the family of the operator of the agricultural undertaking, as defined by national laws or regulations.

Labour inspection and the informal economy

The informal economy accounts for over half of the global workforce and more than 90 per cent of micro- and small enterprises throughout the world. It encompasses a great diversity of situations, employers and workers, most of whom are in the subsistence economy, particularly in developing countries, where the protection afforded by regulation may not be legally applicable, or may not be applied in practice to informal economic units and their workers. The scarce resources of inspection services and the particular challenges related to the informal economy may also result in governments focusing their efforts solely on formal enterprises. In June 2015, the ILO's constituents, in recognition of the fact that, in view of its size, the informal economy in all its forms is a major obstacle to respect for workers' rights, including fundamental principles and rights at work, social protection, decent conditions of work, inclusive development and the primacy of the law, and that it has a detrimental effect on the development of sustainable enterprises, public revenue, State action, particularly in relation to economic, social and environmental policy, as well as institutional solidity and fair competition on national and international markets, adopted at the International Labour Conference the **Transition from the Informal to the Formal Economy Recommendation, 2015 (No. 204**).

Formulating deontological principles for labour inspection services

In France, the Decree issuing the Deontological Code for Public Labour Inspection Services entered into force in 2017. The Code reinforces the rules of professional ethics applicable to inspectors and refers specifically to Conventions Nos 81 and 129. It recalls the ethical principles and rules applicable to any public servant, as well as the principles and rules governing labour inspection in light of the nature of its functions and powers based on the objectives of ensuring the trust of users, reinforcing the legitimacy of the service and the protection of citizens, the public service and each of its officials..

EMPLOYMENT POLICY

For most people, the key to escaping poverty is having a job. Recognizing that the development of labour standards without addressing employment would be meaningless, the ILO dedicates a large part of its programme to creating greater opportunities for women and men to secure decent employment and income. To achieve this goal, it promotes international standards on employment policy which, together with technical cooperation programmes, are aimed at achieving full, productive and freely chosen employment. No single policy can be prescribed to attain this objective. Every country, whether developing, developed or in transition, needs to devise its own policies to achieve full employment. ILO standards on employment policy provide a framework for designing and implementing such policies, thereby ensuring maximum access to the jobs needed to provide decent work.

Relevant ILO instrument

Employment Policy Convention, 1964 (No. 122)

This governance Convention requires ratifying States to declare and pursue an active policy designed to promote full, productive and freely chosen employment. Such a policy shall aim to ensure that there is work for all who are available for and seeking work; that such work is as productive as possible; and that there is freedom of choice of employment and the fullest possible opportunity for each worker to qualify for, and to use his or her skills and endowments in a job for which he or she is well suited, irrespective of race, colour, sex, religion, political opinion, national extraction or social origin. The Employment Policy (Supplementary Provisions) Recommendation, 1984 (No. 169), adds that the economic and social policies, plans and programmes designed to promote full, productive and freely chosen employment should aim to ensure for all workers equality of opportunity and treatment in respect of access to employment, conditions of employment, vocational guidance and training and career development. Moreover, in view of the difficulties encountered by certain underprivileged groups in finding employment, the Recommendation calls on States to adopt measures to respond to the needs of all categories of persons frequently having difficulties in finding lasting employment, such as women, young workers, persons with disabilities, older workers, the long-term unemployed and migrant workers lawfully within their territory. The policy also has to take duly into account the stage and level of economic

development and the mutual relationships between employment objectives and other economic and social objectives, and shall be pursued by methods that are appropriate to national conditions and practices. The Convention also requires ratifying States to take measures to apply an employment policy in consultation with workers' and employers' representatives, and the representatives of the persons affected by the measures to be taken.

Employment Relationship Recommendation, 2006 (No. 198)
The objective of this Recommendation is to protect workers encountering difficulties in establishing whether an employment relationship exists in situations where the respective rights and obligations of the parties concerned are not clear, where there has been an attempt to disguise the employment relationship, or where inadequacies or limitations exist in the legal framework, or in its interpretation or application. The Recommendation envisages the adoption of a national policy to ensure effective protection for workers who perform work in the context of an employment relationship.

In June 2017, the ILO's constituents, recognizing the importance of employment and decent work in promoting peace, preventing situations of crisis resulting from conflict and disasters, enabling recovery and reinforcing resilience, and emphasizing the need to ensure respect for all human rights and the rule of law, including respect for fundamental principles and rights at work and international labour standards, adopted at the International Labour Conference the **Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205)**.

Global Employment Agenda and Follow-up to the 2008 Declaration

In 2003, the ILO Governing Body adopted the Global Employment Agenda, which sets forth ten core elements for the development of a global strategy to boost employment. These include such economic strategies as promoting trade and investment for productive employment and market access for developing countries, sustainable development for sustainable livelihoods, and policy integration in macroeconomic policy. Other core elements include strategies supported by international labour standards, such as the

promotion of cooperatives and small and medium-sized enterprises, training and education, social protection and occupational safety and health, as well as equality and collective bargaining.[14] The follow-up action to the 2008 Declaration on Social Justice for a Fair Globalization includes a scheme of recurrent discussions at the International Labour Conference. As a response to the requirement set out in the Declaration for an integrated approach to help member States meet ILO objectives, it was decided that a recurrent report would be prepared by the Office for discussion at the International Labour Conference. In November 2008, the Governing Body decided on the first of the strategic objectives to be discussed as a recurrent item. Up to now there have been two recurrent discussions by the International Labour Conference on the strategic objective of employment. The first recurrent discussion was held in 2010 on "employment policies for social justice and a fair globalization". The second recurrent discussion on employment was held in 2014, when the Conference discussed "employment policies for sustainable recovery and development". The next recurrent discussion on employment will be in 2021.

Convention No. 122 sets out the goal of full, productive and freely chosen employment, while other ILO instruments put forward strategies for attaining this aim. Employment services (public and private), the employment of persons with disabilities, small and medium-sized enterprises and cooperatives all play a part in creating employment. ILO standards in these fields provide guidance on using these means effectively in order to create jobs.

Relevant ILO instruments

Employment Service Convention, 1948 (No. 88)

The Convention requires ratifying States to establish and operate a free employment service, consisting of a national system of employment offices under the direction of a national authority. The close links between Conventions Nos 88 and 122 are clear in Article 1(2) of Convention No. 88, which provides that "[t]he essential duty of the employment service shall be to ensure, in co-operation where necessary with other public and private bodies concerned, the best possible organisation of the employment market as an integral part of the national programme for the achievement and maintenance of full employment and the development and use of productive resources." The public employment service should assist workers to find suitable employment and assist employers to find suitable workers. The Convention envisages the adoption of specific measures to respond to the needs of certain categories of workers, such as persons with disabilities and young persons.

Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159)

The Convention sets forth the principles of national policy for the vocational rehabilitation and employment of persons with disabilities and provides for the setting up and evaluation of vocational guidance, vocational training, placement and unemployment services for persons with disabilities. The national policy shall aim at ensuring that appropriate vocational rehabilitation measures are made available to all categories of persons with disabilities, and at promoting employment opportunities for persons with disabilities in the open labour market. The policy shall be based on the principle of equality of opportunity between workers with disabilities and workers generally. The Convention also requires the representative organizations of employers and workers, and the representative organizations of and for persons with disabilities, to be consulted.

Private Employment Agencies Convention, 1997 (No. 181)
Requires ratifying States to ensure that private employment agencies respect the principles of non-discrimination. The Convention provides for cooperation between private and public employment services, general principles to protect jobseekers against unethical or inappropriate practices, and the protection of workers under subcontracting arrangements and workers recruited from abroad. It also applies to temporary work agencies.

Older Workers Recommendation, 1980 (No. 162)
Recommends that older workers should, without discrimination on the grounds of their age, enjoy equality of opportunity and treatment with other workers.

Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189)
Recommends member States to adopt measures which are appropriate to national conditions and consistent with national practice to promote small and medium-sized enterprises in view of their importance in promoting employment and sustainable economic growth.

Promotion of Cooperatives Recommendation, 2002 (No. 193)
The objective of this Recommendation is to promote cooperatives, in particular in view of their role in job creation, mobilizing resources and generating investment.

Securing employment for workers with disabilities

Several States that have ratified Convention No. 159 have adopted national policies and laws on vocational rehabilitation and employment for persons with disabilities following consultations with the social partners and representative organizations of persons with disabilities. For example, in 2015, Ireland adopted a global employment strategy for persons with disabilities. Japan and Mongolia have also adopted legislation to eliminate discrimination against persons with disabilities.

The Irish Workway programme was the first project in Europe to adopt a partnership approach in response to high unemployment among people with disabilities. It was established in 2001 under the Programme for Prosperity and Fairness. Workway aims to raise awareness and promote the employment of people with disabilities in the private sector. In order to do so, the programme operates through tripartite local networks established in the four regions of the country. The programme is co-funded by the Irish Government and the European Commission.

Tripartism and social dialogue were also central to the efforts made by Iceland through the adoption of specific legislation on disability and the creation of a vocational rehabilitation fund (VIRK). The origins of the legislation go back to the collective agreements of 2008, which included provisions on the development of new rehabilitation arrangements for workers who fell ill for long periods or suffered accidents resulting in a reduction of their working capacity. The VIRK was also established to give effect to an agreement reached by the social partners for a special contribution by employers.

Youth employment: Challenges and prospects

In 2012, the general discussion at the International Labour Conference reviewed the magnitude and characteristics of the youth employment crisis. It considered in particular the high levels of unemployment and underemployment, the decline in the quality of jobs available for young people, their detachment from the labour market and slow and difficult transitions to decent work. Following the discussion, a resolution was adopted calling for immediate, targeted and r enewed action to address the youth employment crisis. The resolution recognizes that international labour standards play an important role in protecting the rights of young workers. It also includes an appendix listing the international labour standards relevant to work and young persons. Data in the *Global Employment Trends 2017* report confirms that young persons are three times more likely than adults to be unemployed. And when young women and men find work, the quality of the work is a cause for concern, and young persons are twice as likely to be in precarious employment. The Committee of Experts has emphasized that the challenges faced by young persons in finding lasting employment are worse for the categories who are most exposed to decent work deficits, including young women, who are often affected by higher unemployment rates than young men, as well as young persons with disabilities and others. However, the Committee of Experts has noted the efforts made in certain countries through policies and programmes to promote youth employment and create quality jobs.

VOCATIONAL GUIDANCE AND TRAINING

Education and training are key to making people employable, thereby allowing them to gain access to decent work and to escape poverty. To compete in today's global economy, workers and employers need to be especially well trained in information and communication technologies, new forms of business organization and the workings of international markets. Societies aiming to attain full employment and sustained economic growth therefore need to invest in education and human resources development. By providing basic education, core work skills and lifelong learning opportunities for their entire working population, countries can help to ensure that workers can maintain and improve their employability, resulting in a more skilled and productive workforce. Nevertheless, major gaps in education and access to information technology persist between and within countries. ILO standards encourage countries to develop sound human resources practices and training policies that are beneficial to all the social partners. Because of the continued importance of this topic, in 2004 the International Labour Conference adopted an updated Human Resources Development Recommendation, 2004 (No. 195), which focusses on education, training and lifelong learning.

Relevant ILO instruments

Paid Educational Leave Convention, 1974 (No. 140)
The Convention requires ratifying States to formulate and apply a policy designed to promote, by methods appropriate to national conditions and practice, and by stages as necessary, the granting of paid educational leave for the purpose of training at any level, general, social and civic education, and trade union education.

Human Resources Development Convention, 1975 (No. 142)
The instrument requires ratifying States to develop policies and programmes of vocational guidance and vocational training, closely linked with employment, in particular through public employment services. For this purpose, they are required to develop complementary systems of general, technical and vocational education, educational and vocational guidance and vocational training, and to extend them gradually to young persons and adults, including appropriate programmes for persons with disabilities.

Education and training in practice

By investing in human resources, enterprises can improve productivity and compete more successfully in world markets. One study has found that in Denmark, for instance, enterprises which combined production innovations with targeted training were more likely to report growth in output, jobs and labour productivity than companies that did not pursue such strategies. Studies on Germany, Italy, Japan and the United States have reached similar conclusions. Training benefits not only the individual worker but, by increasing her or his productivity and skills level, the employer reaps the rewards as well.[15]

The 2010 General Survey on the employment instruments refers to the critical relation between Convention No. 142, as complemented by Recommendation No. 195, the attainment of full employment and decent work, and the realization of the right to education for all. The General Survey also acknowledges the important role of Convention No. 142 in combating discrimination. The Committee of Experts observed that there is a growing problem of unemployment among educated workers, particularly young university graduates, who are experiencing increasing difficulties in finding secure employment commensurate with their skills level. This is an issue for both advanced market economies and developing countries. The Committee of Experts has encouraged governments to develop job creation and career guidance policies targeted at this new category of the educated unemployed.

The termination of an employment relationship is likely to be a traumatic experience for a worker and the loss of income has a direct impact on her or his family's well-being. As more countries seek employment flexibility and globalization destabilizes traditional employment patterns, more workers are likely to face involuntary termination of employment at some point in their professional lifetime. At the same time, the flexibility to reduce staff and to dismiss unsatisfactory workers is a necessary measure for employers to keep enterprises productive. ILO standards on termination of employment seek to find a balance between maintaining the employer's right to dismiss workers for valid reasons and ensuring that such dismissals are fair and are used as a last resort, and that they do not have a disproportionately negative impact on the worker.

Relevant ILO instrument

Termination of Employment Convention, 1982 (No. 158)
This instrument sets forth the principle that the employment of a worker should not be terminated unless there is a valid reason for such termination connected with the worker's capacity or conduct, or based on the operational requirements of the enterprise, establishment or service. Reasons for dismissal not considered valid include those based on union membership or participation in union activities, the filing of a complaint against an employer, race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction or social origin, temporary absence due to illness, or absence from work during maternity leave. If an individual worker is dismissed, he or she shall have the right to defend him or herself against any allegations. In cases of collective dismissals, governments should encourage employers to consult workers' representatives and develop alternatives to mass lay-offs (such a hiring freezes or working time reductions). The Convention also covers matters related to severance pay, the period of notice, appeal procedures against dismissal, unemployment insurance and the advance warning to be given to the authorities in cases of mass dismissals.[16]

SOCIAL POLICY

The ILO Constitution, in the Declaration of Philadelphia, provides that "all human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity", and that the fulfilment of this objective "must constitute the central aim of national and international policy". Social policy formulated through dialogue between the social partners has the best chance of achieving the aims agreed upon by the international community. Relevant ILO standards provide a framework for creating social policies which ensure that economic development benefits all those who participate in it.

Relevant ILO instruments

Labour Clauses (Public Contracts) Convention, 1949 (No. 94)
This Convention aims to ensure compliance with minimum labour standards in the execution of public contracts.

Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117)
The Convention sets forth the general principle that all policies shall be primarily directed at the well-being and development of the population and the promotion of its desire for social progress. Furthermore, the improvement of standards of living shall be regarded as the principal objective in the planning of economic development. It also sets out additional requirements concerning migrant workers, agricultural producers, independent producers and wage earners, minimum wage-fixing and the payment of wages, non-discrimination, and education and vocational training.

WAGES

With working time, wages are among conditions of work that have the most direct and tangible effect on the everyday life of workers. Although wages are necessary for the maintenance of workers and their families, in many parts of the world access to adequate and regular wages is not guaranteed.

Indeed, in certain countries, wage arrears continue to be a problem. In some cases, workers who have not received their wages are never paid due to the bankruptcy of the enterprise. Problems can also arise in cases where part of wages, and sometimes a large part, are paid in kind. Such situations push the workers concerned into poverty. In certain cases, these practices may even expose them to the risk of debt bondage or forced labour.

The principle of the provision of an adequate living wage was already set out in the Treaty of Versailles. Following the erosion of purchasing power as a result of the 2008 economic crisis, the ILO considered it important to emphasize the link between minimum wage-fixing and action to combat poverty. Accordingly, the Global Jobs Pact, adopted by the International Labour Conference in 2009, makes several references to minimum wages as one of the means of responding to the international economic crisis. The regular adjustment of wages, in consultation with the social partners, is identified in the Pact as one of means of reducing inequality, increasing demand and contributing to economic stability.

ILO standards on wages address all of these issues. They provide for the regular payment of wages, the protection of wages in the event of the insolvency of the employer and the fixing of minimum wage levels.

Relevant ILO instruments

Protection of Wages Convention, 1949 (No. 95)
Wages shall be paid in legal tender at regular intervals; in cases where partial payment of wages is in kind, the value of such allowances should be fair and reasonable. Workers shall be free to dispose of their wages as they choose. In cases of employer insolvency, wages shall enjoy a priority in the distribution of liquidated assets.

Minim Wage Fixing Convention, 1970 (No. 131)
The Convention requires ratifying States to establish minimum wage fixing machinery to determine, periodically review and adjust minimum wage rates having the force of law.

Protection of Workers' Claims Convention, 1992 (No. 173)
The Convention provides for the protection of wage claims in insolvency and bankruptcy proceedings by means of a privilege or through a guarantee institution.

Also relevant:
Equal Remuneration Convention, 1951 (No. 100)
The Convention lays down the principle of equal remuneration for men and women workers for work of equal value.

Wage policies and sustainable development

As part of its Decent Work Agenda, the ILO encourages member States to adopt a minimum wage to reduce poverty and provide social protection for workers. The adoption of appropriate wage policies is also identified as a means of implementing the Sustainable Development Agenda 2030. SDG 8 is to "Promote sustained, inclusive and sustainable economic growth, full and productive employment and decent work for all", with emphasis on ensuring equal pay for work of equal value for everyone. SDG 10 aims to "Reduce inequality within and among countries" and places emphasis on the progressive achievement of greater equality.

The ILO analyses wage trends throughout the world and regularly publishes a *Global Wage Report*. The ***2016/17 edition*** of the report found that, following the 2008-09 financial crisis, real wage growth in the world recovered in 2010, but has since slowed down and has even been reversed in some countries. One of the conclusions of the report is that on average wage growth has fallen behind labour productivity growth (the average value of the goods and services produced by workers). The report also notes that in recent years several countries have introduced or strengthened minimum wages as a means of supporting low-paid workers and reducing wage inequality. According to the report, when they are set at an adequate level, minimum wages can have the effect of raising the income of low-paid workers, many of whom are women, without significant negative effects on employment. Finally, the report finds that the inclusion of wage policy on the agenda of recent meetings of the G20 is a positive development, and recalls that the G20 has called for the establishment of the principles of a sustainable wage policy to strengthen labour market institutions and policies, including the minimum wage and collective bargaining, so that wage increases better reflect productivity growth.

In 2016, the ILO published a ***Minimum wage policy guide***, which describes the diversity of practices and identifies the various options, based on national preferences and situations. Without seeking to promote a particular model, the Guide emphasizes essential principles and good practices for minimum wage fixing and provides examples of the advantages and disadvantages of the various options. The Guide was published following the preparation of a ***General Survey on minimum wages*** (2014), in which the Committee of Experts concluded that the objectives, principles and methods set out in Convention No. 131 remain as relevant today as when the Convention was adopted in 1970 and are adapted to public policies aimed at reconciling the objectives of economic development with the principles of social justice.

WORKING TIME

The regulation of working time is one of the oldest concerns of labour legislation. Already in the early 19th century it was recognized that working excessive hours posed a danger to workers' health and to their families. The very first ILO Convention, adopted in 1919 (see below), limited hours of work. Today, ILO standards on working time provide the framework for regulated hours of work, weekly rest periods, annual holidays, night work and part-time work. These instruments ensure high productivity while safeguarding workers' physical and mental health. Standards on part-time work have become increasingly important instruments for addressing such issues as job creation and the promotion of equality between men and women.

Relevant ILO instruments

Hours of Work (Industry) Convention, 1919 (No. 1)
Hours of Work (Commerce and Offices) Convention, 1930 (No. 30)
These two Conventions set the general standard of 48 hours of work a week, with a maximum of eight hours a day.

Forty-Hour Week Convention, 1935 (No. 47)
Reduction of Hours of Work Recommendation, 1962 (No. 116)
These instruments set out the principle of the 40 hour working week.

Weekly Rest (Industry) Convention, 1921 (No. 14)
Weekly Rest (Commerce and Offices) Convention, 1957 (No. 106)
These instruments set the general standard that workers shall enjoy a rest period of at least 24 consecutive hours every seven days.

Holidays with Pay Convention, 1970 (No. 132)
This Convention provides that every person to whom it applies shall enjoy at least three working weeks of annual paid holiday for one year of service.

Working time in the 21st century

In view of the importance of working time issues in the context of the current transformations in the world of work, the Governing Body decided that the **2018 General Survey** would cover the ILO's working time instruments. In this vast General Survey, the Committee of Experts observes that, while new working-time arrangements, such as on-call work, telework and the platform economy, may offer advantages for both workers and employers, they are also associated with a number of disadvantages, including the encroachment of work on rest periods, the unpredictability of working hours, income insecurity and the stress associated with the perceived need to be constantly connected to work. It is therefore important for these issues to be regulated by national legislation, taking into account both the needs of workers in relation to their physical and mental health and work–life balance, and the flexibility requirements of enterprises. The Committee of Experts also observed that, while national legislation of the countries reviewed broadly recognizes weekly limits on hours of work, daily limits are not clearly set in many countries and that the circumstances that justify recourse to exceptions to normal statutory hours of work are not always clearly defined, or go beyond those recognized in ILO instruments. Moreover, the limits on the number of additional hours allowed in law and practice often go beyond the reasonable limits required by the Conventions, and additional hours are often not compensated either financially or with time off. The Committee of Experts also noted that, although the principle of weekly rest is widely recognized in national legislation, there are frequent cases of recourse to special weekly rest schemes and a tendency to provide financial compensation for work performed during weekly rest periods, rather than compensatory time off. It further noted that, while the principle of holidays with pay is broadly accepted, there is a trend for qualifying periods to be too long, and a tendency to postpone and divide annual leave into parts, which is in contradiction with the purpose of ensuring that workers benefit from a sufficient period of leave to rest and recover from fatigue. Finally, the Committee of Experts noted that the national legislation in many countries does not yet establish protective measures in relation to night work.

Night Work Convention, 1990 (No. 171)

The Convention requires ratifying States to take measures required by the nature of night work for the protection of night workers, including to protect their health, assist them to meet their family and social responsibilities, provide opportunities for occupational advancement and compensate them appropriately. It also requires alternatives to night work to be offered to women for specified periods during and after pregnancy

Part-Time Work Convention, 1994 (No. 175)

The Convention provides that part-time workers must receive the same protection as that accorded to comparable full-time workers in respect of the right to organize, the right to bargain collectively, occupational safety and health and discrimination in employment and occupation. They must also benefit from equivalent conditions in relation to maternity protection, termination of employment and other terms and conditions of employment.

The ILO Constitution sets forth the principle that workers must be protected from sickness, disease and injury arising from their employment. Yet for millions of workers the reality is very different. According to the most recent ILO global estimates, 2.78 million work-related deaths are recorded every year, of which 2.4 million are related to occupational diseases. In addition to the immense suffering caused for workers and their families, the associated economic costs are colossal for enterprises, coun-tries and the world. The losses in terms of compensation, lost work days, interrupted production, training and reconversion, as well as health-care expenditure, represent around 3.94 per cent of the world's annual GDP.[17] Employers face costly early retirements, loss of skilled staff, absenteeism and high insurance premiums. Yet, many of these tragedies are preventable through the implementation of sound prevention, reporting and inspec-tion practices. ILO standards on occupational safety and health provide essential tools for governments, employers and workers to establish such practices and provide for maximum safety at work.

Relevant ILO instruments

The ILO has adopted more than 40 Conventions and Recommendations specifically dealing with occupational safety and health, as well as over 40 codes of practice. Moreover, nearly half of ILO instruments deal directly or indirectly with occupational safety and health issues.

Fundamental principles of occupational safety and health

Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187)

As an instrument setting out a promotional framework, this Convention is designed to provide for coherent and systematic treatment of occupational safety and health issues and to promote recognition of existing Conventions on occupational safety and health. The Convention is aimed at establishing and implementing coherent national policies on occupational safety and

health through dialogue between government, workers' and employers' organizations and to promote a national preventive safety and health culture. It entered into force in early 2008 and has already been ratified by nearly 50 member States.

Occupational Safety and Health Convention, 1981 (No. 155), and its Protocol of 2002

The Convention provides for the adoption of a coherent national occupational safety and health policy, as well as action to be taken by governments and within enterprises to promote occupational safety and health and improve working conditions. This policy shall be developed taking into consideration national conditions and practice. The Protocol calls for the establishment and periodic review of requirements and procedures for the recording and notification of occupational accidents and diseases, and the publication of related annual statistics.

Occupational Health Services Convention, 1985 (No. 161)

This Convention provides for the establishment of enterprise-level occupational health services which are entrusted with essentially preventive functions and are responsible for advising the employer, workers and their representatives in the enterprise on maintaining a safe and healthy working environment.

Safety and health in particular branches of economic activity

Hygiene (Commerce and Offices) Convention, 1964 (No. 120)

The objective of this instrument is to preserve the health and welfare of workers employed in trading establishments, and establishments, institutions and administrative services in which workers are mainly engaged in office work and other related services through elementary hygiene measures responding to the requirements of welfare at the workplace.

Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152)

See under dockworkers.

Safety and Health in Construction Convention, 1988 (No. 167)
The Convention sets out detailed technical preventive and protective measures having due regard to the specific requirements of the sector. These measures relate to the safety of workplaces, machines and the equipment used, work at heights and work executed in compressed air.

Safety and Health in Mines Convention, 1995 (176)
This instrument regulates the various aspects of safety and health characteristic of work in mines, including inspection, special working devices and protective equipment for workers. It also prescribes requirements relating to mine rescue.

Safety and Health in Agriculture Convention, 2001 (No. 184)
The objective of this Convention is the prevention of accidents and injury to health arising out of, linked with or occurring in the course of agricultural and forestry work. The Convention therefore sets out measures relating to machinery safety and ergonomics, the handling and transport of materials, the sound management of chemicals, animal handling, protection against biological risks, and welfare and accommodation facilities.

Protection against specific risks

Radiation Protection Convention, 1960 (No. 115)
The objective of the Convention is to set out basic requirements for the protection of workers against the risks associated with exposure to ionizing radiations. The protective measures to be taken include the limitation of workers' exposure to ionizing radiations to the lowest practicable level and the avoidance of any unnecessary exposure, as well as the monitoring of the workplace and of workers' health. The Convention also sets out requirements relating to emergency situations that may arise.

Occupational Cancer Convention, 1974 (No. 139)
This instrument aims at the establishment of a mechanism for the adoption of measures to prevent the risks of occupational cancer caused by exposure, generally over a prolonged period, to chemical and physical

agents of various types present in the workplace. For this purpose, ratifying States are required to determine periodically carcinogenic substances and agents to which occupational exposure shall be prohibited or regulated, to make every effort to replace these substances and agents by non or less carcinogenic ones, to prescribe protective and supervisory measures, and to prescribe the necessary medical examinations of workers who are exposed.

Working Environment (Air Pollution, Noise and Vibration) Convention, 1977 (No. 148)

The Convention provides that, as far as possible, the working environment shall be kept free from any hazards due to air pollution, noise or vibration. To achieve this, technical measures shall be applied to enterprises or processes, and where this is not possible, supplementary measures regarding the organization of work shall be taken instead.

Asbestos Convention, 1986 (No. 162)

The Convention aims to prevent the harmful effects of exposure to asbestos on the health of workers by specifying reasonable and practicable methods and techniques to reduce occupational exposure to asbestos to a minimum. With a view to achieving this objective, the Convention enumerates various detailed measures, which are based essentially on the prevention and control of health hazards due to occupational exposure to asbestos, and the protection of workers against these hazards.

Chemicals Convention, 1990 (No. 170)

The Convention provides for the adoption and implementation of a coherent policy on safety in the use of chemicals at work, which includes the production, handling, storage and transport of chemicals, as well as the disposal and treatment of waste chemicals, the release of chemicals resulting from work activities, and the maintenance, repair and cleaning of equipment and containers of chemicals. In addition, it allocates specific responsibilities to suppliers and exporting States.

The current situation with regard to occupational safety and health

In 2017, the Committee of Experts published an important General Survey on the occupational safety and health instruments relating to the promotional framework, construction, mines and agriculture. In the General Survey, the Committee of Experts noted an almost universal recognition of the importance of ensuring safe and secure conditions at work, in general, and in the construction, mining and agriculture sectors in particular. All member States reported measures taken in law or practice to promote occupational safety and health and to protect workers from occupational accidents and diseases, and many reported recent measures to reinvigorate and intensify efforts in this regard.

Safety and health of young workers

On the occasion of the World Day for Safety and Health at Work 2018, the ILO drew attention to the issue of the safety and health of young workers. The 541 million young workers (aged 15-24 years) globally, including 37 million children engaged in hazardous child labour, account for over 15 per cent of the world's labour force and suffer up to a 40 per cent higher rate of non-fatal occupational injuries than adult workers over 25 years of age. Many factors can increase youth vulnerability to occupational safety and health risks, such as their physical and psychological stage of development, lack of work experience and training, limited awareness of work-related hazards and lack of bargaining power, which can lead young workers to accept dangerous tasks or jobs with poor working conditions. The ILO placed emphasis on the critical importance of addressing these challenges and improving safety and health for young workers, not only to promote decent work for youth, but also to link these efforts to action to combat hazardous, and all other forms of child labour.

Codes of practice

ILO codes of practice set out practical guidelines for public authorities, employers, workers, enterprises and specialized occupational safety and health protection bodies (such as enterprise safety committees). They are not legally binding instruments and are not intended to replace the provisions of national laws or regulations, or accepted standards. Codes of practice provide guidance on safety and health at work in certain economic sectors (including construction, opencast mines, coal mines, iron and steel industries, non-ferrous metals industries, agriculture, shipbuilding and ship repairing and forestry), protecting workers against certain hazards (such as radiation, lasers, visual display units, chemicals, asbestos and airborne substances) and certain safety and health measures (e.g. occupational safety and health management systems; ethical guidelines for workers' health surveillance; recording and notification of occupational accidents and diseases; protection of workers' personal data; safety, health and working conditions in the transfer of technology to developing countries).

SOCIAL SECURITY

Social security is a human right which responds to the universal need for protection against certain life risks and social needs. Effective social security systems guarantee income security and health protection, thereby contributing to the prevention and reduction of poverty and inequality, and the promotion of social inclusion and human dignity. They do so through the provision of benefits, in cash or in kind, intended to ensure access to medical care and health services, as well as income security throughout the life cycle, particularly in the event of illness, unemployment, employment injury, maternity, family responsibilities, invalidity, loss of the family breadwinner, as well as during retirement and old age. Social security systems therefore constitute an important investment in the well-being of workers and the community as a whole, and facilitate access to education and vocational training, nutrition and essential goods and services. In relation with other policies, social security contributes to improving productivity and employability, and to economic development. For employers and enterprises, social security helps to maintain a stable workforce that can adapt to changes. Finally, it reinforces social cohesion and therefore contributes to building social peace, inclusive societies and a fair globalization by ensuring decent living conditions for all.

The Conventions and Recommendations which make up the ILO's standards framework on social security are unique: they set out minimum standards of protection to guide the development of benefit schemes and national social security systems, based on good practices from all regions of the world. They are therefore based on the principle that there is no single model for social security, and that it is for each country to develop the required protection. For this purpose, they offer a range of options and flexibility clauses for the progressive achievement of the objective of the universal coverage of the population and of social risks through adequate benefit levels. They also set out guidance on the design, financing, implementation, governance and evaluation of social security schemes and systems, in accordance with a rights-based approach. In a globalizing world, in which individuals are exposed to ever greater economic risks, it is clear that a significant national policy of social protection can contribute to attenuating the many negative effects of crises. It was for this reason that the International Labour Conference adopted a new instrument in 2012,

the Social Protection Floors Recommendation (No. 202). Moreover, the 2019 General Survey, focusing on universal social protection for life in dignity and health, prepared by the Committee of Experts, which will be examined by ILO constituents at the International Labour Conference in 2019, covers this Recommendation.

Relevant ILO instruments

Social Security (Minimum Standards) Convention, 1952 (No. 102)
This Convention sets out minimum standards for the level of social security benefits and the conditions under which they are granted. It covers the nine principal branches of social security, namely medical care, sickness, unemployment, old age, employment injury, family, maternity, invalidity and survivors' benefits. To ensure that it can be applied in all national circumstances, the Convention offers ratifying States the possibility of ratification by initially accepting at least three of its nine branches and of subsequently accepting obligations under other branches, thereby allowing them to progressively attain all the objectives set out in the Convention. The level of minimum benefits can be determined with reference to the level of wages in the country concerned. Temporary exceptions may also be envisaged for countries where the economy and medical facilities are insufficiently developed, thereby enabling them to restrict the scope of the Convention and the coverage of the benefits provided.

Social Protection Floors Recommendation, 2012 (No. 202)
This instrument provides guidance on introducing or maintaining social protection floors and on implementing social protection floors as part of strategies to extend higher levels of social security to as many people as possible, in accordance with the guidance set out in ILO social security standards.

Equality of Treatment (Social Security) Convention, 1962 (No. 118)
Maintenance of Social Security Rights Convention, 1982 (No. 157)
These instruments provide for certain social security rights and benefits for migrant workers, who risk losing the entitlements to social security benefits that they enjoyed in their country of origin.

Further social security instruments

A later generation of Conventions expands the scope of the protection provided by Convention No. 102. While offering a higher level of protection in terms of the scope and level of benefits to be guaranteed, these instruments authorize certain exceptions which ensure flexibility.

The benefits provided under Convention No. 102 and later Conventions are outlined below. This information does not include provisions on the duration and conditions of entitlement to benefits, the derogations allowed under these instruments or the higher levels of benefits provided by the relevant Recommendations.[18]

Medical care

- Convention No. 102: provides for preventive care, general practitioner care, including home visits, specialist care, essential pharmaceutical supplies as prescribed, prenatal, confinement and postnatal care by medical practitioners or qualified midwives, and hospitalization where necessary.
- Convention No. 130: provides for the same benefits as Convention No. 102, plus dental care and medical rehabilitation.

Sickness benefit

- Convention No. 102: periodical payments, corresponding to at least 45 per cent of the reference wage.
- Convention No. 130: periodical payments, corresponding to at least 60 per cent of the reference wage. Also provides for funeral expenses in case of the death of the beneficiary.

Unemployment benefit

- Convention No. 102: periodical payments, corresponding to at least 45 per cent of the reference wage.
- Convention No. 168: periodical payments, corresponding to at least 50 per cent of the reference wage. Beyond the initial period, possibility of applying special rules of calculation. Nevertheless, the total benefits to which the unemployed may be entitled must guarantee them healthy and reasonable living conditions, in accordance with national standards.

Old-age benefit

- Convention No. 102: periodical payments, corresponding to at least 40 per cent of the reference wage. The rates of relevant benefits must be revised following substantial changes in the general level of earnings and/or cost of living.
- Convention No. 128: periodical payments, corresponding to at least 45 per cent of the reference wage. Same conditions as Convention No. 102 relating to the revision of rates.

Employment injury benefit

- Convention No. 102: medical care, periodical payments corresponding to at least 50 per cent of the reference wage in cases of incapacity for work or invalidity. Benefits for widows and dependent children in case of the death of breadwinner with periodical payments corresponding to at least 40 per cent of the reference wage. Possibility of converting periodical payments into a lump sum under certain conditions. Except in the case of incapacity for work, obligation to revise the rates of periodical payments following substantial changes in the cost of living.
- Convention No. 121: same as Convention No. 102, plus certain types of care at the place of work. Periodical payments, corresponding to at least 60 per cent of the reference wage in cases of temporary incapacity for work or invalidity, benefits for widows, disabled and dependent widowers, and dependent children in case of the death of breadwinner, with periodical payments corresponding to at least 50 per cent of the reference wage. Obligation to prescribe a minimum amount for these payments, possibility of converting payments into a lump sum under certain conditions, and supplementary benefits for persons requiring the constant help of a third person.

Family benefit

- Convention No. 102: provides for either periodical payments, or the provision of food, clothing, housing, holidays or domestic help, or a combination of these.

Maternity benefit

- Convention No. 102: medical care, including at least prenatal, confinement and postnatal care, either by medical practitioners or qualified midwives, and hospitalization where necessary; periodical payments, corresponding to at least 45 per cent of the reference wage.
- Convention No. 183: medical benefits, including prenatal, childbirth and postnatal care, as well as hospitalization when necessary; cash benefits to ensure that the woman can maintain herself and her child in proper conditions of health and with a suitable standard of living, corresponding to at least two-thirds of previous earnings or a comparable amount.

Invalidity benefit

- Convention No. 102: periodical payments, corresponding to at least 40 per cent of the reference wage; the rates of the relevant benefits must be revised following substantial changes in the general level of earnings and/or the cost of living.
- Convention No. 128: periodical payments, corresponding to at least 50 per cent of the reference wage; the rates of relevant benefits must be revised following substantial changes in the general level of earnings and/or the cost of living. Obligation to provide rehabilitation services and to take measures to facilitate the placement of persons with disabilities in suitable employment.

Survivors' benefit

- Convention No. 102: periodical payments, corresponding to at least 40 per cent of the reference wage; the rates of the relevant benefits must be revised following substantial changes in the general level of earnings and/or the cost of living.
- Convention No. 128: periodical payments, corresponding to at least 45 per cent of the reference wage; the rates of the relevant benefits must be revised following substantial changes in the general level of earnings and/or the cost of living.

MATERNITY PROTECTION

Raising a family is a cherished goal for many working people. Yet pregnancy and maternity are an especially vulnerable time for working women and their families. Expectant and nursing mothers require special protection to prevent harm to their or their infants' health, and they need adequate time to give birth, recover and nurse their children. At the same time, they also require protection to ensure that they do not lose their job simply because of pregnancy or maternity leave. Such protection not only ensures the equal access of women to employment, it also ensures the continuation of often vital income, which is necessary for the well-being of their entire family. Safeguarding the health of expectant and nursing mothers and protecting them against job discrimination is a precondition for achieving genuine equality of opportunity and treatment for men and women at work and enabling workers to raise families in conditions of economic security.

Relevant ILO instrument

Maternity Protection Convention, 2000 (No. 183)

This Convention is the most up-to-date international labour standard on maternity protection, although earlier instruments – the Maternity Protection Convention, 1919 (No. 3), and the Maternity Protection Convention (Revised), 1952 (No. 103) – are still in force in certain countries.

Convention No. 183 provides for 14 weeks of maternity benefit for women to whom the instrument applies. Women who are absent from work on maternity leave shall be entitled to a cash benefit which ensures that they can maintain themselves and their child in proper conditions of health and with a suitable standard of living, and which shall be no less than two thirds of her previous earnings or a comparable amount. The Convention also requires ratifying States to take measures to ensure that pregnant women and nursing mothers are not obliged to perform work which has been determined to be harmful to their health or that of their child, and to protect them against discrimination based on maternity. It

also prohibits employers from terminating the employment of a woman during pregnancy or absence on maternity leave, or during a period following her return to work, except on grounds unrelated to pregnancy, childbirth and its consequences, or nursing. Women returning to work must be returned to the same or an equivalent position paid at the same rate. The Convention also establishes the right to one or more daily breaks or a daily reduction of hours of work for women to breastfeed their child.

Maternity leave: Countries complying with ILO standards[19]

Globally, 52 per cent of the countries studied (99 countries) provide for a period of maternity leave of at least 14 weeks, the standard established by Convention No. 183. Among those, 48 countries meet or exceed the 18 weeks of leave suggested in Recommendation No. 191; 49 countries provide for 12 to 13 weeks of leave – less than the duration specified by Convention No. 183, but consistent with the level set by Conventions Nos. 102 and 103 of at least 12 weeks. Only 16 per cent (30 countries) provide for less than 12 weeks of maternity leave. Of the 192 countries for which information is available, all but two provide cash benefits to women during maternity leave. The two exceptions are Papua New Guinea and the United States, which provide some form of maternity leave, but have no general legal provision respecting cash benefits. Globally, 38 per cent (73 countries) of the 192 countries for which information is available provide cash benefits of at least two-thirds of earnings for at least 14 weeks. Indeed, 14 per cent (26 countries) go beyond this standard by providing 100 per cent of previous earnings for at least 18 weeks. In 44 per cent (84 countries), however, maternity leave is unpaid, paid at less than two-thirds of previous earnings, or paid for a period of less than 14 weeks.

DOMESTIC WORKERS

Domestic workers represent a significant part of the global workforce in informal employment and are among the most vulnerable groups of workers. They work for private households, often without a real employment contract, undeclared and excluded from the scope of labour legislation. Currently there are at least 67 million domestic workers worldwide, not including child domestic workers, and this number is increasing steadily in developed and developing countries. 80 per cent of domestic workers are women.

Deplorable working conditions, labour exploitation and abuses of human rights are major problems facing domestic workers. Only 10 per cent of all domestic workers are covered by general labour legislation to the same extent as other workers. In contrast, over one quarter are completely excluded from the scope of national labour legislation. Domestic workers often have very low wages, excessive hours of work, with no guaranteed day of weekly rest, and are sometimes victims of physical, psychological or sexual abuse, or constraints on their freedom of movement.

Relevant ILO instruments

Domestic Workers Convention, 2011 (No. 189)
This Convention, with the accompanying Recommendation No. 201, provides that domestic workers around the world who care for families and households, must have the same basic labour rights as those available to other workers: reasonable hours of work, weekly rest of at least 24 consecutive hours, a limit on in-kind payments, clear information on their terms and conditions of employment, as well as respect for fundamental principles and rights at work, including freedom of association and the right to collective bargaining.

On 1st January 2019, 27 countries had ratified Convention No. 189, most of which have taken measures to give effect to its provisions. For example, Costa Rica has extended access to social security to all domestic workers. Measures to authorize labour inspection have been taken in a number of countries, while maintaining respect for the household (Costa Rica, Uruguay). In other countries, where a minimum wage was established for domestic workers that is below the national minimum wage, measures have been taken to increase their wage levels and enable them and their families to live a decent life (Argentina).

Domestic work in figures

Domestic work is a significant source of employment, accounting for around 1.7 per cent of total employment worldwide, and 3.6 per cent of wage employment. Data on domestic work are particularly difficult to collect. The ILO published its first estimates of domestic work in 2013 (in the report ***Domestic workers across the world***). The methodology was subsequently refined and adapted in 2016, and published in the context of estimates of the number of migrant workers throughout the world. These key resources are accompanied by guides on qualitative and quantitative research on child domestic work and reflection on the means of measuring the social and economic value of domestic work.[20]

MIGRANT WORKERS

The growing pace of economic globalization has created more migrant workers than ever before. Unemployment and increasing poverty have prompted many workers in developing countries to seek work elsewhere. It is estimated that 73 per cent of migrants are workers. In industrialized countries, demand for labour, especially unskilled labour, has increased. As a result, millions of workers and their families travel to countries other than their own to find work. Considerable efforts have been made over recent years to obtain reliable and comparable data on labour migration. However, as noted by the ILO and the international community, there remain significant gaps. In response, the ILO has published global and regional estimates of migrant workers. According to these estimates, there are at present approximately 244 million migrants around the world, representing 3.3 per cent of the global population. Women make up almost half of migrants.[21] Migrant workers contribute to the economies of their host countries, and the remittances they send home help to boost the economies of their countries of origin. Yet, migrant workers often benefit from inadequate social protection and are vulnerable to exploitation and human trafficking. Skilled migrant workers are less vulnerable to exploitation, but their departure deprives some developing countries of the valuable labour needed for their own economies. ILO standards on migration provide tools for both countries of origin and of destination to manage migration flows and ensure adequate protection for this vulnerable category of workers.

Relevant ILO instruments

Migration for Employment Convention (Revised), 1949 (No. 97)

The Convention requires ratifying States to facilitate international migration for employment by establishing and maintaining a free assistance and information service for migrant workers and taking measures against misleading propaganda relating to emigration and immigration. It includes provisions on appropriate medical services for migrant workers and the transfer of earnings and savings. States have to apply treatment no less favorable than that which applies to their own nationals in respect of a number of matters, including conditions of employment, freedom of association and social security.

Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)
The Convention sets out measures to combat clandestine and illegal migration, while at the same time establishing the general obligation to respect the fundamental rights of all migrant workers. It also extends the scope of equality of treatment between legally resident migrant workers and national workers beyond the provisions of Convention No. 97 to ensure equality of opportunity and treatment in respect of employment and occupation, social security, trade union and cultural rights, and individual and collective freedoms for persons who, as migrant workers or members of their families, are lawfully within the territory of a ratifying State. It also requires ratifying States to facilitate the reunification of the families of migrant workers legally residing in their territory.

Migrants in today's world of work: Global and regional trends

Although migration is a vital dimension of the debate on the future of work, factors such as technological change, modifications of the employment relationship and the erosion of the social contract between the State and other actors will make it increasingly difficult to manage migration for employment. Indeed, migration for employment is becoming increasingly complex and dynamic throughout the world, both within and between regions. On certain migration routes, for example between Asia and the Arab States, or within South East Asia, the number of international migrants, the great majority of whom are workers, has tripled since 1990. Temporary migration for employment, particularly of low-skilled workers, is greater than flows of permanent migrants, which creates real challenges in relation to governance, particularly on how to ensure decent work and reduce the costs of migration for this category of migrant workers.

The ILO has been concerned since its creation to protect the rights of migrant workers, and has adopted measures to reduce the irregularities and abuses from which they sometimes suffer, while taking fully into account the complex balance required in social, economic and political terms. The migration for employment instruments basically call for international cooperation for the promotion of a rights-based approach. In its 2016 General Survey concerning the instruments on migrant workers, the Committee of Experts considered that this objective is as relevant now as it was when the instruments were adopted in 1949 and 1975 even if, having not foreseen current migration developments, certain details in the provisions appear somewhat outdated. Emphasizing the potential of the instruments to respond to many of the current migration challenges experienced by member States, as well as their inherently flexible nature, the Committee of Experts encouraged the ILO to undertake a comprehensive campaign to promote the effective implementation and awareness of Conventions Nos 97 and 143, as well as the implementation of Recommendations Nos 86 and 151, in the context of its Fair Migration Agenda. The Committee of Experts emphasized, in this regard, the importance of measures to address the needs of women, as well as particular groups of migrant workers, such as ethnic and religious minorities, rural and indigenous populations, youth, persons with disabilities, and people living with HIV/AIDS.

SEAFARERS

An estimated 90 per cent of world trade passes through maritime or river transport and requires seafarers to operate the ships. Seafarers are therefore essential to international trade and the international economic system. It should be emphasized that maritime transport is the first really globalized sector. This means that very often seafarers drawn from many countries work together on board ships that are registered or "flagged" in yet another country and owned by shipowners who sometimes are not the same nationality as the ship or any of the seafarers. Under international law, the country in which a ship is flagged, or in other words the country whose flag the ship flies, is the country with international responsibility for establishing and enforcing the necessary measures to ensure safety at sea, particularly in relation to working conditions, irrespective of the nationality of the seafarers or the shipowner.

On ships flying the flags of countries that do not exercise effective jurisdiction and control over them, as required by international law, seafarers often have to work under unacceptable conditions, to the detriment of their well-being, health and safety, and the safety of the ships on which they work. Since seafarers most frequently work outside their home country and their employers are also often not based in their country, effective international standards are essential in the sector. Of course, these standards must also be implemented at the national level, particularly by governments that have a ship registry and authorize ships to fly their flags. This is already well recognized in connection with ensuring the safety and security of ships and protecting the marine environment. It is also important to emphasize that many shipowners provide seafarers on their ships with decent working and living conditions. These countries and shipowners however face unfair competition as they are undercut by shipowners which operate substandard ships.

As the ship is both their home and their workplace for prolonged periods of time, the working and living conditions of seafarers are of primary importance. Moreover, seafarers are exposed to many unique occupational risks. They also face exposure to extreme weather conditions, as well as the risk of being abandoned in a foreign country if the shipowner encounters financial or other difficulties. In addition, contemporary concerns for enhanced national security and border controls have made it difficult for seafarers to exercise the right to go ashore for brief periods for their health and well-being or to travel to join or leave a ship on its voyage.

Relevant ILO instruments

To protect the world's seafarers and their contribution to international trade, the ILO has adopted over 70 instruments (41 Conventions and the related Recommendations) at special maritime sessions of the International Labour Conference. The ILO's international standards for this sector establish the minimum conditions for "decent work" and address almost all aspects of work, including minimum requirements for work on a ship (such as minimum age, medical fitness and training), provisions on conditions of employment, such as hours of work and rest, wages, leave, repatriation, accommodation, recreational facilities, food and catering, occupational safety and health protection, welfare and social security protection. In addition, they address issues such as pensions and an internationally recognized document for seafarers (a seafarers' identity document) to assist in border control.

Consolidation of ILO maritime standards

In February 2006, at its 10th Maritime Session, the 94th Session of the International Labour Conference adopted the Maritime Labour Convention, 2006 (MLC, 2006). This Convention revises and consolidates 37 existing Conventions and the related Recommendations. The MLC, 2006, uses a new format with some updating, where necessary, to reflect modern conditions and language. In this manner, it sets out, in a single instrument, the right of the world's 1.5 million seafarers to decent conditions of work in almost every aspect of their working and living conditions, including minimum age, employment agreements, hours of work and rest, payment of wages, paid annual leave, repatriation, on board medical care, the use of recruitment and placement services, accommodation, food and catering, health and safety protection and accident prevention, and complaint procedures for seafarers.[22]

The MLC, 2006, applies to a wide range of ships operating on international and national or domestic voyages, with the exception of those sailing exclusively in inland waters or waters within, closely adjacent to sheltered waters or areas where port regulations apply; those engaged in fishing or similar pursuits; ships of traditional build, such as dhows and junks; and warships or naval auxiliaries.

To enter into force, the MLC, 2006, needed to be ratified by 30 ILO member States representing at least 33 per cent of the world gross shipping tonnage. On 20 August 2012, both prerequisites were satisfied, and the Convention entered into force 12 months later, on 20 August 2013.

As of 30 November 2018, the Convention had already been ratified by 90 countries representing over 90 per cent of the world gross tonnage and is continuing to be ratified rapidly.

In order to ensure that it has a far-reaching impact at the national level, and to continue promoting its widespread ratification, the ILO delivers a wide range of capacity-building activities, such as national tripartite seminars, and has developed a wide range of resources, including the website devoted to the MLC, 2006, which contains updated information on activities under the Convention and a database containing country-specific information and guidance on the legislation and measures adopted for its implementation. In addition, the Maritime Labour Academy, based at the ILO's International Training Centre in Turin, organizes workshops on the Convention, including short-term residential training courses for inspectors and trainers of maritime labour inspectors, workshops in cooperation with the international organizations representing seafarers and shipowners, and workshops for jurists.

In June 2013, the ILO Governing Body established the Special Tripartite Committee (STC), which is mandated under Article XIII of the MLC, 2006, to keep the working of the Convention under continuous review. Under the Convention, the Committee has the power to consider and propose to the International Labour Conference amendments to the Code of the Convention, and also plays an important consultative role under Article VII for countries that do not have national shipowners' or seafarers' organizations to consult when implementing the MLC, 2006. The STC held its first meeting in April 2014, when it adopted very important amendments to the Code to address the issue of the provision of rapid and effective financial security to compensate seafarers in cases of long-term personal injury, death and abandonment. The amendments were approved by the International Labour Conference in June 2014 and entered into force on 18 January 2017. Two further sets of amendments to the Code of the Convention have since been adopted in 2016 and 2018. The amendments are intended to include the prevention of harassment and bullying in occupational safety and health measures and to respond to the situation of seafarers held captive as a result of acts of piracy and armed robbery. In this case, the employment agreement is maintained during the period of captivity, while wages continue to be paid and the right to repatriation is maintained. These amendments are due to enter into force over the coming years.

In parallel, much consideration has been given to the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), with a view to modernizing its provisions and incorporating the progress that has been made since the adoption of the Convention in relation to the security of identity documents. The discussions resulted in the adoption of amendments to the Annexes of the Convention, which entered into force on 8 June 2017. The Convention makes a vital contribution to the security of maritime transport in order to combat terrorist threats, and particularly to respond to the needs of seafarers in transit or transfer to join a ship or to be repatriated. It also facilitates shore leave, which is essential for the health and welfare of seafarers, who often remain on board their ship for several months at a time.

Finally, in the framework of the Standards Review Mechanism, the STC began an assessment in April 2018 of the relevance of the maritime instruments adopted prior to the MLC, 2006. The objective is to ensure the maintenance of a robust and up-to-date body of international maritime labour standards adapted to the needs of seafarers for protection and to ensure the conditions of fair competition for the actors in the maritime transport industry. In April 2018, the STC placed emphasis on the need to focus on the ratification of the MLC, 2006, as amended, which is the universally recognized reference instrument in the maritime transport sector.

FISHERS

Over 58 million people are estimated to be engaged in the primary sector of capture fisheries and aquaculture. This includes 37 per cent engaged full time, 23 per cent engaged part time, and the rest working as either occasional fishers or of unspecified status. Over 15 million work full time on fishing vessels. Fishing involves long hours and strenuous activity in an often challenging marine environment. Fishers may be using simple or complex dangerous machinery to catch, sort and store fish. Injury and fatality rates are much higher in the fishing sector than national averages for all workers in many countries. In the event of injury or illness at sea, fishers may be far from professional medical care and must rely on others on board for such care; medical evacuation services vary considerably between countries and regions. Fishing vessels may be at sea for long periods, operating in distant fishing grounds. Fishers often face difficulty in taking shore leave in foreign ports and problems obtaining visas allowing them to join or leave the vessel in foreign countries. Relationships between employers (often fishing vessel owners) and workers are diverse. There are two main types of payment system in the sector: the flat wage and the share system. A flat wage is a fixed salary per pay period. Under a share system contract, fishers earn a percentage of the gross revenue or profit of the particular fishing trip. Sometimes fishers may be paid a low minimum wage, with the rest of their pay being based on a share of the catch or on bonuses (for example, for finding fish). In many countries, these arrangements place fishers in the category of "self-employed". To respond to the needs of workers engaged in fishing, the ILO has developed specific standards for their protection. In view of the importance of the fishing industry and the developments that have taken place since the adoption of fishing standards in 1959 and 1966, respectively, and bearing in mind that fishing vessels are specifically excluded from the Maritime Labour Convention, 2006, the International Labour Conference adopted at its 97th Session the **Work in Fishing Convention, 2007 (No. 188)**, and the **Work in Fishing Recommendation, 2007 (No. 199)**, which are intended to set comprehensive standards addressing the living and working conditions of fishers. Convention No. 188 entered into force on 16 November 2017.

Taking into account the need to revise the Conventions adopted by the International Labour Conference specifically concerning the fishing sector, namely the Minimum Age (Fishermen) Convention, 1959 (No. 112), the Medical Examination (Fishermen) Convention, 1959 (No. 113), the Fishermen's Articles of Agreement Convention, 1959 (No. 114), and the Accommodation of Crews (Fishermen) Convention, 1966 (No. 126), Convention No. 188 updates these instruments and aims to reach a greater number of the world's fishers, particularly those working on smaller vessels. The objective of the Convention is to ensure that fishers have decent conditions of work on board fishing vessels with regard to minimum requirements for work on board; conditions of service; accommodation and food; occupational safety and health protection; medical care and social security. It applies to all commercial fishing, with the exception of subsistence and recreational fishing; to all vessels, regardless of size; and to all fishers, including those who are paid on the basis of a share of the catch.

Among the many improvements, the new Convention:

- raises the minimum age for work on board fishing vessels to 16 years;
- fixes the maximum period of validity of a medical certificate at two years;
- requires the adoption of laws regarding minimum levels of crewing and defines minimum periods of daily and weekly rest for vessels remaining at sea for more than three days;
- establishes fishers' entitlement to repatriation at the cost of the fishing vessel owner; and
- finally, incorporates port State control provisions modelled on those applicable in the maritime sector.

Older ILO instrument

Fishermen's Competency Certificates Convention, 1966 (No. 125)

The Convention requires ratifying States to establish standards of qualification for certificates of competency for the skipper, mate or engineer on board a fishing vessel, and to organize and supervise the examination of candidates to ensure that they have the necessary qualifications. It sets forth the minimum age and minimum professional experience necessary for each profession, the competences necessary for specific categories and the grades of certificates for which candidates have to prove their qualification.

DOCKWORKERS

For many countries, the dock industry has become an important link in the transport network that requires constant upgrading in order to respond to the demands of international trade. The growing transport volume, the increasing sophistication of infrastructure, the widespread use of containers and the intensity of capital investment required for the development of dock activities have led to profound reforms in the sector. Once relying on mostly occasional and low-skilled labour, dock work now requires very highly skilled workers who are increasingly registered workers. At the same time, there are growing demands on dockworkers to be more productive and to work in shifts, while the overall dock workforce has been reduced. Developing countries are finding it difficult to finance the development of increasingly sophisticated ports. ILO standards help address these challenges by dealing with two characteristics of dock work: the need for specific protection due to the safety and health hazards to which dockworkers are exposed during their work, and the impact of technological progress and international trade on their employment and the organization of work in ports.

Relevant ILO instruments

Dock Work Convention, 1973 (No. 137)
This Convention deals with methods of work in docks and their impact on employment and the organization of the profession. It has two main objectives: first, to afford protection to dockworkers in their professional life through measures relating to the conditions of their access to and performance of work; and second, to foresee and manage in the best possible manner, through appropriate measures, fluctuations in the work and the workforce required for it.

Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152)
This Convention requires ratifying States to take measures with a view to providing and maintaining workplaces, equipment and methods of work that are safe and without risk of injury to health; providing and maintaining

safe means of access to any workplace; providing the information, training and supervision necessary to ensure the protection of workers against risks of accident or injury to health at work; providing workers with personal protective equipment and clothing, and any life-saving appliances reasonably required; providing and maintaining suitable and adequate first aid and rescue facilities; and developing and establishing proper procedures for any emergency situations that may arise.

INDIGENOUS AND TRIBAL PEOPLES

Indigenous and tribal peoples have their own cultures, ways of life, traditions and customary laws. Unfortunately, throughout history, lack of respect for tribal and indigenous cultures has led to numerous instances of social conflict and bloodshed. Today, the international community has accepted the principle that the cultures, ways of life, traditions and customary laws of indigenous and tribal peoples are valuable and need to be respected and protected, and that indigenous and tribal peoples should participate in decision-making processes in the country in which they live. The most recent ILO standards on this subject set out these principles and provide a framework for governments, organizations of indigenous and tribal peoples, and non-governmental organizations to ensure the development of the peoples concerned, with full respect for their needs and desires.

Relevant ILO instruments

The **Indigenous and Tribal Peoples Convention, 1989 (No. 169)**, and the older **Indigenous and Tribal Populations Convention, 1957 (No. 107)**, are to date the only international treaties dealing exclusively with the rights of indigenous and tribal peoples. Convention No. 169, which is considered an up-to-date instrument and which revised Convention No. 107, provides for consultation and participation of indigenous and tribal peoples with regard to policies and programmes that may affect them. It provides for the enjoyment of fundamental rights and establishes general policies regarding indigenous and tribal peoples' customs and traditions, land rights, the use of natural resources found on traditional lands, employment, vocational training, handicrafts and rural industries, social security and health, education, and cross-border contacts and communication.

The rights of indigenous and tribal peoples in practice

Over the years, many countries have adopted or amended legislation putting Convention No. 169 into practice. Several Latin American countries, including the Plurinational State of Bolivia, Colombia, Mexico, Nicaragua, Peru and the Bolivarian Republic of Venezuela, have recognized in their Constitutions the multi-ethnic and multi-cultural character of their respective populations. Some countries have also taken steps to ensure self-governance, participation and consultation. For example, in 1987, Norway set up the Sameting, a Parliament for the Sami people with consultative and limited administrative authority. Denmark has set

up the Greenland Home Rule authorities so that many local matters may be governed by and for the Inuit peoples of Greenland. More recently, on 30 August 2012, the Central African Republic became the first African country to ratify Convention No. 169. In 2018, Luxembourg became the 23rd country to ratify the Convention.

Indigenous peoples and climate change: From victims to agents of change through decent work

In a report entitled ***Indigenous peoples and climate change: From victims to change agents through decent work***, the ILO has analysed the situation of indigenous peoples in a context of climate change. The report suggests that indigenous peoples are affected in different ways by climate change, and also by the policies or actions that are aimed at addressing it. At the same time, it emphasizes that, as agents of change, indigenous peoples are essential to the success of policies and measures to mitigate and adapt to climate change, especially their sustainable economic model and traditional knowledge. The report emphasizes the importance of the Decent Work Agenda, including Convention No. 169 and the ILO *Guidelines for a just transition towards environmentally sustainable economies and societies for all*, for empowering indigenous women and men, and ensuring that they can emerge as partners for the achievement of sustainable development and strong climate action.

Convention No. 169 and peace agreements

On two occasions, the ratification of Convention No. 169 has occurred as an integral element of peace accords to put an end to an internal armed conflict that was rooted in the exclusion of indigenous communities. In Guatemala, the Agreement on a Firm and Lasting Peace put an end to 36 years of civil war in December 1996. The 1996 Agreement brought into effect a number of previous accords negotiated over a six-year period, such as the Agreement on the Identity and Rights of Indigenous Peoples, signed on 31 March 1995 by the Government and the *Unidad Revolucionaria Nacional Guatemalteca* (URNG). The peace agreement facilitated the ratification of Convention No. 169 by Guatemala on 5 June 1996. In Nepal, the formal end of the armed conflict initiated in February 1996 was reached on 21 November 2006 with the signature of a Comprehensive Peace Accord between the Government and the Communist Party of Nepal (Maoist). The peace process consisted of various agreements, some of which included provisions on the ratification of Convention No. 169, which was ratified by Nepal on 14 September 2007.

OTHER SPECIFIC CATEGORIES OF WORKERS

In most cases, international labour standards have universal value and apply to all workers and all enterprises. Some standards mentioned earlier cover specific industries, such as seafaring. Finally there are a number of standards dealing with work-related issues in very specific sectors of economic activity (plantations, hotels, restaurants) or concerning specific groups of workers (nursing personnel, homeworkers).

Relevant ILO instruments

Plantations Convention, 1958 (No. 110), and its Protocol of 1982
Plantations still constitute an important economic sector in many developing countries. These instruments cover the recruitment and engagement of migrant workers and afford protection to plantation workers in respect of employment contracts, wages, working time, medical care, maternity protection, employment accident compensation, freedom of association, labour inspection and housing.

Nursing Personnel Convention, 1977 (No. 149)
Due to the growth of health services, many countries lack sufficient numbers of qualified nursing personnel. Many nurses are migrant workers who face particular challenges. This Convention requires each ratifying State to adopt measures appropriate to national conditions to provide nursing personnel with education and training and with working conditions, including career prospects and remuneration, which are likely to attract persons to the profession and retain them in it. Nurses shall enjoy conditions at least equivalent to those of other workers in the country with regard to hours of work, weekly rest, paid annual holidays, educational leave, maternity leave, sick leave and social security.

Working Conditions (Hotels and Restaurants) Convention, 1991 (No. 172)
Hotels, restaurants and tourism is one of the economic sectors with the highest growth rate in the world. It is also one of the sectors that creates the most employment, in view of its high labour coefficient and significant multiplier effect on employment in other related sectors. However, it has a reputation of offering poor working conditions for several reasons: the fragmentation of the sector, with a majority of small and medium-sized enterprises where the unionization rate is low; the low wages and skills

requirements; and shift work, night work and seasonal work. With the objective of improving the working conditions of these workers and bringing them closer to those prevailing in other sectors, this Convention provides for reasonable hours of work and contains provisions on overtime, rest periods and annual leave. It also prohibits the sale and purchase of employment in hotels and restaurants.

Home Work Convention, 1996 (No. 177)

Homeworkers, the majority of whom are women, are a particularly vulnerable category of workers on account of their often informal status and lack of legal protection, their isolation and their weak bargaining position. The objective of the Convention is to promote equality of treatment between homeworkers and other wage earners, particularly in relation to freedom of association, protection against discrimination, occupational safety and health, remuneration, social security, access to training, minimum age for admission to work and maternity protection.

From sexual exploitation to a job in the hotel sector[23]

Poverty and the absence of job prospects lead young persons living in the coastal areas of Madagascar to fall into the trap of the commercial sexual exploitation of children. The efforts made locally to combat one of the worst forms of child labour are being supported by an ILO project. Between 2014 and 2016, the ILO, in collaboration with UNICEF, set up a project to enable young persons who had fallen into this system to leave it with a view to learning a trade. The young persons concerned are mainly girls, but also boys who have acted as "procurers". They were provided with three months of training in hotel work (waiters, cleaners, cooks, bar staff), which is a sector where local employers experience difficulties in recruiting skilled personnel. The theoretical training was supplemented by a three-month internship in enterprises, which resulted in several trainees being recruited. One of the beneficiaries of the programme, now aged 22, explains that she had fallen into the trap of commercial sexual exploitation between the ages of 15 and 20. From a poor family with five children, she tells of her ordeal and her meetings with clients for derisory sums, which she has now completely given up. As a result of the training that she received, she is now a waitress in a hotel restaurant. She says that she is happy and dreams that in a few years she will have her own small fast food outlet (known locally as a "gargote").

Working conditions in the health sector

In addition to promoting social health protection for all workers, the ILO supports better working conditions for health workers through sectoral labour standards and social dialogue. The shortage of trained health workers coincides with longer life expectancy, the increasing use of specialized medical technology and the emergence of new and drug resistant diseases. Meanwhile, hospitals and other health facilities are rarely considered as workplaces. As the demand for health services grows and the shortage of qualified health personnel becomes more severe, working conditions are deteriorating and the quality of health care may be jeopardized. The critical shortage of workers in the poorest countries is further exacerbated by wealthier countries offering better working conditions to migrant health workers. The ILO is collaborating with the WHO to address these challenges by recognizing health facilities as a unique work environment and encouraging the improvement of working conditions so that health workers are encouraged and supported to provide high quality care in their communities.

Regular supervisory system Representations
Complaints
Freedom of association
Application of unratified Conventions
Technical assistance and training
ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up
ILO Declaration on Social Justice for a Fair Globalization
Centenary Standards Initiative

3

APPLYING AND PROMOTING INTERNATIONAL LABOUR STANDARDS

For nearly a century, the ILO has been contributing to the progress made in achieving social justice on the planet. To do so, it applies a decision-making process that is unique among international governance instituions. The value of "tripartism", the principle that lies at the heart of ILO action, is widely recognized, and this principle is considered to be the reason for the Organization's unparalleled impact on the achievement of rights at work throughout the world. Nevertheless, although the first stage in the legal protection of workers and employers at the international level is indeed the adoption of labour standards, supervision of their application is no less important. The ILO supervisory system is multidimensional, and is anchored in the Organization's standards and principles. Of the many supervisory mechanisms that exist in international and regional organizations, the specific system established by the ILO to promote compliance with labour standards is considered to be one of the most developed and effective.

International labour standards are in fact backed up by supervisory bodies that are unique at the international level, which help to ensure that countries implement the Conventions that they ratify. The ILO regularly examines the application of standards in member States and points out areas where they could be better applied. If there are any problems in the application of standards, the ILO seeks to assist countries through social dialogue and technical assistance.

REGULAR SUPERVISORY SYSTEM

Once a country has ratified an ILO Convention, it is required to report regularly on the measures it has taken for its implementation. Every three years, governments have to provide reports detailing the steps they have taken in law and practice to apply any of the eight fundamental and four governance Conventions that they have ratified. For all other Conventions, reports have to be provided every six years, except for Conventions that have been "shelved" (which are no longer supervised on a regular basis). Reports on the application of Conventions may be requested at shorter intervals. Governments are required to submit copies of their reports to employers' and workers' organizations. These organizations may comment on the government reports, or send comments directly to the ILO on the application of Conventions.

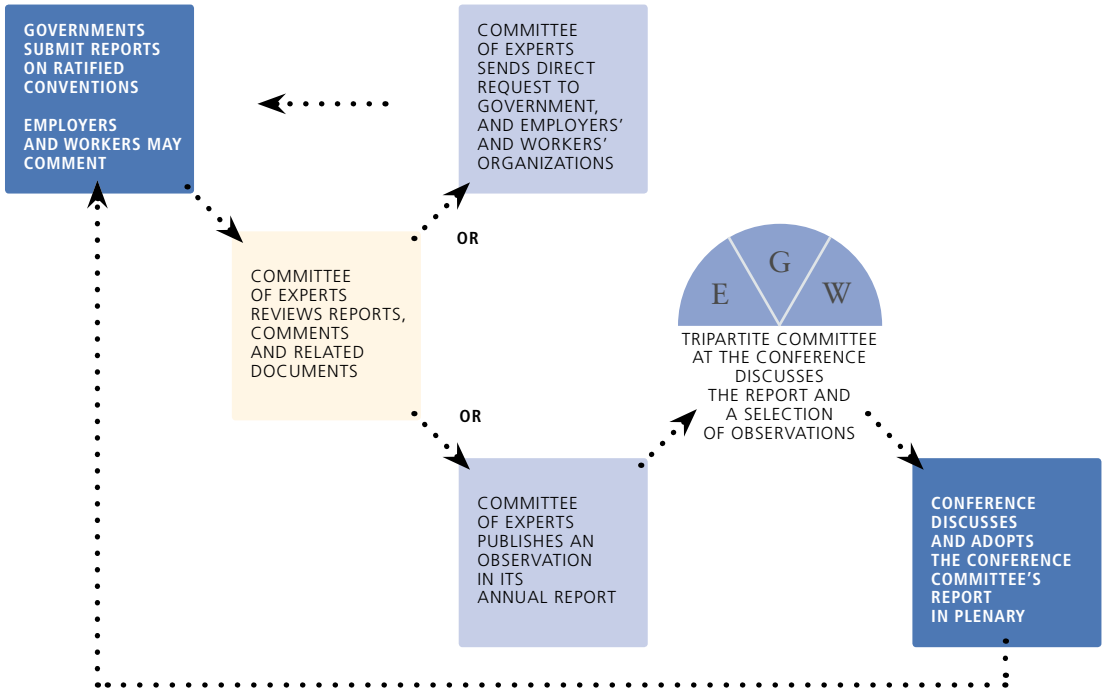
Committee of Experts on the Application of Conventions and Recommendations

The Committee of Experts was set up in 1926 to examine the growing number of government reports on ratified Conventions. Today it is composed of 20 eminent jurists appointed by the Governing Body for renewable three-year terms. The experts come from different geographic regions, legal systems and cultures. The role of the Committee of Experts is to provide an impartial and technical evaluation of the application of international labour standards in ILO member States.

When examining the application of international labour standards, the Committee of Experts makes two kinds of comments to governments: ***observations*** and ***direct requests***. Observations contain comments on fundamental questions raised by the application of a particular Convention in a State. These observations are published in the annual report of the Committee of Experts. Direct requests relate to more technical questions or requests for further information. They are not published in the report, but are communicated directly to the governments concerned.[24]

The annual report of the Committee of Experts consists of three parts. Part I contains the General Report, which includes comments on compliance by member States with their Constitutional obligations. Part II contains observations on the application of international labour standards, while Part III is a General Survey on a specific subject selected by the ILO Governing Body (see the section on General Surveys).

The regular supervisory process



Conference Committee on the Application of Standards

The annual report of the Committee of Experts, usually adopted in December, is published in February the following year and submitted to the International Labour Conference the following June, where it is examined by the Conference Committee on the Application of Standards. A standing committee of the Conference, the Conference Committee is made up of Government, Employer and Worker delegates. It examines the report in a tripartite setting and selects from it a number of observations for discussion. The governments referred to in these comments are invited to respond before the Conference Committee and to provide information on the case. In many cases, the Conference Committee draws up conclusions recommending that governments take specific steps to remedy a problem or accept ILO missions or technical assistance. The discussions and conclusions on the individual cases (normally 24 cases) examined by the Conference Committee are published in its report. Situations of special concern are highlighted in special paragraphs of its General Report.

Impact of the regular supervisory system

Cases of progress noted by the Committee of Experts on the application of Convention and Recommendation

Since 1964, the Committee of Experts has kept track of the number of cases of progress in which it has noted changes in law and practice which have improved the application of a ratified Convention. To date, over 3,000 cases of progress (cases in which the Committee has expressed "satisfaction") have been noted.

Since first identifying cases of satisfaction in its reports, the Committee of Experts has continued to follow the same general criteria. The Committee expresses satisfaction in cases in which, following comments it has made on a specific issue, governments have taken measures through either the adoption of new legislation, an amendment to the existing legislation or a significant change in the national policy or practice, thus achieving fuller compliance with their obligations under the respective Conventions. In expressing its satisfaction, the Committee indicates to governments and the social partners that it considers the specific matter resolved. The reason for identifying cases of satisfaction is twofold:

- to place on record the Committee's appreciation of the positive action taken by governments in response to its comments; and

- to provide an example to other governments and social partners which have to address similar issues.

The impact of the regular supervisory system is not just limited to cases of progress. The Committee of Experts each year examines whether member States have fulfilled their obligation to submit the instruments adopted to their legislative bodies for consideration. Even if a country decides not to ratify a Convention, it may choose to bring its legislation into conformity with it. Member States regularly review the Committee's comments on the application of a Convention in other countries and may amend their own law and practice so as to avoid similar problems in the application of a standard or to emulate good practices. Where a Convention has

been ratified, the Committee often makes direct requests to governments, pointing to apparent problems in the application of a standard and giving the countries concerned time to respond and address these issues before any comments are published in its report. The Committee's interventions facilitate social dialogue by requiring governments to review the application of a standard and to share this information with the social partners, who may also provide information. The ensuing social dialogue can lead to further problem-solving and prevention.

The reports of both the Committee of Experts and the Conference Committee are available on the Internet to millions of users. Governments and the social partners thus have an even greater incentive to solve problems in the application of standards in order to avoid critical comments by these bodies. Upon request by member States, the International Labour Office provides substantial technical assistance in drafting and revising national legislation to ensure that it is in conformity with international labour standards. In this way, the supervisory bodies play an important role in preventing problems in the application of standards from arising in the first place.

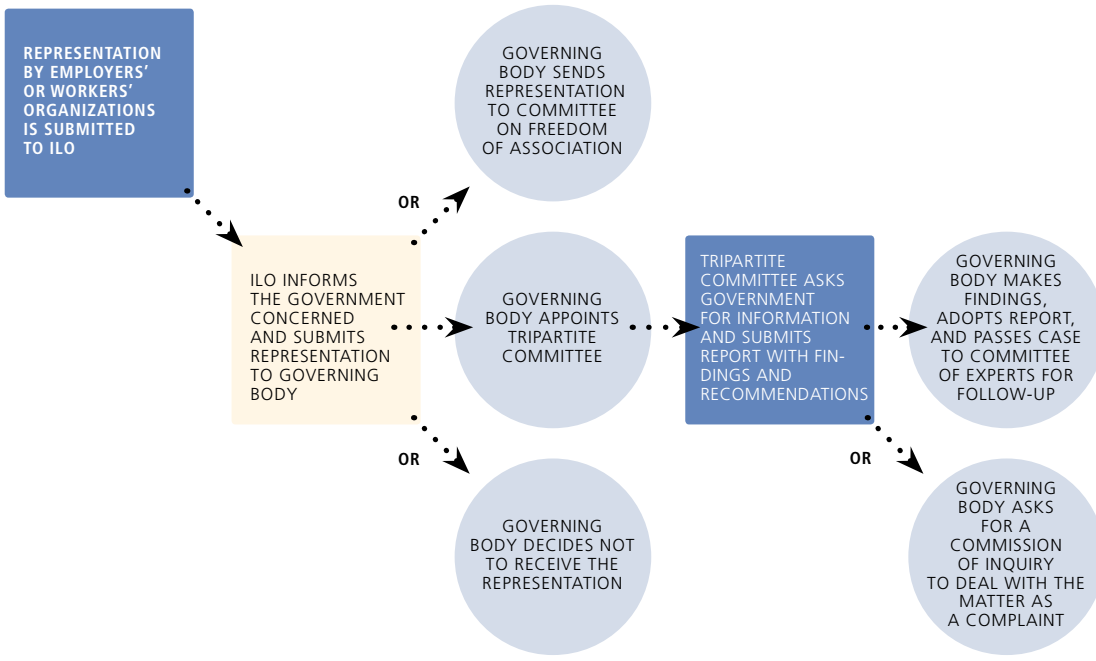
REPRESENTATIONS

The representation procedure is governed by articles 24 and 25 of the ILO Constitution, under which an industrial association of employers or of workers has the right to present to the ILO Governing Body a representation against any member State which, in its view, "has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party". A three-member tripartite committee of the Governing Body may be set up to examine the representation and the government's response. The report that the committee submits to the Governing Body sets out the legal and practical aspects of the case, examines the information submitted and concludes with recommendations. Prior to the 2000s, where the government's response was not considered satisfactory, the Governing Body was entitled to publish the representation and the response. Over recent years, the reports of the tripartite committees have been systematically made available to the public on the ILO website. Moreover, if the government does not take the necessary measures, the Committee of Experts may be requested to follow up the case or, in the most serious instances, the case may lead to a complaint, in which case the Governing Body may decide to establish a Commission of Inquiry. Finally, representations concerning the application of Conventions Nos 87 and 98 are usually referred for examination to the Committee on Freedom of Association, in accordance with the procedure for the examination of representations.

Who can made a representation?[23]

Representations under article 24 of the ILO Constitution may be made by national and international employers' and workers' associations. Individuals cannot make representations directly to the ILO, but can pass on relevant information to their workers' or employers' organization.

The representation procedure



Representations in practice

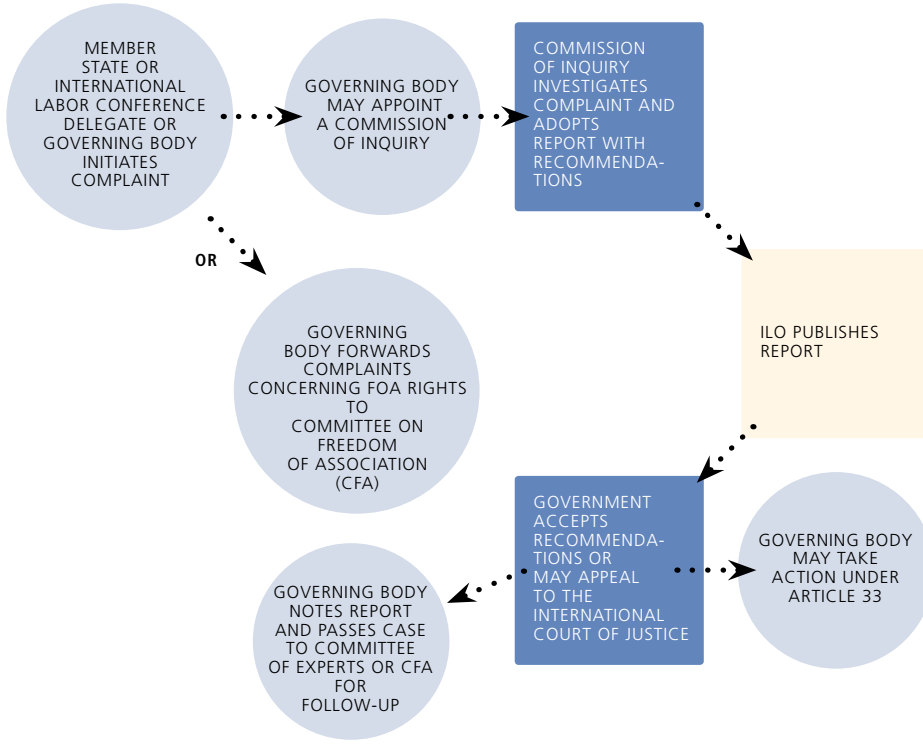
Greece ratified the Labour Inspection Convention, 1947 (No. 81), in 1955. In 1994, it adopted a law which decentralized the labour inspectorate and placed it under the responsibility of autonomous prefectural administrations. The Federation of Associations of Public Servants of the Ministry of Labour of Greece (FAMIT) subsequently made a representation to the ILO claiming that the law contravened the principle of Convention No. 81 that labour inspection should be placed under the supervision and control of a central authority. The tripartite committee set up to examine this representation agreed and urged the Greek Government to amend its legislation to comply with the Convention. In 1998, the Government adopted new laws bringing the labour inspectorate under a central authority once again. The same year, the Committee of Experts commended the Greek Government for its "diligence and close attention" to the recommendations made by the tripartite committee.

COMPLAINTS

The complaint procedure is governed by articles 26 to 34 of the ILO Constitution, under which a complaint may be filed against a member State for not complying with a ratified Convention by another member State which has ratified the same Convention, a delegate to the International Labour Conference or the Governing Body of its own motion. Upon receipt of a complaint, the Governing Body may establish a Commission of Inquiry, consisting of three independent members, which is responsible for carrying out a full investigation of the complaint, ascertaining all the facts of the case and making recommendations on measures to be taken to address the problems raised by the complaint. A Commission of Inquiry is the ILO's highest-level investigative procedure and is generally set up when a member State is accused of committing persistent and serious violations and has repeatedly refused to address them. To date, 13 Commissions of Inquiry have been established, the most recent of which was established by the Governing Body in March 2018 following an article 26 complaint filed against the Government of the Bolivarian Republic of Venezuela.

When a country refuses to fulfill the recommendations of a Commission of Inquiry, the Governing Body can take action under article 33 of the ILO Constitution. This provision establishes that "[i]n 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 recommend to the Conference such action as it may deem wise and expedient to secure compliance therewith." Article 33 was invoked for the first time in the ILO's history in 2000, when the Governing Body asked the International Labour Conference to take measures to lead Myanmar to end the use of forced labour. An article 26 complaint had been filed against Myanmar in 1996 for violations of the Forced Labour Convention, 1930 (No. 29), and the resulting Commission of Inquiry had found "widespread and systematic use" of forced labour in the country.

The complaint procedure



Complaints in practice

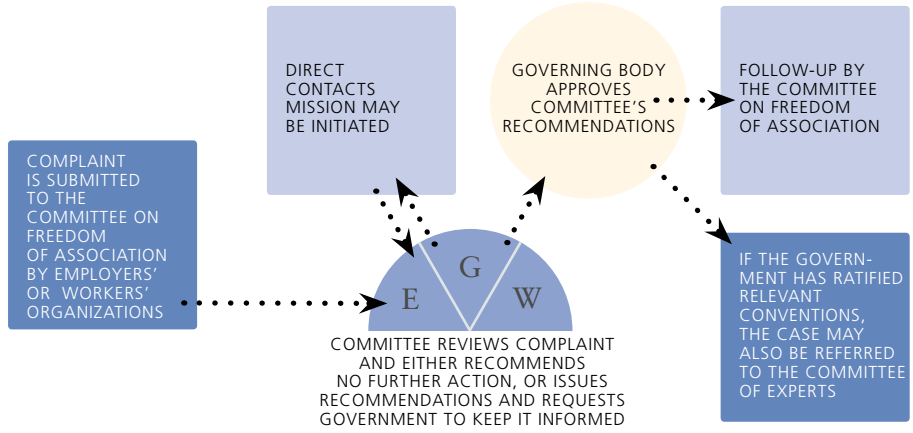
Poland ratified both the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), in 1957. When martial law was declared in the country in 1981, the Government suspended the activities of the Solidarnosc trade union and detained or dismissed many of its leaders and members. After the case had been examined by the Committee on Freedom of Association, delegates at the 1982 International Labour Conference filed a complaint under article 26 against Poland. The resulting Commission of Inquiry found grave violations of both Conventions. Based on the Commission's conclusions, the ILO and numerous countries and organizations put pressure on Poland to redress the situation and, in 1989, the Polish Government gave Solidarnosc legal status. Lech Walesa, Solidarnosc leader and later President of Poland, noted that "the Commission of Inquiry created by the ILO after the imposition of martial law in my country made significant contributions to the changes which brought democracy to Poland."[25]

FREEDOM OF ASSOCIATION

Committee on Freedom of Association

Freedom of association and collective bargaining are among the founding principles of the ILO. Soon after the adoption of Conventions Nos 87 and 98 on freedom of association and collective bargaining, the ILO came to the conclusion that the principle of freedom of association needed a further supervisory procedure to ensure compliance with it in countries that had not ratified the relevant Conventions. As a result, in 1951, the ILO set up the Committee on Freedom of Association (CFA) for the purpose of examining complaints of violations of freedom of association, whether or not the country concerned had ratified the relevant Conventions. Complaints may be brought against a member State by employers' and workers' organizations. The CFA is a Governing Body committee, and is composed of an independent chairperson and three representatives each of governments, employers and workers. If it decides to receive the case, it establishes the facts in dialogue with the government concerned. If it finds that there has been a violation of freedom of association standards or principles, it issues a report through the Governing Body and makes recommendations on how the situation could be remedied. Governments are subsequently requested to report on the implementation of its recommendations. In cases where the country has ratified the relevant instruments, legislative aspects of the case may be referred to the Committee of Experts. The CFA may also choose to propose a "direct contacts" mission to the government concerned to address the problem directly with government officials and the social partners through a process of dialogue. In nearly 70 years of work, the CFA has examined over 3,300 cases. More than 60 countries on five continents have acted on its recommendations and have informed it of positive developments with regard to freedom of association in recent decades.[26]

Freedom of association procedure



The Committee on Freedom of Association: An innovative procedure in international law

Paragraph 14 of the Special procedures for the examination of complaints alleging violations of freedom of association provides that the mandate of the Committee on Freedom of Association (CFA) "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." The Governing Body has regularly approved this mandate and in 2009 decided to include it in the *Compendium of rules applicable to the Governing Body*. The function of the CFA is not to formulate general conclusions concerning the trade union situation in particular countries on the basis of vague general statements, but simply to evaluate specific allegations relating to compliance with the principles of freedom of asso-ciation. The object of the CFA complaint procedure is not to criticize governments, but rather to engage in a constructive tripartite dialogue to promote respect for trade union rights in law and practice.

To make a complaint to the Committee, certain conditions of receivability have to be met. The complainant must indicate clearly that the complaint is made to the Committee on Freedom of Association; the complaint must be made by an employers' or workers' organization; it must be made in writing and signed by the representative of a body entitled to make a complaint. Non-governmental organizations having consultative status with the ILO are also entitled to make complaints. In terms of substance, the allegations contained in the complaint must not be of a purely politi-cal nature; they must be set out clearly and duly supported with evidence. It is not necessary to have exhausted all the national procedures, but the CFA may take into account the fact that a case is under examination by a national jurisdiction. The CFA meets three times a year in the week preceding the sessions of the Governing Body.[27]

National tripartite mechanisms for the prevention and settlement of disputes relating to international labour standards promoted by the ILO.

For many years, the ILO has been promoting national tripartite mechanisms in Latin America for the prevention and settlement of disputes relating to international labour standards, and particularly concerning freedom of association and collective bargaining, at the request of governments against which complaints have been made to the Committee on Freedom of Association. The ILO supervisory bodies have noted and/or supported the use of such mechanisms and have encouraged the Office to continue promoting their appropriate development. These mechanisms have proved to be very useful in preventing and resolving many disputes relating to freedom of association, and have sometimes offered a framework for the conclusion of collective agreements. Colombia and Panama have created commissions of this type with encouraging results. In the Dominican Repubic, it was decided to create a round-table, the responsibilities of which include the prevention and appropriate treatment of any dispute relating to the application of ratified ILO Conventions with a view to finding solutions and reaching agreements. Experience shows that the following criteria lead to the effective operation of such bodies:

– Ministries of Labour have to allocate the necessary human and financial resources for the coordination of the work of conciliation mechanisms, and it should be possible to coordinate with and invite other ministries and public institutions to participate in the meetings held to deal with the cases under examination;
– acceptance of the mediation mechanism must be based on tripartite agreement;
– the most representative organizations of employers and workers and the government should nominate a permanent national mediator/moderator who has the confidence of all the parties;
– the conciliation proposals and conclusions adopted in the context of this procedure must be based on the relevant international labour standards and take into account the comments of the supervisory bodies;
– a follow-up mechanism for the agreements concluded should be established to reinforce the confidence of the parties in the mechanism;
– the members of mediation mechanisms should also receive special training on international labour standards and the ILO supervisory system;
– the conciliation procedure must be free of charge and optional, and should not prevent recourse to the ILO supervisory bodies.

There can be no doubt that the international community has found in these mechanisms another tool to reinforce social dialogue. The challenge is to "export" these bodies beyond Latin America. The initiative responds to a modern trend in the permanent quest for the full application of international labour standards.

General Surveys (article 19)

International labour standards are universal instruments adopted by the international community and reflecting common values and principles on work-related issues. While member States can choose whether or not to ratify Conventions, the ILO considers it important to keep track of developments in all countries, whether or not they have ratified them. Under article 19 of the ILO Constitution, member States are required to report at regular intervals, at the request of the Governing Body, on measures they have taken to give effect to the provisions of certain Conventions or Recommendations, and to indicate any obstacles which have prevented or delayed the ratification of a particular Convention.

On the basis of article 19 of the Constitution, the Committee of Experts publishes an in-depth annual ***General Survey*** on the national law and practice of member States on certain Conventions and/or Recommendations chosen by the Governing Body. These surveys are established mainly on the basis of reports received from member States and information transmitted by employers' and workers' organizations. They allow the Committee of Experts to examine the impact of Conventions and Recommendations, analyse the difficulties reported by governments in their application and identify means of overcoming these obstacles.

The most recent General Surveys include:

- 2010 - Employment instruments
- 2011 - Social security instruments
- 2012 - Fundamental Conventions
- 2013 - Labour relations (public service) and collective bargaining
- 2014 - Minimum wage fixing instruments
- 2015 - Right of association (agriculture) and rural workers' organizations
- 2016 – Migrant workers instruments
- 2017 – Occupational safety and health instruments
- 2018 – Working time instruments
- 2019 – Social Protection Floors Recommendation (No. 202)
- (forthcoming 2020) – Instruments relating to the strategic objective of employment
- (forthcoming 2021) – Instruments on nursing personnel and domestic workers

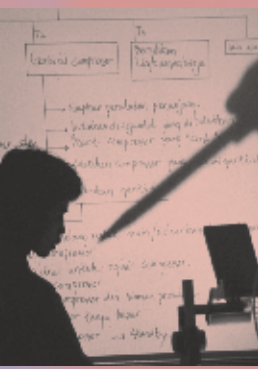
TECHNICAL ASSISTANCE AND TRAINING

The ILO does not just supervise the application of ratified Conventions. It also provides different forms of technical assistance, in which ILO officials or other experts help countries address problems in legislation and practice to bring them into line with the obligations under ratified instruments. Forms of technical assistance include advisory and direct contacts missions, during which ILO officials meet government officials to discuss problems in the application of standards with the aim of finding solutions; and promotional activities, including seminars and national workshops, with the purpose of raising awareness of standards, developing the capacity of national actors to use them, and providing technical advice on how to apply them for the benefit of all. The ILO also provides assistance in drafting national legislation in line with its standards.

A global network of international labour standards specialists

Many of these technical assistance activities are carried out by ILO international labour standards specialists who are assigned to ILO offices located around the world. Standards specialists meet government officials, employers' and workers' organizations to provide assistance with issues arising in the region, new ratifications of Conventions and reporting obligations, to discuss solutions to problems raised by the supervisory bodies and to review draft legislation to ensure that it conforms with international labour standards. International labour standards specialists are stationed in:

Africa: Cairo, Dakar, Pretoria, Yaoundé
Americas: Lima, San José, Santiago
Caribbean: Port of Spain
Arab States: Beirut
East Asia: Bangkok
South Asia: New Delhi
Eastern Europe and Central Asia: Budapest, Moscow



ILO International Training Centre

The ILO International Training Centre, located in Turin, Italy, has the mandate of offering training, education and capacity building for governments, employers' and workers' organizations and other national and international partners for the promotion of decent work and sustainable development. Each year, the Centre organizes over 450 programmes and projects for some 12,000 participants from 190 countries. In particular, the Centre provides training on international labour standards for government officials, employers, workers, lawyers, judges and legal educators, as well as specialized courses on labour standards, productivity improvement and enterprise development, international labour standards and globalization, and the rights of women workers.

The Turin Centre also hosts the Maritime Labour Academy, a programme of specialized courses aimed at strengthening the capacity of governments, shipowners and seafarers in the application of the Maritime Labour Convention, 2006.

ILO DECLARATION ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK AND ITS FOLLOW-UP (1998)

In 1998, the ILO created a special promotional measure to strengthen the application of the four principles and associated rights that are considered fundamental for social justice. By adopting the Declaration on Fundamental Principles and Rights at Work and its Follow-up, ILO member States recognized that they have an obligation, arising from the very fact of membership in the Organization, to work towards realizing certain basic values, namely: freedom of association and the effective recognition of the right to collective bargaining; the elimination of all forms of forced or compulsory labour; the effective abolition of child labour; and the elimination of discrimination in respect of employment and occupation. This obligation exists even if they have not yet been able to ratify the eight fundamental Conventions which embody these principles (including the Protocol of 2014 to the Forced Labour Convention). At the same time, the ILO itself has an obligation to provide the assistance needed to achieve these objectives.

Moreover, paragraph 5 of the Declaration emphasizes that labour standards should not be used for protectionist trade purposes, and that nothing in the Declaration and its Follow-up shall be invoked or otherwise used for such purposes. In addition, the comparative advantage of any country should in no way be called into question by the Declaration and its Follow-up.

A follow-up mechanism to the Declaration was adopted at the same time to help determine the needs of States to improve the application of these principles and rights. Member States are required to submit annual reports on all the fundamental rights for which they have not ratified the corresponding Conventions. The reports are examined by the Governing Body, whose comments are published in the Introduction to the Annual Review of reports, which examines the implementation of the fundamental principles and rights at work in the countries concerned, focusing on new developments and trends.

The Declaration and its Follow-up are designed to promote the principles and rights that it embodies and to facilitate ratification of the fundamental Conventions through dialogue and technical assistance. The purpose of the Declaration and its Follow-up is not to create a parallel set of standards, but rather to assist member States to achieve full respect for the fundamental principles and rights at work, including the ratification of all the fundamental Conventions, as well as the Protocol of 2014 to the Forced Labour Convention. Once this has been achieved, all member States will be under the regular ILO supervisory system with respect to these instruments.

ILO DECLARATION ON SOCIAL JUSTICE FOR A FAIR GLOBALIZATION (2008)

Amid widespread uncertainty in the world of work, ranging from financial turmoil and economic downturn to growing unemployment, informality and insufficient social protection, in June 2008 the governments, workers and employers of the International Labour Organization adopted the **Declaration on Social Justice for a Fair Globalization**, which is designed to strengthen the ILO's capacity to promote its Decent Work Agenda and forge an effective response to the growing challenges of the transformation of the world of work in the context of globalization. It is the third major statement of principles and policies adopted by the International Labour Conference since the ILO Constitution of 1919. It builds on the Declaration of Philadelphia of 1944 and the Declaration on Fundamental Principles and Rights at Work of 1998. The 2008 Declaration expresses the contemporary vision of the ILO's mandate in the era of globalization. All the Members of the Organization must pursue policies based on the strategic objectives – employment, social protection, social dialogue and rights at work. At the same time, it emphasizes a holistic and integrated approach by recognizing that these objectives are "inseparable, interrelated and mutually supportive" and the role of international labour standards as a useful means of achieving them all.

The Declaration also emphasizes the need to promote the ILO's standards policy as a cornerstone of ILO activities by enhancing its relevance to the world of work, as well as ensuring the role of standards as a useful means of achieving the constitutional objectives of the Organization. The Declaration specifies that how member States achieve the ILO's strategic objectives is a question that must be determined by each Member subject to its existing international obligations and the fundamental principles and rights at work with due regard, among others, to the principles and provisions of international labour standards. The Declaration also recalls that the violation of fundamental principles and rights at work cannot be invoked or otherwise used as a legitimate comparative advantage and that labour standards should not be used for protectionist trade purposes.

Finally, the Declaration includes a follow-up mechanism to ensure the means by which the Organization will assist the Members in their efforts to promote the **Decent Work Agenda**, including a review of the ILO's institutional practices and governance; regular discussions by the International Labour Conference in response to the situation and needs in member States and to assess the results of ILO activities; voluntary country reviews, technical assistance and advisory services; and strengthening research capacities, information collection and sharing.

CENTENARY INITIATIVE ON INTERNATIONAL LABOUR STANDARDS

The Standards Initiative is one of the seven Centenary Initiatives that has been implemented in the run-up to of the ILO's centenary year in 2019. It has a dual objective:

- to enhance the relevance of international labour standards through a standards review mechanism; and
- to consolidate tripartite consensus on an authoritative supervisory system.

1. Standards Review Mechanism (SRM)

The SRM is an in-built mechanism of the ILO Standards Policy to ensure that the ILO has a clear, robust and up-to-date body of international labour standards that respond to the changing patterns of the world of work, for the purpose of the protection of workers and taking into account the needs of sustainable enterprises (see section 1, Updating international labour standards).

2. A consolidated tripartite consensus on an authoritative supervisory system

Its implementation began with a request by the Governing Body in March 2015 that the Chairperson of the Committee of Experts and the Chairperson of the Committee on Freedom of Association jointly prepare a report on the inter-relationship, 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.

At its March 2017 session, the Governing Body adopted a work plan and timetable for the strengthening of the supervisory system, including ten proposals grouped under four focus areas. The ten proposals cover a broad range of topics, such as: the relationship between the ILO supervisory bodies, the streamlining of reporting, information-sharing with organizations and legal certainty. The work plan is now being implemented.

The Standards Initiative is spearheading current international labour standards policy. This policy aims to strengthen the role of international labour standards in advancing the key objective of the Organization of furthering social justice through the promotion of decent work. To achieve this aim, the Standards Policy is also informing efforts to:

- achieve greater visibility of international labour standards; and
- reach out to constituents through technical assistance, technical cooperation and capacity building.

Key ILO bodies and documents
Notes

4

RESOURCES

"We cannot develop at the expense of social justice. We cannot compete without a floor of basic human standards. If this is true inside our own society, it is true for the world as a whole."

Nelson Mandela, President of the African National Congress, 1994[28]

As this booklet has tried to show, international labour standards are important tools for ensuring that the global economy provides benefits and opportunities for all. From freedom of association to social security, from combating child labour to promoting vocational training, international labour standards provide for dignified and decent working conditions and related economic benefits at the national and enterprise levels. The supervisory system ensures that countries respect their obligations under the Conventions they have ratified and, more generally, their obligations under the ILO Constitution.

The international labour standards system continues to grow and develop in response to current global needs. There have been many cases of progress to which the international labour standards system has contributed. But there is much work left to do. While the international labour standards system is primarily a tool to be used by national governments and employers' and workers' organizations, the wider public can play a role as well. Individuals, non-governmental organizations, enterprises and activists can raise awareness of the system, encourage their governments to ratify Conventions and work with the appropriate employers' and workers' organizations to identify problems in the application of standards. It is hoped that this introduction to the standards-related work of the ILO will not only empower ILO constituents, but also allow society as a whole to make use of these powerful tools for development.

The following pages provide an overview of some of the most important documents and sources of further information on international labour standards.

KEY ILO BODIES AND DOCUMENTS

- **Conventions and Recommendation**

- **ILO Constitution**

- **Report of the Committee of Experts on the Application of Conventions and Recommendations**
  Annual report containing:
  General Report: comments on compliance by member States with reporting obligations, cases of progress and the relationship between international labour standards and the multilateral system (Report III (Part 1A))
  Observations: comments on the application of Conventions in ratifying States (Report III (Part 1A))
  General Survey: examination of law and practice in a particular subject area in member States that have or have not ratified the relevant Conventions (Report III (Part 1B))

- **Report of the Conference Committee on the Application of Standards**
  Report containing:
  General Report
  Examination of individual cases
  Available in the Provisional Record of the International Labour Conference and published separately as Extracts from the Record of Proceedings of the International Labour Conference.

- **Report of the Committee on Freedom of Association**
  Published three times a year as a Governing Body document and in the ILO ***Official Bulletin.***

- **Reports of committees established to examine representations (art. 24)**
  Published in Governing Body documents

- **Reports of Commissions of Inquiry (art. 26)**
  Published in Governing Body documents and in the ILO ***Official Bulletin***

  All of the above are available in the NORMLEX database at: www.ilo.org/normlex

- **Governing Body documents**, including documents of the Legal Issues and International Labour Standards Section, available at: www.ilo.org/gb/lang--en/index.htm

- **International Labour Conference documents**, including preparatory reports for the adoption of Conventions and Recommendations, available at: www.ilo.org/ilc/ILCSessions/lang--eng/index.htm

- **Documents under the Follow-up to the Declaration on Fundamental Principles and Rights at Work**
  Available at:
  www.ilo.org/declaration/follow-up/annualreview/annualreports/lang--en/index.htm

  ILO documents are also available through ILO offices and depositary libraries.

Selected publications

A selection of publications on the various subjects covered by international labour standards and the ILO supervisory system is available through the ILO website on international labour standards. These publications cover the following subjects, among others:

- General works on international labour standards
- ILO standard-setting activities and the supervisory system
- Freedom of association and collective bargaining
- Child labour and forced labour
- Seafarers and maritime labour
- Maternity protection
- Informal economy
- Trade and workers' rights
- Labour administration and inspection
- Equality of treatment

- **See the labour standards website under "Publications" at the following address:**
  www.ilo.org/global/standards/information-resources-and-publications/publications/lang--en/index.htm

Internet resources

- NORMLEX is a trilingual database (English, French and Spanish) which brings together information on international labour standards (such as information on ratifications, reporting requirements, comments of the ILO supervisory bodies, etc.), as well as on national labour and social security legislation. It has been designed to provide full and easily usable information on these subjects.

  NATLEX is a trilingual database (English, French and Spanish – as well as very many texts in the original language) on labour, social security and human rights law. It includes nearly 90,000 legislative texts from 196 countries and over 160 territories, provinces and other entities.

  These databases are accessible through the international labour standards website at:
  www.ilo.org/normes

NOTES

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Document No. 61

Constitution of the ILO, articles 22–34

Constitution of the International Labour Organization

International Labour Office, Geneva, 2021

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.

Article 23

Examination and communication of reports

1. The Director-General shall lay before the next meeting of the Conference a summary of the information and reports communicated to him by Members in pursuance of articles 19 and 22.

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

Article 24

Representations of non-observance of Conventions

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

Article 25

Publication of representation

If no statement is received within a reasonable time from the government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.

Article 26

Complaints of non-observance

1. Any of the Members shall have the right to file a complaint with the International Labour Office if it is not satisfied that any other Member is securing the effective observance of any Convention which both have ratified in accordance with the foregoing articles.

2. The Governing Body may, if it thinks fit, before referring such a complaint to a Commission of Inquiry, as hereinafter provided for, communicate with the government in question in the manner described in article 24.

3. If the Governing Body does not think it necessary to communicate the complaint to the government in question, or if, when it has made such communication, no statement in reply has been received within a reasonable time which the Governing Body considers to be satisfactory, the Governing Body may appoint a Commission of Inquiry to consider the complaint and to report thereon.

4. The Governing Body may adopt the same procedure either of its own motion or on receipt of a complaint from a delegate to the Conference.

5. When any matter arising out of article 25 or 26 is being considered by the Governing Body, the government in question shall, if not already represented thereon, be entitled to send a representative to take part in the proceedings of the Governing Body while the matter is under consideration. Adequate notice of the date on which the matter will be considered shall be given to the government in question.

Article 27

Cooperation with Commission of Inquiry

The Members agree that, in the event of the reference of a complaint to a Commission of Inquiry under article 26, they will each, whether directly concerned in the complaint or not, place at the disposal of the Commission all the information in their possession which bears upon the subject matter of the complaint.

Article 28

Report of Commission of Inquiry

When the Commission of Inquiry has fully considered the complaint, it shall prepare a report embodying its findings on all questions of fact relevant to determining the issue between the parties and containing such recommendations as it may think proper as to the steps which should be taken to meet the complaint and the time within which they should be taken.

Article 29

Action on report of Commission of Inquiry

1. The Director-General of the International Labour Office shall communicate the report of the Commission of Inquiry to the Governing Body and to each of the governments concerned in the complaint, and shall cause it to be published.

2. Each of these governments shall within three months inform the Director-General of the International Labour Office whether or not it accepts the recommendations contained in the report of the Commission and if not,

whether it proposes to refer the complaint to the International Court of Justice.

Article 30

Failure to submit Conventions or Recommendations to competent authorities

In the event of any Member failing to take the action required by paragraphs 5(b), 6(b) or 7(b)(i) of article 19 with regard to a Convention or Recommendation, any other Member shall be entitled to refer the matter to the Governing Body. In the event of the Governing Body finding that there has been such a failure, it shall report the matter to the Conference.

Article 31

Finality of decisions of the International Court of Justice

The decision of the International Court of Justice in regard to a complaint or matter which has been referred to it in pursuance of article 29 shall be final.

Article 32

Effect of decisions of the International Court of Justice on findings or recommendations of Commission of Inquiry

The International Court of Justice may affirm, vary or reverse any of the findings or recommendations of the Commission of Inquiry, if any.

Article 33

Failure to carry out recommendations of Commission of Inquiry or the International Court of Justice

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

Article 34

Compliance with recommendations of Commission of Inquiry or the International Court of Justice

The defaulting government may at any time inform the Governing Body that it has taken the steps necessary to comply with the recommendations of the Commission of Inquiry or with those in the decision of the International Court of Justice, as the case may be, and may request it to constitute a Commission of Inquiry to verify its contention. In this case the provisions of articles 27, 28, 29, 31 and 32 shall apply, and if the report of the Commission of Inquiry or the decision of the International Court of Justice is in favour of the defaulting government, the Governing Body shall forthwith recommend the discontinuance of any action taken in pursuance of article 33.

Document No. 62

GB.301/LILS/6(Rev.), 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, March 2008, paras 42–79

INTERNATIONAL LABOUR OFFICE

Governing Body

GB.301/LILS/6(Rev.)
301st Session

Geneva, March 2008

Committee on Legal Issues and International Labour Standards

LILS

FOR DECISION

SIXTH ITEM ON THE AGENDA

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

Executive summary

The main purpose of this paper is to report on the initial progress made in the implementation of the interim plan of action for the standards strategy approved by the Governing Body to enhance the impact of the standards system.

When it approved the interim plan of action at its 300th Session (November 2007), the Governing Body agreed to postpone the implementation of certain aspects of its first (standards policy) and second (supervisory system) components until after the discussion on the strengthening of the ILO's capacity at the Conference in June. This applied in particular to the organization of tripartite consultations on the first component, which the present paper proposes to initiate no later than November 2008.

With respect to *standards policy*, the paper presents a progress report on the strengthened promotion of the ratification and effective implementation of the priority and recently adopted Conventions. As far as the labour inspection Conventions are concerned, the paper recalls that their promotion is an integral part of the strategy to modernize and reinforce labour inspection that the Office has been requested to develop and implement. For the employment policy and tripartite consultation Conventions, the paper proposes a targeted approach to countries. Regarding the four most recently adopted Conventions (Nos 185, 187, 188 and the Maritime Labour Convention, 2006 (MLC)), the paper indicates the main elements of the promotional strategy adopted in each case, important action that has been taken in this respect and technical cooperation and assistance needs.

With respect to the dynamics of the *supervisory system*, the paper provides an overview of the links between the various supervisory procedures relating to ratified Conventions (articles 22, 24 and 26 of the Constitution) and the special procedure for the examination of complaints alleging infringements of trade union rights. The overview focuses on historical and procedural matters. Within this framework, the overview endeavours to provide information on the historical development of the supervisory system, the main features of each procedure and the links that have been established between procedures. The objective of the exercise is to provide constituents with all the necessary explanations on the supervisory system as a whole to ensure a clear understanding of its linkages. The overview also highlights the important role of the Governing Body in ensuring coordination between the various procedures.

With respect to *enhancing the impact of the standards system through technical cooperation*, the paper provides a brief update of the activities carried out since the approval of the interim plan of action, and particularly the finalization of the good practice guide on promoting international labour standards through technical cooperation, which will be disseminated soon.

With respect to *enhancing access to and the visibility of the standards system*, the paper describes the two main steps to be taken for the implementation of a comprehensive online reporting system aimed at facilitating the communication of reports by member States: (i) electronic reporting facilities to be made available for this year's reporting cycle; (ii) consolidated access for each member State in one single application to all the information concerning reporting cycles and the comments of the Committee of Experts, with the possibility of replying to these comments and completing all the report forms directly online. Recent activities relating to the International Labour Standards Department's web site and databases and the steps taken to increase the visibility of international labour standards for the widest possible audience are also described.

2.1. Overview of the ILO supervisory system

2.1.1. Main developments in the ILO supervisory system from 1919 onwards

42. The constitutional provisions relating to supervision of the application of ratified Conventions – the obligation to make annual reports on measures taken to give effect to ratified Conventions and the procedures for the presentation of complaints and representations – have been in place since they were first set out in the 1919 Constitution. Nevertheless, the supervisory system has evolved substantially over the years, mainly through the decisions taken by the Conference and the Governing Body. In addition, the supervisory bodies have taken a number of decisions relating to their own methods of work and procedure.

43. The first important development was the establishment in **1926** of the Conference Committee on the Application of Standards and the CEACR through the same Conference resolution. [15] When the ILO was first created, it had been thought that supervision of the application of ratified Conventions would be carried out by the Conference itself through the summary of annual reports that the Director-General would lay before it. However, during its first six years of existence, the Conference as a whole was not able to take cognizance of the summary, as it was not in a position to do a thorough examination. [16] Recognition of this gave rise to the need for specific machinery to undertake such an examination.

44. At the time, the distinction was emphasized between the procedure for the examination of reports submitted by member States and the procedures concerning complaints and representations. The annual reports were presented as constituting a means of providing and sharing information among member States; the procedure for their examination therefore differed essentially from the representation and complaint procedures. Indeed, under the terms of the above Conference resolution, the mandate of the Committee of Experts was to make "the best and fullest use of the information contained in the reports rendered by the State Members".

45. The submission of the first two representations in 1924 and 1931 raised a number of practical questions about the modalities of the procedure embodied in the Constitution. It was felt that to safeguard both the rights of industrial associations and the freedom of action of the Governing Body, some rules were needed. In **1932**, the Governing Body therefore adopted Standing Orders concerning the application of the representation procedure. [17] In the course of the discussion leading up to the adoption of these rules, members of the Governing Body emphasized the need to distinguish clearly between the representation procedure and the complaint procedure.

46. The next important development in the supervisory system occurred through the **1946** amendments to the Constitution. Several significant changes were introduced in articles 19

[15] Resolution concerning the methods by which the Conference can make use of the reports submitted under Article 408 of the Treaty of Versailles, ILC, Eighth Session (1926), Vol. I, Appendix VII, p. 429; in accordance with the resolution, the two committees were named respectively "Committee of the Conference" and "Committee of Experts".

[16] See *Note* prepared by the Office, ILC, Eighth Session (1926), Vol. I, Appendix V, p. 395.

[17] The Standing Orders concerning the representation procedure were amended in 1938, 1980 and, more recently, in 2004.

and 22, and particularly: (i) the obligation to report on measures taken to submit newly adopted instruments to the competent national authorities; (ii) the obligation to submit information and reports on unratified Conventions and Recommendations when so requested by the Governing Body; (iii) the obligation to communicate reports and information under articles 19 and 22 to representative employers' and workers' organizations. The terms of reference of the Conference Committee and the CEACR were revised to reflect the first two obligations. Other changes were also made to the complaint procedure relating to article 26.

47. The third major development in the supervisory system took place in **1950**. Following the adoption of 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 ILO, in agreement with the Economic and Social Council of the United Nations (ECOSOC), established a procedure for the examination of allegations concerning the infringement of trade union rights, including a new supervisory body: the Fact-Finding and Conciliation Commission on Freedom of Association. It was also agreed that all allegations regarding infringements of trade union rights received by the United Nations against ILO member States would be forwarded by ECOSOC to the Governing Body. The purpose of the new procedure was to provide facilities for impartial and authoritative investigation of questions of fact raised by allegations of infringements of trade union rights. In view of the fact that the principle of freedom of association was enshrined in the ILO Constitution and the Declaration of Philadelphia, as well as its importance for the tripartite structure of the ILO, allegations concerning infringements of trade union rights could be made against all ILO member States, whether or not they had ratified the relevant Conventions. On the other hand, no allegations could be referred to the Fact-Finding and Conciliation Commission on Freedom of Association without the consent of the government concerned. [18] It was emphasized that the new arrangements would not in any way replace the existing constitutional provisions concerning representations and complaints.

48. In **1951**, the Governing Body went on to establish the Committee on Freedom of Association (CFA). Initially, the examination of complaints by the CFA was intended to determine whether the allegations warranted further examination by the Governing Body and, where it was so determined, to attempt to secure the consent of the government concerned to the referral of such allegations to the Fact-Finding and Conciliation Commission on Freedom of Association. The examination of allegations by the CFA, unlike the Fact-Finding and Conciliation Commission, did not require the consent of the government concerned. The CFA rapidly became the main body responsible for examining allegations of violations of freedom of association for a number of reasons, including: the difficulty in obtaining the consent of government to the referral of matters to the Fact-Finding and Conciliation Commission; the formal nature of the investigation carried out by the latter; and substantial developments in the procedure of the CFA, which led to a broadening of the examination of complaints by the CFA. To date, the CFA has examined around 2,600 complaints, whereas the Fact-Finding and Conciliation Commission has only examined six.

49. Following the establishment of the special procedure on freedom of association, the developments that have occurred in the supervisory system have related to the operation of existing supervisory arrangements.

[18] A compromise was thus reached between proponents of the universality of ILO action in respect of all its Members in relation to freedom of association and those who considered that the ILO could only intervene on the basis of the ratification of the relevant Conventions.

50. In the mid-1950s, the first decisions were taken to allow the CEACR and the Conference Committee to deal with their increasing workload. Reference should be made to two such decisions. First, a certain division of labour was progressively established between the Conference Committee and the CEACR. At the beginning, both Committees examined successively all the issues arising out of annual reports. However, in **1955**, the Conference Committee adopted the "principle of selectivity" [19] so that it could concentrate only on cases in which the CEACR had drawn attention to definite discrepancies between the terms of ratified Conventions and national law and practice. Second, in **1959**, the Governing Body decided to lengthen the reporting cycle from one to two years.

51. Starting in the 1960s, supervision of the application of ratified Conventions, which had hitherto been carried out mainly through the regular supervisory procedure, began to see the more frequent use of complaint and representation procedures. In **1961**, a complaint was lodged by one member State against another, leading to the establishment of the first Commission of Inquiry. As of **1965**, employers' and workers' organizations began to have recourse more frequently to the representation procedure. A total of 24 complaints and 123 representations have been lodged to date.

52. In addition to further adjustments to reporting arrangements, the main development in the 1970s was the increased participation of employers' and workers' organizations in the supervisory procedures. In **1971** and **1977**, the Conference adopted two resolutions reinforcing tripartism in all ILO activities, including supervision of the application of international labour standards. [20] These resolutions prompted various measures to encourage greater participation by employers' and workers' organizations in the supervisory procedures. Moreover, Convention No. 144 was adopted in 1976 with a view to reinforcing the involvement of employers' and workers' organizations at the national level in all ILO standards-related activities, including the drawing up of reports by member States under article 22. When, in 1976, the Governing Body decided to further lengthen the reporting cycle for Conventions (except for the most important Conventions) from two to four years, it approved a number of safeguards to ensure that the introduction of a longer reporting cycle did not weaken the effectiveness of the supervisory system. These measures included consideration by the CEACR of comments sent directly to the Office by employers' and workers' organizations even in years when no report was due. Modifications to the reporting cycle were again made in 1976 and 1993. [21]

53. Following the Report of the Director-General to the 81st Session of the Conference (1994), [22] the Governing Body has regularly discussed the working of the supervisory system within the overall framework of improvements to ILO standards-related activities with a view to strengthening the efficiency and impact of the supervisory mechanisms. An

[19] ILC, *Record of Proceedings*, 38th Session, 1955, p. 582, paras 6–7.

[20] Resolution concerning the strengthening of tripartism in the overall activities of the International Labour Organisation, ILC, 56th Session, June 1971; resolution concerning the strengthening of tripartism in ILO supervisory procedures of international standards and technical co-operation programmes, ILC, 63rd Session, June 1977.

[21] See GB.298/LILS/4, paras 31–32, for a summary of the various adjustments to reporting arrangements, including the reporting cycle, decided on by the Governing Body.

[22] *Defending values, promoting change: Social justice in a global economy: An ILO agenda*, Report of the Director-General (Part I), ILC, 81st Session, 1994.

overview of the related discussions and decisions was presented to the Governing Body at its 292nd Session (March 2005). [23]

2.1.2. Overview of the specific features of each of the supervisory procedures

54. The supervisory system consists of several different procedures, each with a well-defined purpose. In the first place, the regular supervisory procedure, based on the reports submitted regularly by member States, ensures the continuous assessment of the application by member States (difficulties and progress) of ratified international labour Conventions. It combines the CEACR's objective examination of the reports submitted with tripartite dialogue in the Conference Committee. Despite the lengthening of the reporting cycle, this continuity has been preserved, particularly by making the necessary arrangements for the active participation of employers' and workers' organizations through the submission of comments. Second, the special supervisory procedures, which are based on the various types of complaints, focus on specific problems as they arise and are mainly initiated by employers' and workers' organizations. The main purpose is to resolve particular cases, generally involving complex issues of fact and law that call for close examination by a specially convened body. These special supervisory procedures each have specific mandates and attributes. The representation and complaint procedures address allegations of non-observance of ratified Conventions. The representation procedure permits a relatively speedy resolution of the case by a tripartite body, while the procedure for the examination of a complaint by a Commission of Inquiry under article 26 of the Constitution is more solemn and may eventually result in important measures under article 33 of the Constitution. The scope of the special procedure on freedom of association is broader, as it can be invoked whether or not the country concerned has ratified the relevant Conventions and the allegations are examined in the light of the principles of freedom of association.

55. The following table is intended to provide a schematic overview of the main features differentiating the various supervisory procedures. [24]

[23] See GB.292/LILS/7, paras 22–34.

[24] All the supervisory procedures are described in the *Handbook of procedures relating to international labour Conventions and Recommendations*, revised edition, 2006. Further details on the special procedure concerning freedom of association can be found, in particular, in Annex I of the *Digest of decisions and principles of the Freedom of Association Committee of the Governing Body of the ILO*, fifth (revised) edition, 2006.

	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 to 29 and 31 to 34	Principle of freedom of association embodied in the Preamble of the Constitution and the Declaration of Philadelphia
Other legal basis	(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	(i) Provisions adopted by common consent by the Governing Body and the UN Economic and Social Council (ECOSOC) in January and February 1950; (ii) decisions taken by the Governing Body; (iii) decisions adopted by the supervisory bodies themselves
Initiation of the procedure	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 Comments submitted by employers' and workers' organizations (article 23) In 2006, a total of 2,935 reports were requested: 64% of these reports were requested within the reporting cycle (2.8% were first reports); 36% of reports were requested out of the reporting cycle, mainly because they were overdue, although 3.1% were requested by the supervisory bodies for other reasons	Representation made by an industrial association of employers or workers alleging failure by a Member to secure effective observance of a ratified Convention 123 representations have been submitted to date	Complaint by a Member alleging failure by another Member to secure effective observance of any Convention which both have ratified 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 24 complaints have been submitted to date	**(i) Initiation of the procedure:** 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 **(ii) Initiation of the procedure – specific conditions:** **Fact-Finding and Conciliation Commission:** 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 Fact-Finding and Conciliation Commission In principle, no complaint may be referred to the Commission without the consent of the Government concerned **Committee on Freedom of Association (CFA):** Referral, 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 *(1926 Conference resolution)*	Tripartite committees of the Governing Body *(Standing Orders concerning the procedure for the examination of representations)*	Commissions of Inquiry *(article 26, para. 3)*	CFA *(Governing Body decision of 1951, 117th Session)*	Fact-Finding and Conciliation Commission on Freedom of Association *(1950 decisions of the Governing Body (110th Session) and of ECOSOC accepting the services of the ILO and the Fact-Finding and Conciliation Commission on behalf of the UN)*
Nature and mandate	Standing body 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)*	Standing committee of the Conference 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)*	Ad hoc tripartite body of the Governing Body 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, para. 1 and article 6 of the Standing Orders)*	Ad hoc body 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)* 11 complaints examined by a Commission of Inquiry	Standing tripartite body of the Governing Body 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; Digest, para. 6)* Around 2,600 complaints have been examined by the CFA	Standing body 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 have been examined by the Fact-Finding and Conciliation Commission

	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	Conference Committee on the Application of Standards	Tripartite committees	Commissions of Inquiry	CFA	Fact-Finding and Conciliation Commission on Freedom of Association
Composition	Members are appointed by the Governing Body, upon the proposal of the Director-General in their personal capacity. Members are impartial persons of technical competence and independent standing	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 or 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	Conference Committee on the Application of Standards	Tripartite committees	Commissions of Inquiry	CFA	Fact-Finding and Conciliation Commission on Freedom of Association
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 Report published	Plenary of the Conference discusses and approves the report. Report published	Governing Body discusses and approves the report in 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 *Official Bulletin*, under article 29 of the Constitution	Report submitted to the Governing Body for discussion and approval Report published in the ILO *Official Bulletin*	Report communicated by the Director-General to the Governing Body, which takes note of it Report published in the ILO *Official Bulletin*

	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	Conference Committee on the Application of Standards	Tripartite committees	Commissions of Inquiry	CFA	Fact-Finding and Conciliation Commission on Freedom of Association
Outcome	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" Conclusions on individual cases by Conference Committee Technical assistance provided by the Office at the request of the government in the light of these comments		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 Possible follow-up by the CEACR	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 Governing Body may recommend action by the Conference in case of failure to give effect to the recommendations (article 33). Possible follow-up by CEACR	Possible recommendations to Governing Body: (i) no further examination required; (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; (iii) attempt to secure government's consent to referral to the Fact-Finding and Conciliation Commission; (iv) CEACR's attention drawn to legislative aspects if Conventions ratified	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

2.2. Explanations of the links between the supervisory procedures concerning the application of ratified Conventions, including the special procedure for the examination of complaints alleging infringements of trade union rights

2.2.1. Relevant general features of the supervisory system

56. The system as a whole has a number of features that are conducive to the establishment of links between its different components.

57. The various supervisory procedures all pursue a common purpose: the effective observance of international labour standards, and in particular ratified Conventions. The links between the supervisory procedures therefore operate in respect of obligations freely assumed by member States through the ratification of Conventions. This consideration also includes the special procedure concerning freedom of association since, as will be seen below, this procedure interacts with other procedures only in cases where member States have ratified the relevant Conventions.

58. As is only natural in a tripartite organization, in addition to governments, the system involves the participation of employers' and workers' organizations, and their role has continued to grow as the system has developed. Convention No. 144 formalized the important role that they should fulfil at the national level, where they contribute to the adoption of measures and assist in reviewing their implementation. Employers' and workers' organizations can contribute to the work of the CEACR by sending comments on the application of ratified Conventions, or they can initiate action by an ILO supervisory body 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. Their representatives participate directly in the work of a number of the supervisory bodies and the Governing Body.

59. Under the ILO Constitution, the Governing Body has a number of specific functions in relation to the operation of the supervisory procedures. These include the approval of report forms on ratified Conventions and the consideration of representations and complaints. Moreover, the Governing Body has responsibilities relating to the overall efficient functioning and work of the supervisory bodies. Accordingly it: (i) decides upon the mandates of certain supervisory bodies (although not in the case of Commissions of Inquiry and the Conference Committee on the Application of Standards); (ii) appoints the members of most of these bodies (on the proposal of the Director-General in the case of bodies composed of independent experts); and (iii) receives all the reports of the supervisory bodies, either to note or approve them (with the exception of the report of the Conference Committee). The Governing Body has always exercised these responsibilities in full knowledge of the distinction between its own role and those of the specific bodies concerned. It has accordingly left them to determine their methods of work and procedures and has approved their reports after discussion by its members. As will be seen below, the Governing Body is also called upon to take decisions relating to the linkages between the various supervisory procedures.

60. In accordance with its functions under article 10 of the Constitution, the Office also has an important role to play in acting as the secretariat of the supervisory bodies. In this capacity, it prepares the necessary materials for their meetings, including, where appropriate, draft

texts for their consideration and adoption, taking into account the work carried out by other supervisory bodies. The Office therefore contributes, within its mandate, to the coherence of examination between the supervisory bodies. Further, the Office has specific responsibilities at the various stages prior to the examination of cases by the supervisory bodies in terms of obtaining full and appropriate information from the parties. It also follows up comments made by the supervisory bodies, particularly through its technical cooperation and assistance activities.

2.2.2. Similarities between the supervisory procedures

61. The supervisory procedures present a number of similarities, some of which are of particular relevance to the present overview. While a range of supervisory procedures are available, the tools employed in each case show similarities. These tools include: submission of written information, which may be supplemented by oral information; on-the-spot missions, particularly in the form of direct contacts missions; arrangements to follow up on matters examined by a supervisory body in the context of a particular complaint or a representation; and various publicity measures.

62. Moreover, some supervisory mechanisms present similarities in terms of composition and procedure, which tend to create particular links between the bodies concerned. Thus, the CFA and the tripartite committees set up to examine representations are all tripartite bodies of the Governing Body examining submissions made by employers' and workers' organizations. The impartiality of their respective examinations is guaranteed by similar rules, which exclude from the examination of the case any representative or national of the State against which the submission is made, as well as any person occupying an official position in the organization which has made the submission. [25] The introductory note to the Standing Orders concerning the procedure for the examination of representations refers to certain principles developed by the CFA in relation to the issues of receivability and prescription of complaints, which may be applied by analogy to the representations procedure. [26] The two investigatory bodies of the system – the Fact-Finding and Conciliation Commission and Commissions of Inquiry – also present a number of similarities regarding their membership (the independence and qualifications of their members) and procedures (both commissions have recourse to similar means to obtain full and objective information). They also have in common the mandate to investigate the facts relating to the alleged non-compliance.

2.2.3. Links

63. As noted above, on each occasion that the Conference and the Governing Body decided to supplement the institutional framework of the supervisory system, emphasis was placed on the distinctive nature of each procedure. This meant that the examination of issues under one procedure would not prevent the initiation of another procedure on the same issues. On the other hand, there is an inherent need for coordination and coherence between the work of the various supervisory bodies in order to achieve the common purpose of the effective observance of international labour standards. This need has thus led to the establishment of links between the procedures.

[25] Article 3, paragraph 1, of the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the ILO and paragraph 10 of Annex I of the *Digest of decisions and principles of the Freedom of Association Committee*, op. cit.

[26] Introductory note to the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the ILO, adopted by the Governing Body at its 291st Session (November 2004), paras 10 and 16.

64. The links between the supervisory procedures operate at three levels: (a) the referral of matters to the appropriate supervisory body; (b) suspension or closure of a supervisory procedure upon the initiation of another procedure; and (c) the examination by other supervisory bodies, and particularly the CEACR, of the effect given to the recommendations of supervisory bodies in specific cases.

Referral

In the context of a representation under article 24

65. Under article 26, paragraph 4, of the Constitution, the Governing Body may initiate the complaint procedure of its own motion. One of the objectives of this provision, which was already included in the original 1919 Constitution, was to enable the Governing Body to initiate a complaint procedure in light of a representation submitted by an industrial association under article 24. This specific manner of initiating a complaint procedure was further specified in the first version of the Standing Orders concerning the procedure for the examination of representations adopted in 1932. Article 10 of the current Standing Orders was inserted to enable the Governing Body, when it receives a representation, to adopt at any time the complaint procedure provided for in article 26. When the Standing Orders were revised in 1980, it was decided to retain this provision "both to draw attention to this possibility and to make it clear that the fact that the representation procedure under article 24 was under way did not prevent the initiation of the complaints procedure under article 26". [27] To date, the Governing Body has availed itself of this possibility on two occasions. [28]

66. Under article 3, paragraphs 1–3, of the Standing Orders concerning the procedure for the examination of representations, if the Governing Body deems a representation receivable, it can decide on one of the following three courses of action: (i) reference to a tripartite committee, which is the most common course of action; 87 tripartite committees have thus been established to date; (ii) referral to the CFA [29] of any aspects of a representation relating to a Convention dealing with trade union rights, in which case the CFA will examine the case applying its own methods of work and procedure, and its conclusions and recommendations will be published in a report that is separate from the report on complaints examined under the special procedure; there have been 16 such referrals to date; and (iii) postponement of the appointment of a tripartite committee if the representation relates to matters and allegations similar to those that have been the subject of a previous representation until the CEACR has examined the follow-up to the recommendations adopted by the Governing Body in relation to the previous representation; the Governing Body has not yet formally resorted to this possibility.

[27] GB.212/14/21, para. 45.

[28] In one of these cases, the representation had already been examined by a tripartite committee. When examining the report of the tripartite committee, the Governing Body decided to set up a Commission of Inquiry which, in the course of its examination, emphasized that its task did not consist of reviewing the conclusions of the tripartite committee that had examined the representation; rather, it was to carry out its own investigation.

[29] The possibility of referral to the CFA, in accordance with articles 24 and 25 of the Constitution, was introduced when the Standing Orders were revised in 1980 in light of the resolution concerning the promotion, protection and strengthening of freedom of association, trade union and other human rights, adopted by the Conference at its 63rd Session.

In the context of a complaint relating to the application of ratified Conventions on freedom of association

67. As indicated in the table above, in principle no complaint may be referred to the Fact-Finding and Conciliation Commission on Freedom of Association without the consent of the government concerned. Nevertheless, the government's consent is not required in respect of any complaint relating to a ratified Convention, in which case the Governing Body may designate the Fact-Finding and Conciliation Commission as a Commission of Inquiry under article 26 of the Constitution. The possibility thus open to the Governing Body is reflected in the six reports of the Fact-Finding and Conciliation Commission. Although the Governing Body has never availed itself of this possibility, it made use of similarities between the two commissions in one instance. [30]

68. In eight instances where complaints lodged under article 26 concerned issues relating to the non-observance of ratified Conventions on freedom of association already pending before the CFA, the Governing Body sought the latter's recommendation as to whether the article 26 complaint should be referred to a Commission of Inquiry. In four of these cases, referral to a Commission of Inquiry was not considered appropriate in light of the information obtained through on-the-spot missions. These cases remained under the CFA's examination. In two cases, the CFA recommended the referral of the complaint to a Commission of Inquiry, while emphasizing that it was for the Governing Body to take a decision on the recommendation and the modalities of its implementation. In the two remaining cases, the CFA merely underlined that it was for the Governing Body to decide on the referral of the complaint to a Commission of Inquiry. It should also be noted that in one case the Governing Body decided of its own motion to refer allegations pending before the CFA to a Commission of Inquiry.

Suspension or closure

69. It is the established practice that the examination of a case by the CEACR and, subsequently by the Conference Committee, should be suspended in the event of a representation (article 24) or complaint (article 26) in relation to the same case being referred either to a tripartite committee or to a Commission of Inquiry. The CEACR reverts to its examination once the Governing Body has taken a decision on the representation or complaint. As will be noted below, the CEACR's subsequent examination of the case may include follow-up of the recommendations of the body which examined the representation or complaint. Nevertheless, in cases where a complaint is lodged with the CFA, examination by the CEACR of some of the issues raised therein is not suspended. [31]

[30] At the time, allegations of infringements of trade union rights against a country which had not ratified the Conventions on freedom of association had led to the establishment of a Fact-Finding and Conciliation Commission with the government's consent. When the Conference subsequently requested the Governing Body to refer to a Commission of Inquiry the question of the observance by that country of other Conventions it had ratified, the Governing Body nominated the same persons that it had appointed as members of the Fact-Finding and Conciliation Commission one month earlier to sit on the Commission of Inquiry. A double investigation was carried out by the Commission, which eventually submitted two reports to the Governing Body.

[31] There may be several explanations for this established practice: (i) although the two bodies examine legislative as well as practical issues, their respective examinations have a different emphasis (case-specific and with greater emphasis on practical issues for the CFA, while the CEACR's examination tends to focus on legislative issues or on more general questions relating to the application of Conventions in practice); (ii) the importance of freedom of association and the related need to draw attention to serious problems relating to the application of the relevant Conventions; (iii) the special procedure was not meant to replace existing procedures, but to supplement them.

Similarly, referral by the Governing Body of a representation under article 24 to the CFA does not affect the examination of the matter by the CEACR. [32]

70. In the process leading to the adoption of the Standing Orders concerning the representation procedure in 1932, the Office suggested that a decision of the Governing Body to initiate a complaint procedure under article 26, paragraph 4, should imply "closure" of a representation procedure on the same matter. However, no rule was introduced in the Standing Orders to that effect. The Governing Body has consequently retained its discretion as to the course of action to be decided upon in such cases. On one occasion, when discussing the report of the respective tripartite committee, the Governing Body decided to refer the matters raised in a representation to a Commission of Inquiry; in view of this referral, the Governing Body decided that it was no longer necessary to adopt the recommendations of the tripartite committee set up to examine the original representation. On another occasion, the Governing Body decided that the representation procedure should resume its course once the procedure for the examination of the complaint had become without object. [33]

Effect given to the recommendations made by the supervisory bodies

71. It is a well-established practice in the supervisory system that the CEACR follows up the effect given by governments to the recommendations made by tripartite committees (article 24) and Commissions of Inquiry (article 26). The governments concerned are therefore requested to indicate in their reports under article 22 the measures taken on the basis of these recommendations. The related information is then examined by the regular supervisory machinery. As such, it becomes part of the ongoing dialogue between the government, the CEACR and the Conference Committee, if it so decides.

72. In the case of the recommendations made by tripartite committees (article 24), this practice was officially acknowledged when the Standing Orders concerning representations were last revised in 2004. There is a direct reference to the practice in article 3, paragraph 3, of the Standing Orders concerning representations relating to matters similar to those which have been the subject of a previous representation. [34] The practice itself is described in the introductory note to the Standing Orders on the representation procedure. [35]

73. In relation to recommendations made by Commissions of Inquiry (article 26 of the Constitution), the practice of follow-up by the CEACR has been followed since the first Commission of Inquiry was set up. It was left to the CEACR to determine when it was no longer necessary for the government to provide information on the matters (or certain of

[32] The question of the effect of the complaint and representation procedures, including the special procedure on freedom of association, on the regular supervisory machinery was discussed by the Governing Body at its 273rd (November 1998) and 276th (November 1999) Sessions. See GB.273/LILS/1 and GB.276/LILS/2. The amendments to the Standing Orders proposed in this respect did not achieve consensus.

[33] In this particular instance, a complaint under article 26 and a representation under article 24 had been lodged by a member State and a workers' organization against the same member State. The complaint and representation raised the same issues of non-observance of ratified Conventions. The Governing Body decided that the issues should be referred to a Commission of Inquiry. A settlement was eventually reached between the two member States and the complaint was withdrawn.

[34] See para. 66 above.

[35] See para. 19 of the introductory note, op. cit.

them) examined by the Commission of Inquiry. In the case of a complaint concerning the application of Conventions Nos 87 and 98, the Commission of Inquiry recommended that the implementation of its recommendations should be followed up by the CFA, which had been examining the matters raised in the complaint over a long period. At the same time, the Commission of Inquiry observed that, within the framework of its regular supervision, the CEACR would continue to examine the legislative aspects involved in respect of Conventions Nos 87 and 98.

74. The procedure of the CFA provides for the examination of the action taken by governments on its recommendations. [36] It should be recalled that the relevant procedural rules were set forth for the first time in the 127th Report of the CFA. [37] At the time, they constituted a response to paragraph 14 of the resolution concerning trade union rights and their relation to civil liberties, adopted at the 54th Session (June 1970) of the Conference. In accordance with this resolution, the Governing Body requested the CFA to examine what further measures might be taken to strengthen its procedure and in particular to consider arrangements for periodically reviewing the action taken by governments on its recommendations.

75. Under these rules, where member States have ratified one or more Conventions on freedom of association, examination of the legislative aspects of the recommendations adopted by the Governing Body is often referred to the CEACR. The attention of the CEACR is specifically drawn in the concluding paragraph of the CFA's reports to discrepancies between national law and practice and the terms of the Convention. However, it is made clear in the procedure that such referral does not prevent the CFA from examining the effect given to its recommendations, particularly in view of the nature and urgency of the issues involved. Since its 236th Report (November 1984), the CFA has highlighted in the introduction to its report the cases to which the attention of the CEACR has been drawn.

The issue of interpretation of international labour Conventions

76. As indicated in the earlier papers on the implementation of the standards strategy, a complete overview of the links between the supervisory procedures relating to ratified Conventions should also cover the procedure relating to the interpretation of international labour Conventions. It should be recalled in this respect that, while the supervisory bodies examine the application of ratified Conventions in law and in practice, under the terms of article 37, paragraph 1, of the Constitution, the authority to interpret Conventions is vested with the International Court of Justice. In addition, paragraph 2 of article 37 envisages the alternative solution of instituting a tribunal "for the expeditious determination of any dispute or question relating to the interpretation of a Convention which may be referred thereto by the Governing Body or in accordance with the terms of the Convention". An explanation on the issue of interpretation was provided to the Governing Body at its 256th Session (May 1993). At that time, the Office prepared a thorough study [38] with a view to providing the necessary background for a possible detailed examination by the Governing Body of the implementation of article 37, paragraph 2. More specifically, the study reviewed the existing arrangements, including their limitations, under which questions of interpretation have been dealt in the absence of any recourse to the machinery provided for in the Constitution. It examined whether and to what extent the appointment of the tribunal provided for in article 37, paragraph 2, could offer a useful additional

[36] See paras 70–74 of Annex I of the *Digest* of the CFA, op. cit.

[37] See 127th Report in *Official Bulletin*, Vol. LV, 1972, Supplement, paras 10 and 22–28.

[38] See GB.256/SC/2/2.

mechanism and sketched out possible modalities for its institution and functioning. While the Governing Body welcomed the study, it did not come to any decision on the matter. The question arises as to whether this issue should be revisited.

2.3. Conclusions

77. The functioning of the ILO supervisory system is a complex matter and the system has evolved substantially over the years since it was first established by the 1919 Constitution. Its development has been informed by pragmatism under the effect, firstly, of the decisions of the Governing Body and the Conference in giving effect to their responsibility to ensure the smooth and effective functioning of the system. It has also developed in the light of decisions taken by the supervisory bodies themselves concerning their methods of work and procedures with a view to adapting the system to changing needs, particularly in relation to the increased workload.

78. This review highlights the important role of the Governing Body with regard to all the supervisory procedures, except for the regular supervisory procedure, which is ultimately the responsibility of the Conference. This implies that the Governing Body is able to maintain oversight of the procedures and is in a position to ensure that the necessary linkage and differentiation are maintained. On the other hand, the Governing Body has exercised restraint, particularly by leaving it to the supervisory bodies themselves (with the exception of the tripartite committees set up to examine representations under article 24) to determine their methods of work and procedure.

79. The above overview has endeavoured to provide the information that is necessary to facilitate greater understanding by constituents of the links between the various procedures. As indicated at the outset, it has focused on historical and procedural aspects. The links between the procedures could also be studied from a substantive and practical standpoint. Such a study could address two issues: the concrete interplay between the supervisory procedures in cases where constituents resort to a procedure in relation to questions that are already before another supervisory body; whether, and to what extent, the interplay between the procedures has contributed to compliance with ratified Conventions. In view of its limited resources, the Office's margin for manoeuvre to undertake a study of this scope within the specific deadlines for the preparation of Governing Body papers is very narrow. The study would therefore have to cover selected cases of application of ratified Conventions. Further, some prerequisites would have to be met before the Office could embark upon such a study. There would have to be a clear consensus within the LILS Committee, first, that the Office is indeed requested to carry out such a study and, second, that the sole objective of the exercise is to strengthen the impact of the ILO supervisory system.

3. Update on action to enhance the impact of the standards system through technical cooperation

80. With regard to action to enhance the impact of standards through technical cooperation, three main elements were outlined in the interim plan of action:

- specific interventions to address thematic priorities for the promotion, ratification and implementation of standards, shared across countries or regions;
- specific interventions to address the promotion, ratification and implementation of standards in the context of DWCPs; and

Document No. 63

GB.326/LILS/3/1, 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, February 2016

INTERNATIONAL LABOUR OFFICE

Governing Body

326th Session, Geneva, 10–24 March 2016

GB.326/LILS/3/1

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

LILS

Date: 29 February 2016
Original: English

THIRD ITEM ON THE AGENDA

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

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

Professor Paul F. van der Heijden
Chairperson

Committee on Freedom of Association (CFA)

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Appendices

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.

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.

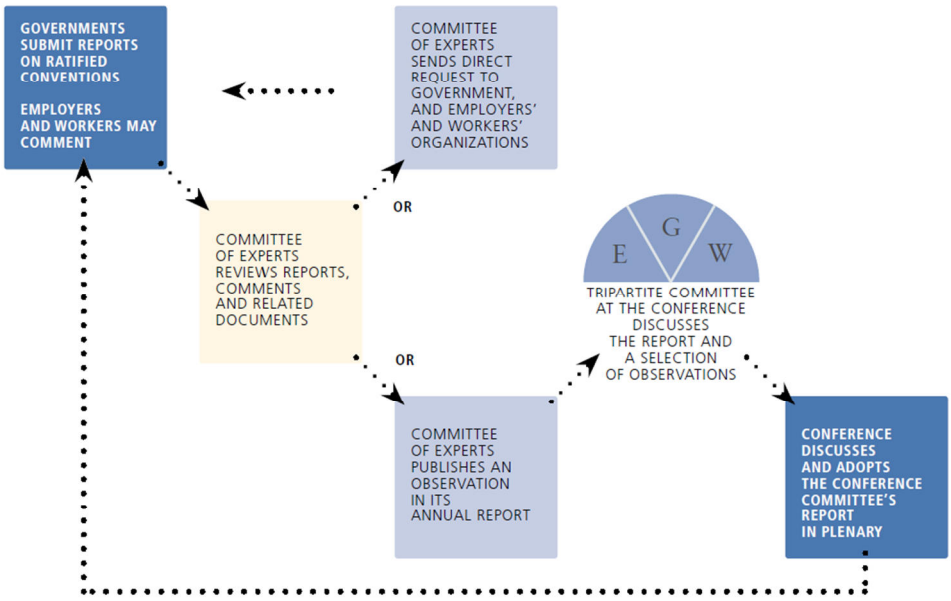
[21] ILO: *Report of the Committee of Experts on the Application of Conventions and Recommendations*, op. cit., p. 2.

[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.

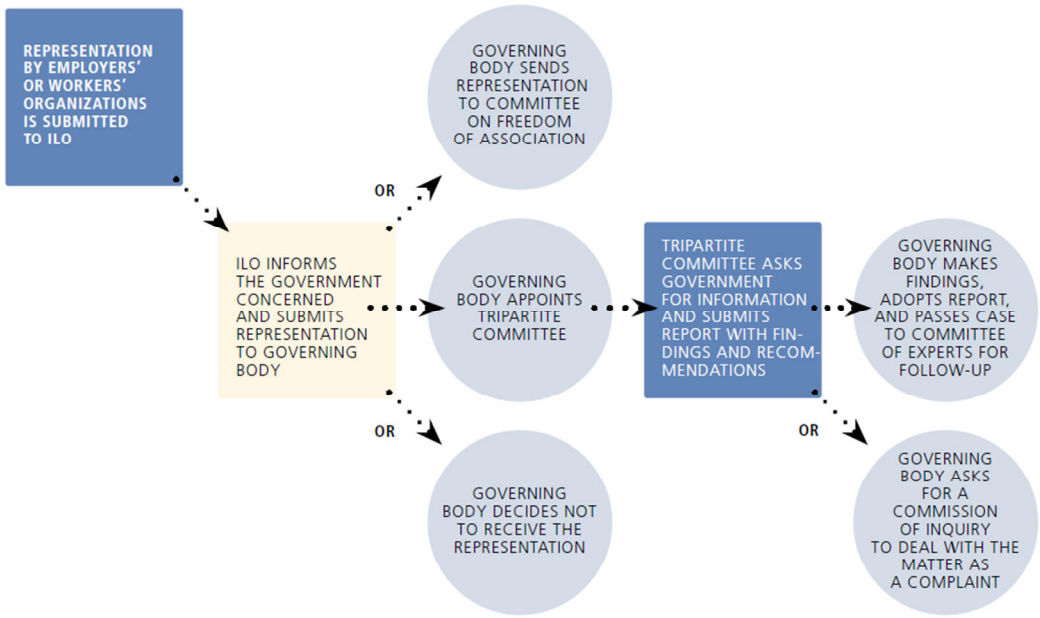
[24] ibid.

[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.

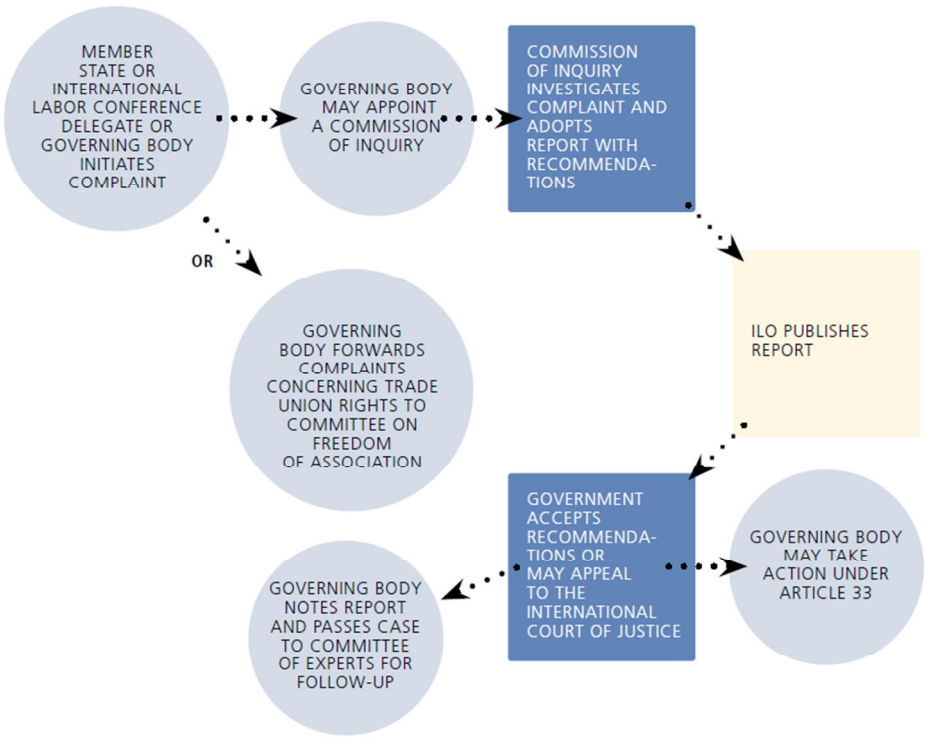
[29] ILO: *Handbook of procedures relating to international labour Conventions and Recommendations*, op. cit., paras 82–84.

[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. Tajgman 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. Tajgman 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.

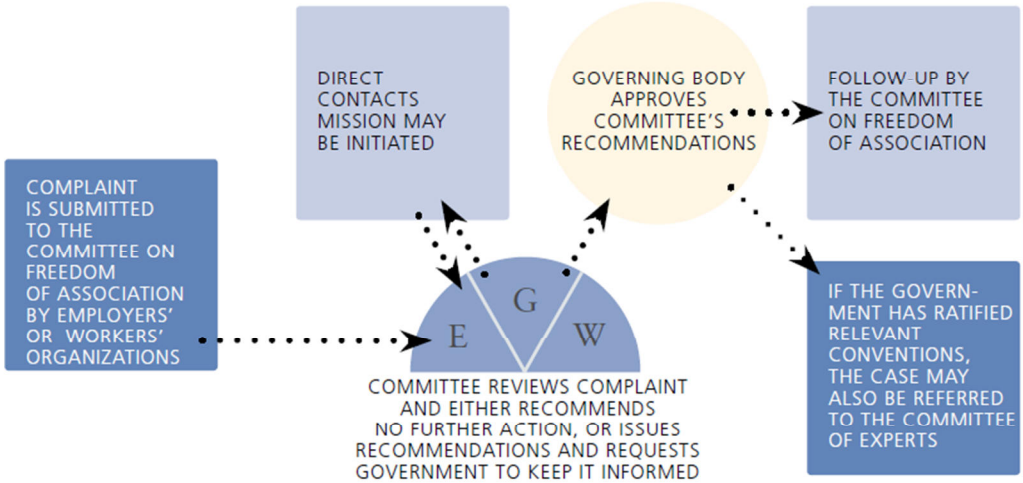
[39] ibid., pp. 60–61. See paragraphs 28–30 of the special procedures for examining complaints alleging violations of freedom of association.

[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 procedure [44]



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.

1944–61

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.

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	(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.	(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	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). 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.	Representation made by an industrial association of employers or workers alleging failure by a Member to secure effective observance of a ratified Convention. 168 representations have been submitted to date.	Complaint by a Member alleging failure by another Member to secure effective observance of any Convention which both have ratified. 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. 30 complaints have been submitted to date.	(i) Initiation of the procedure: 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; (ii) Initiation of the procedure – Specific conditions: Fact-Finding and Conciliation Commission (FFCC): – 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; Committee on Freedom of Association (CFA): – 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	*Standing body* 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).	*Standing Committee of the Conference* 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).	*Ad hoc tripartite body of the Governing Body* 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).	*Ad hoc body* 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.	*Standing tripartite body of the Governing Body* 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; *Digest*, para. 6). Until July 2015, 3,126 complaints have been examined by the CFA.	*Standing body* 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 *Official Bulletin*, under article 29 of the Constitution.	Report submitted to the Governing Body for discussion and approval. Report published in the ILO *Official Bulletin*.	Report communicated by the Director-General to the Governing Body, which takes note of it. Report published in the ILO *Official Bulletin*.

	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	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". Conclusions on individual cases by Conference Committee. Technical assistance provided by the Office at the request of the government in the light of these comments.		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. Possible follow-up by the CEACR.	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. Governing Body may recommend action by the Conference in case of failure to give effect to the recommendations (article 33). Possible follow-up by the CEACR.	Possible recommendations to the Governing Body: (i) no further examination required; (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; (iii) attempt to secure government's consent to referral to the FFCC; (iv) CEACR's attention drawn to legislative aspects if Conventions ratified.	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.

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.

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.

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.

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.

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.

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/.

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.

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.

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-sessional 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.

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)*.

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.

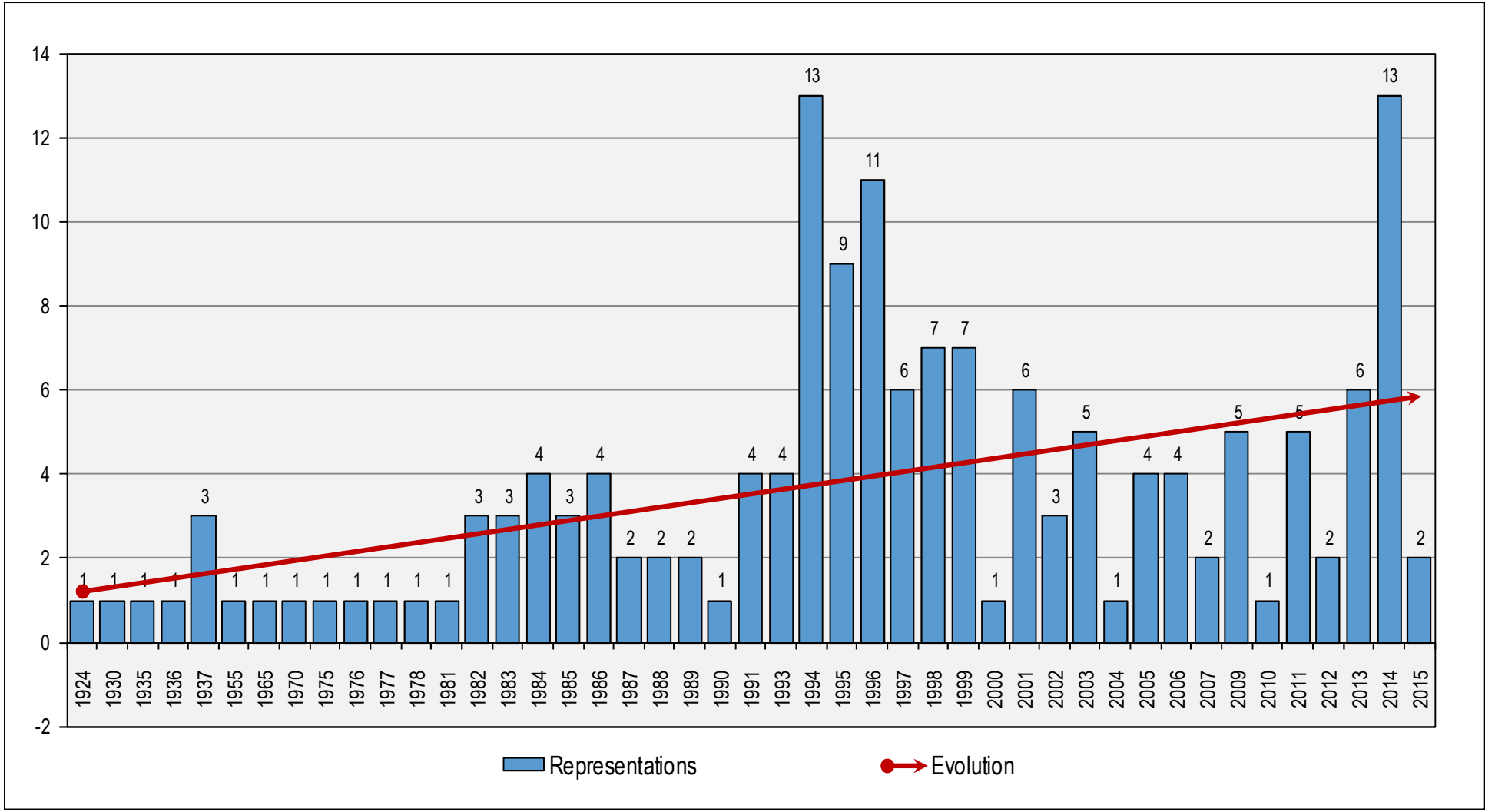
[111] International Convention for the Protection of All Persons from Enforced Disappearance, 20 Dec. 2006, entry into force 23 Dec. 2010, Article 31.

[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.

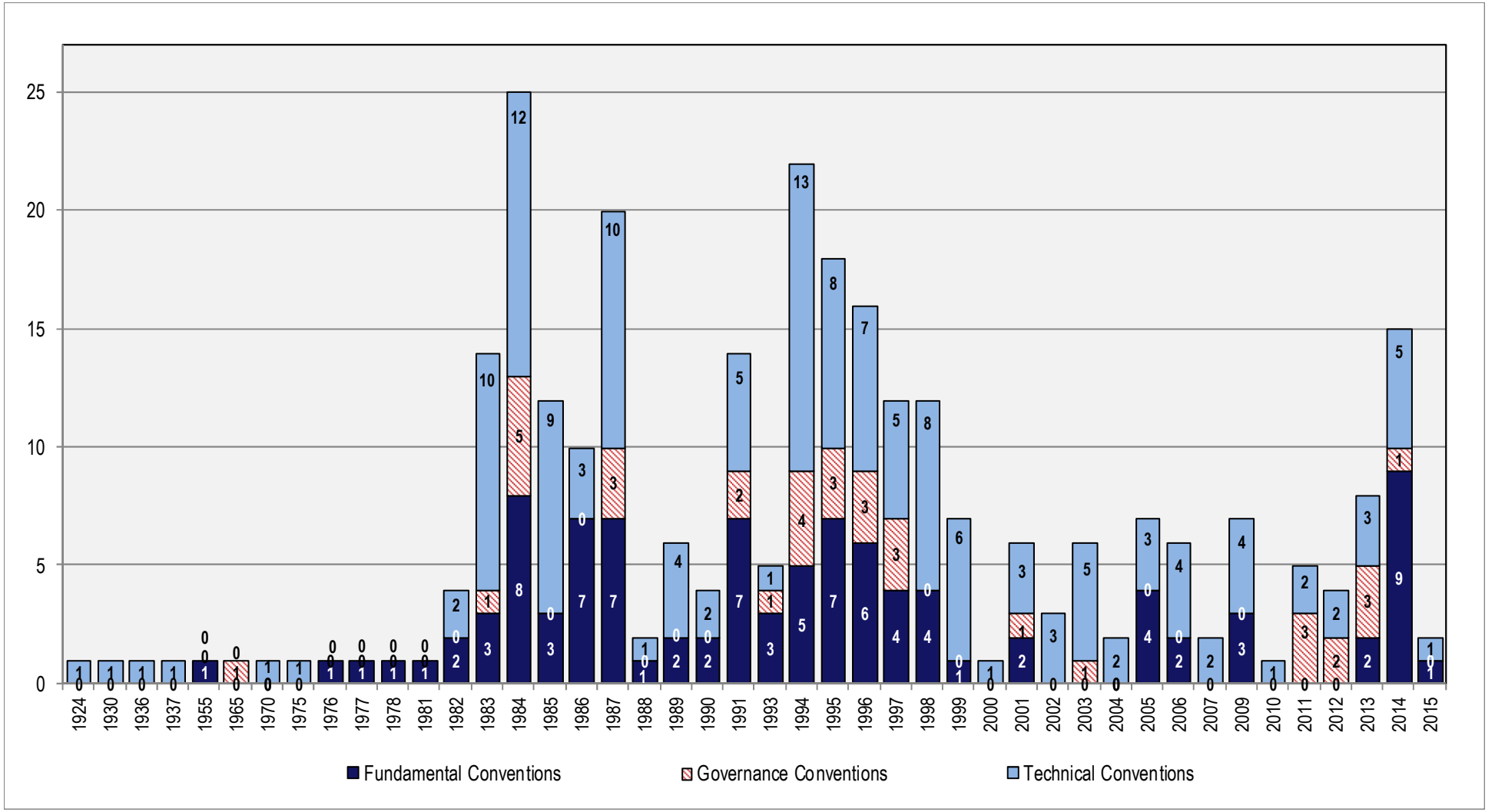
Appendix II. Statistics and figures

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



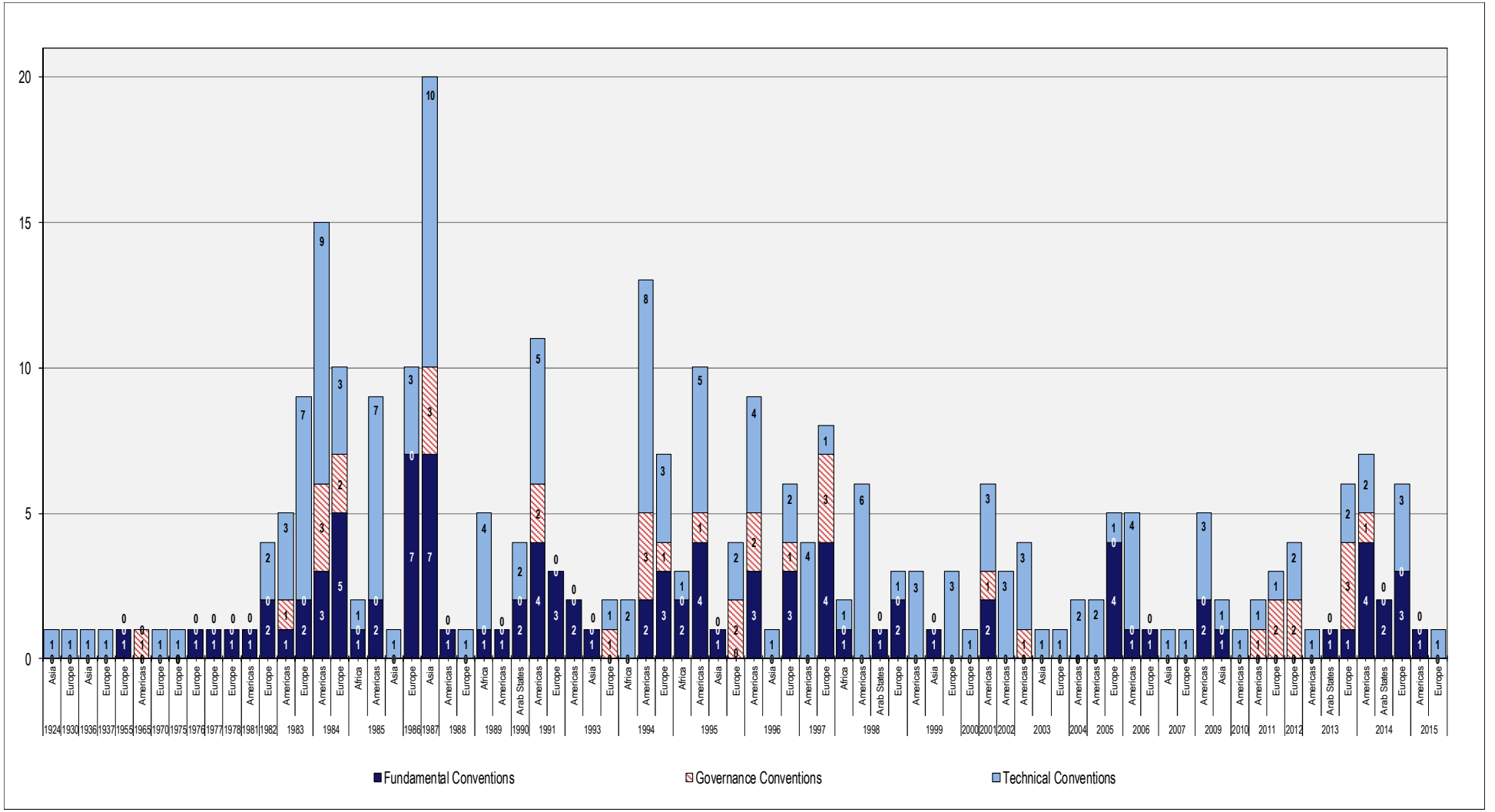
* The figure includes only the years on which at least one representation was submitted.

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



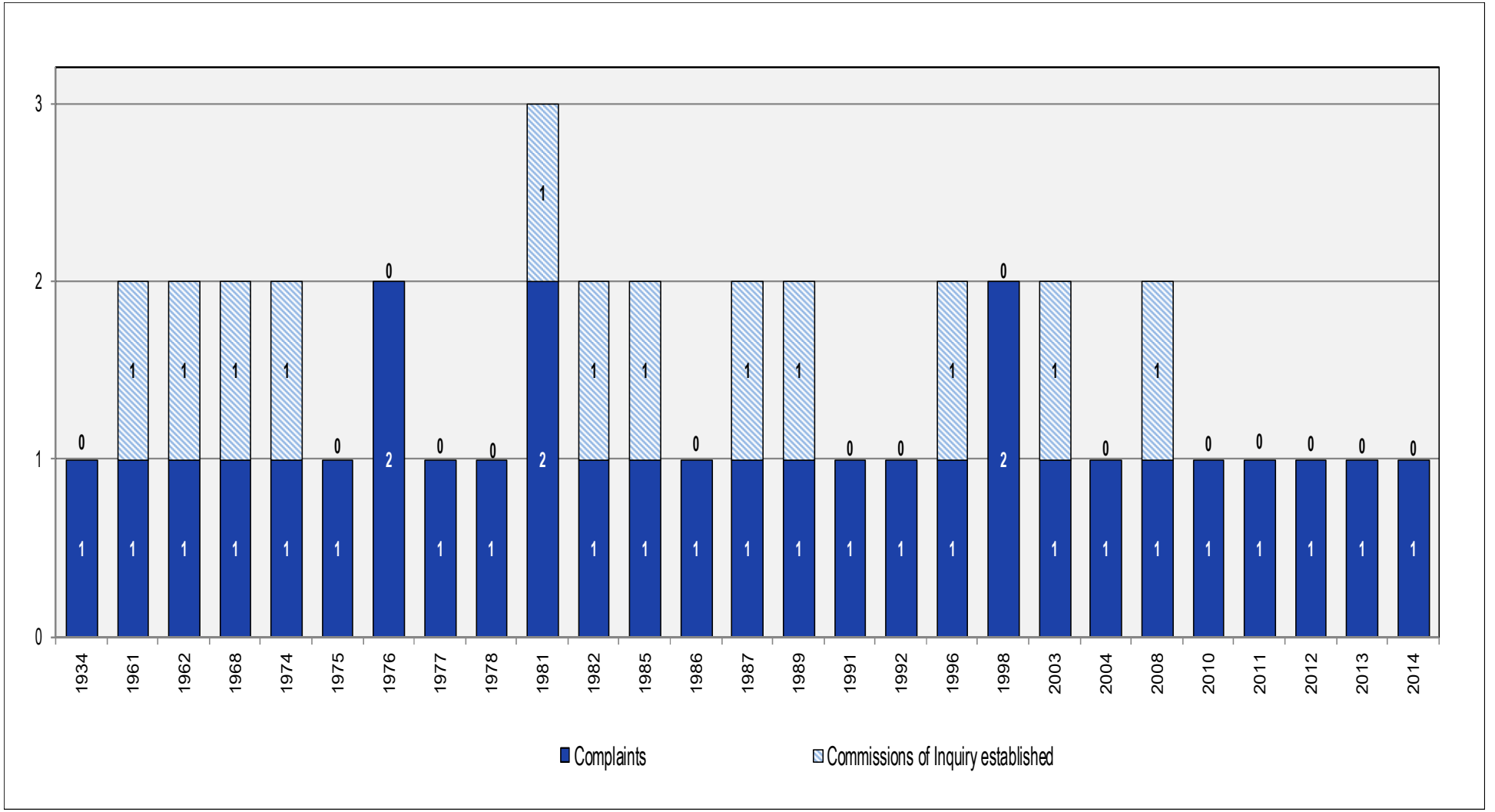
* The figure includes only the years on which at least one representation was submitted.

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



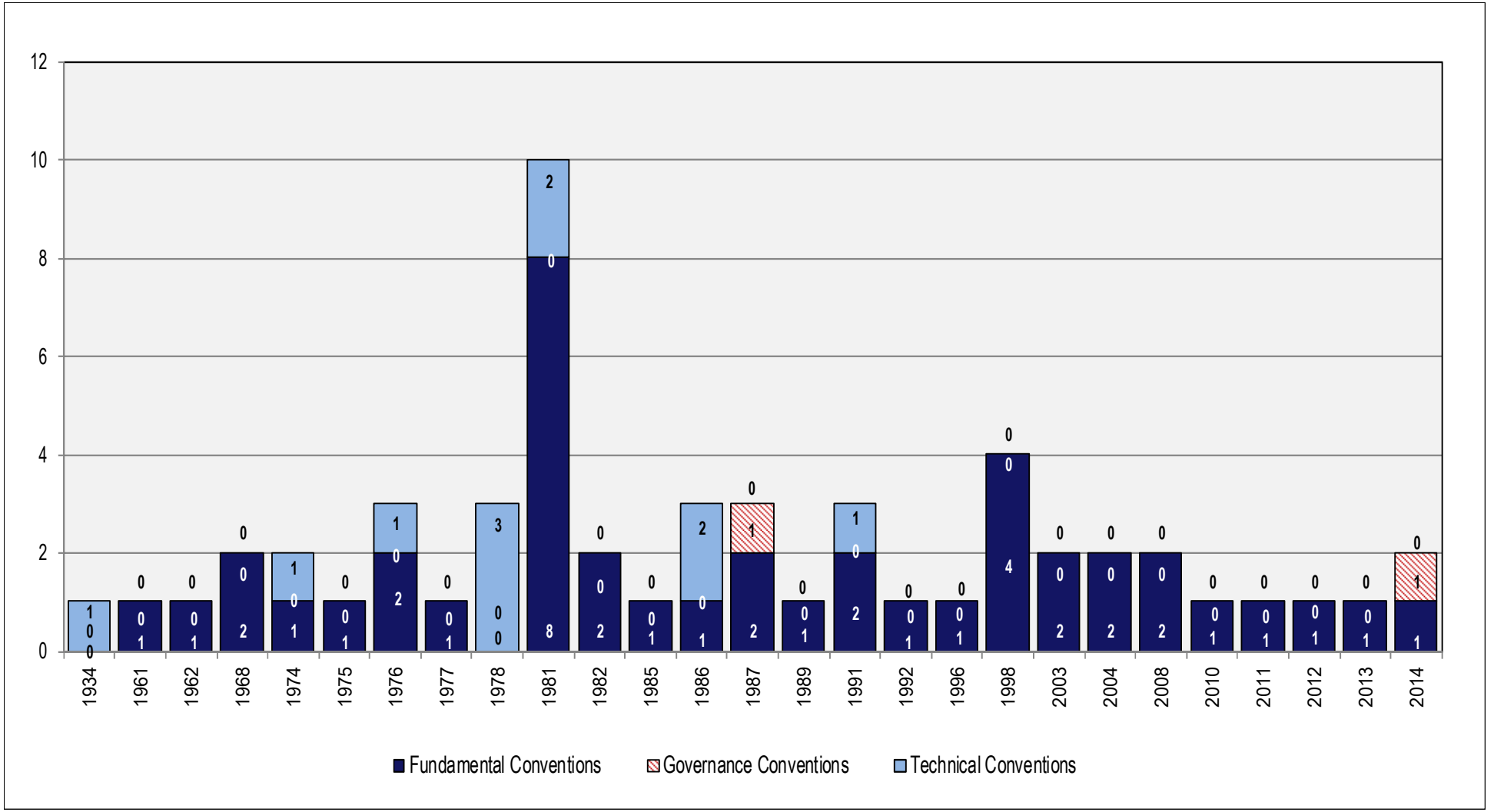
* The figure includes only the years on which at least one representation was submitted.

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



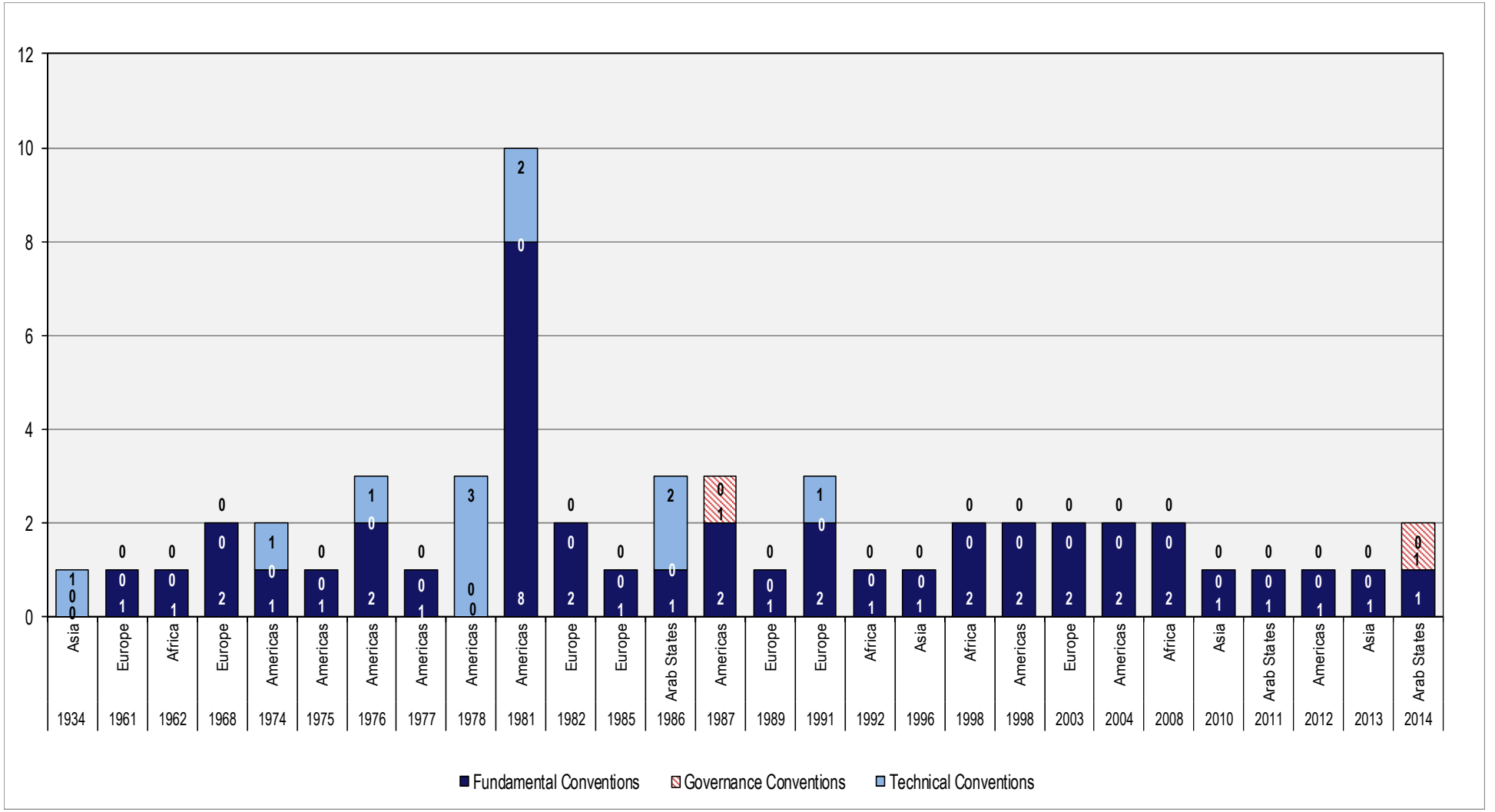
* The figure includes only the years on which at least one complaint was submitted.

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)

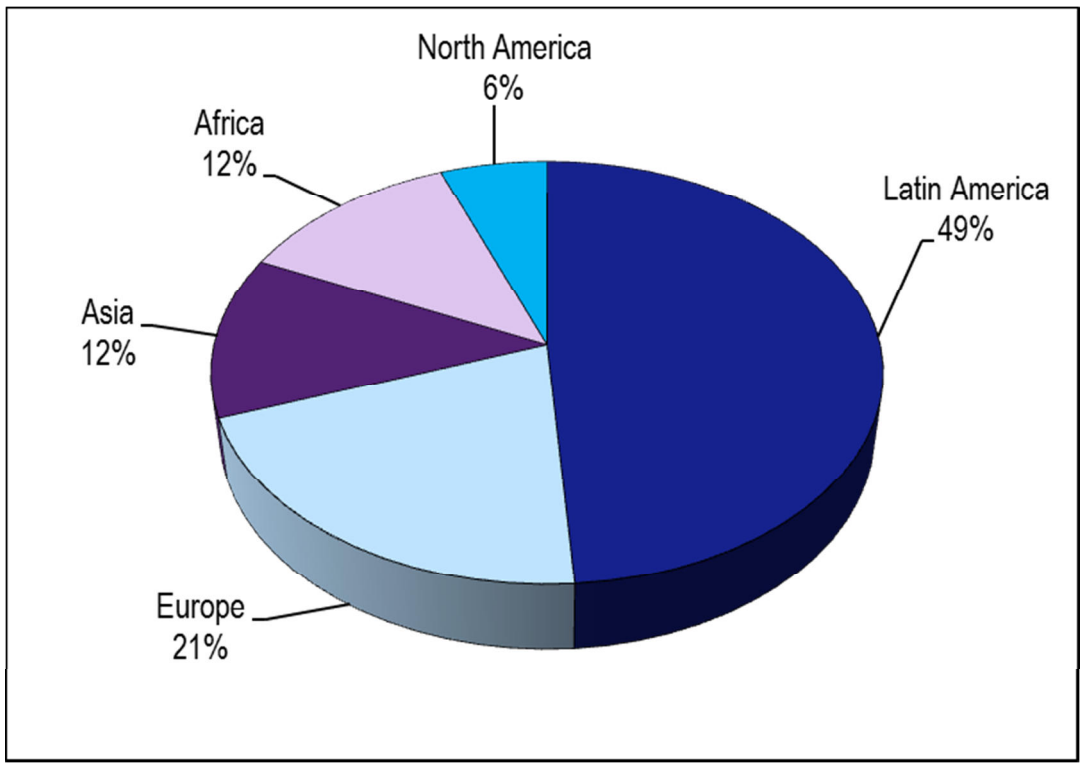


Figure 8. **Number of complaints originating from Africa** (1951–2015)

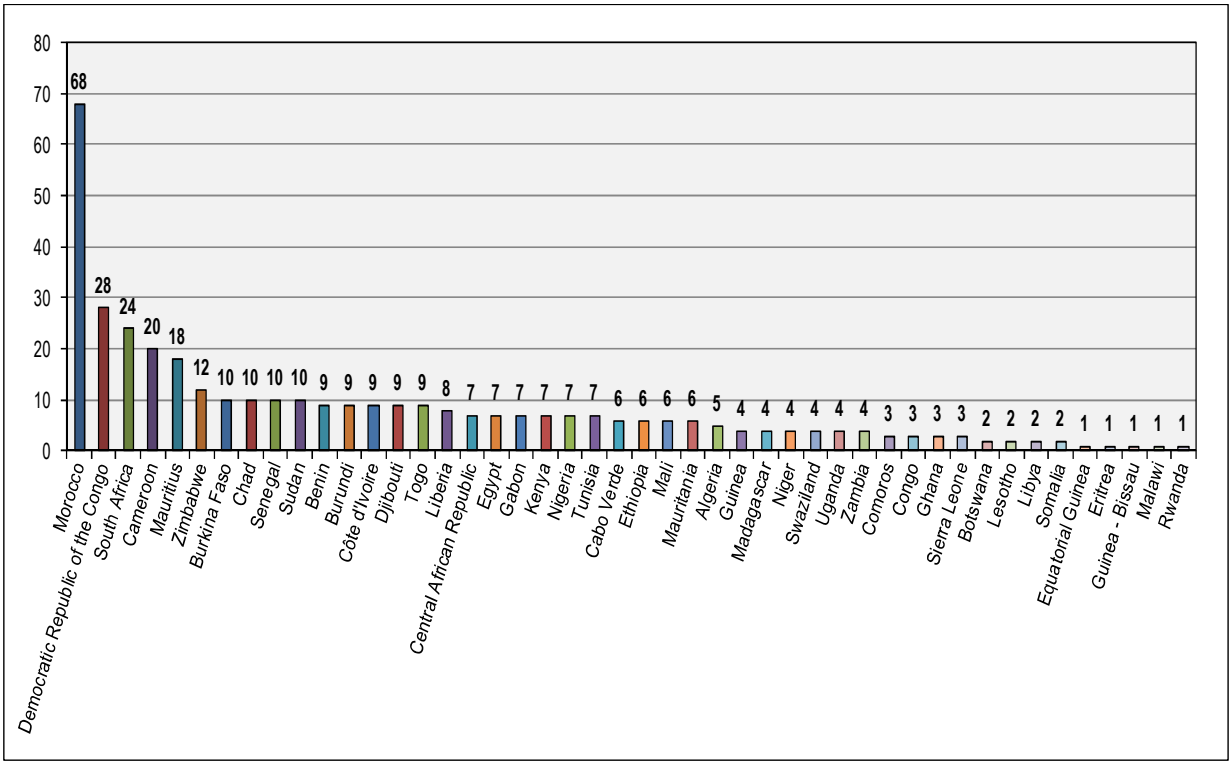


Figure 9. Number of complaints originating from Asia (1951–2015)

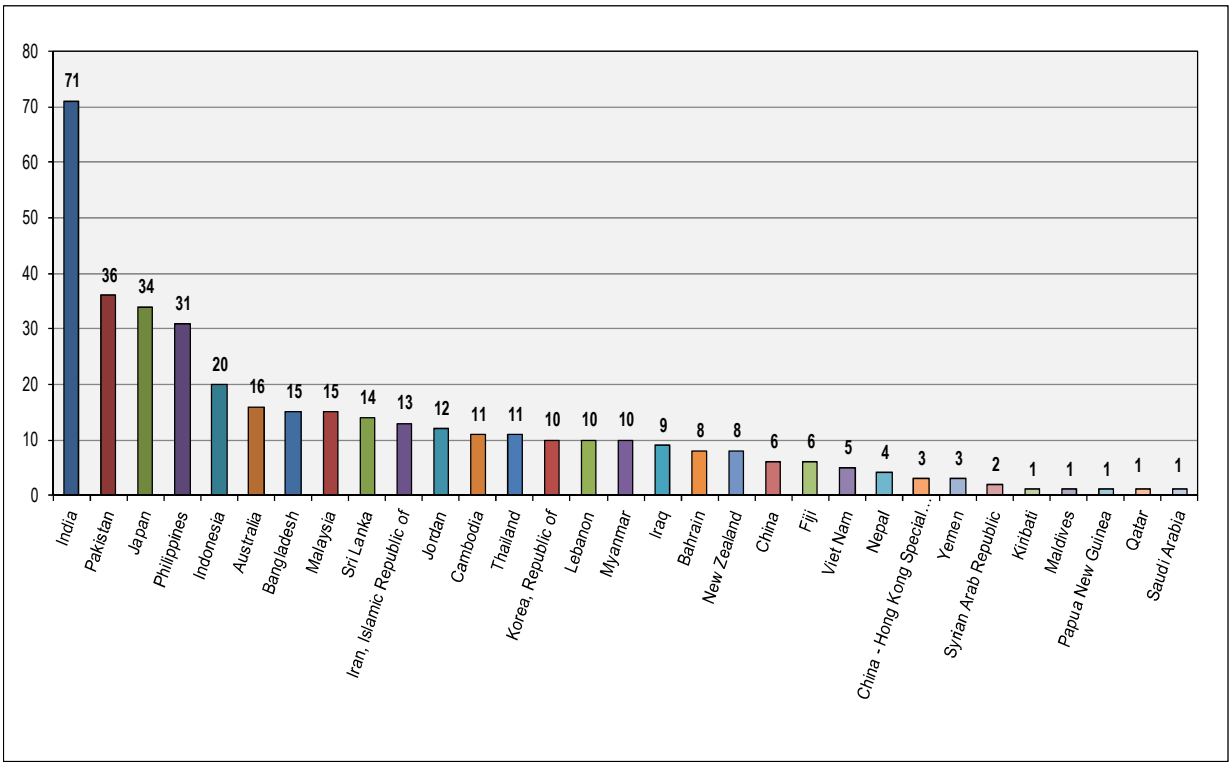


Figure 10. Number of complaints originating from Europe (1951–2015)

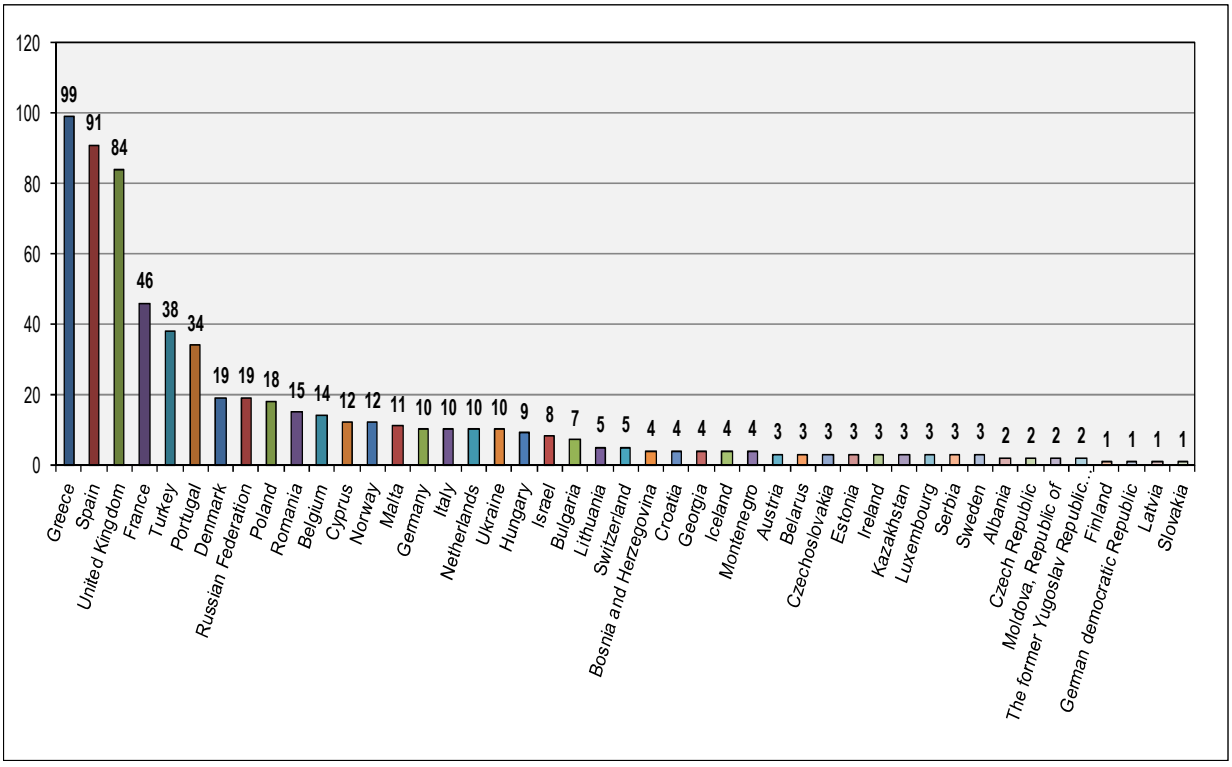


Figure 11. Number of complaints originating from Latin America (1951–2015)

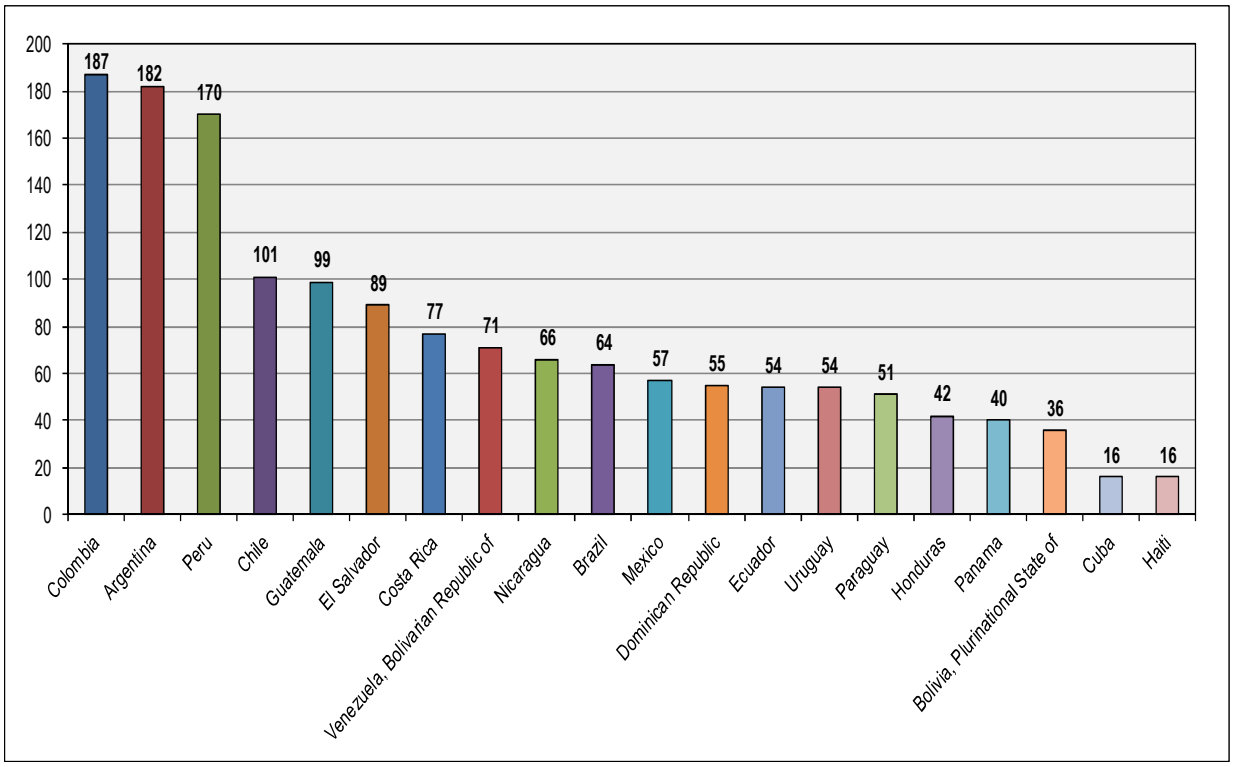


Figure 12. Number of complaints originating from North America (1951–2015)

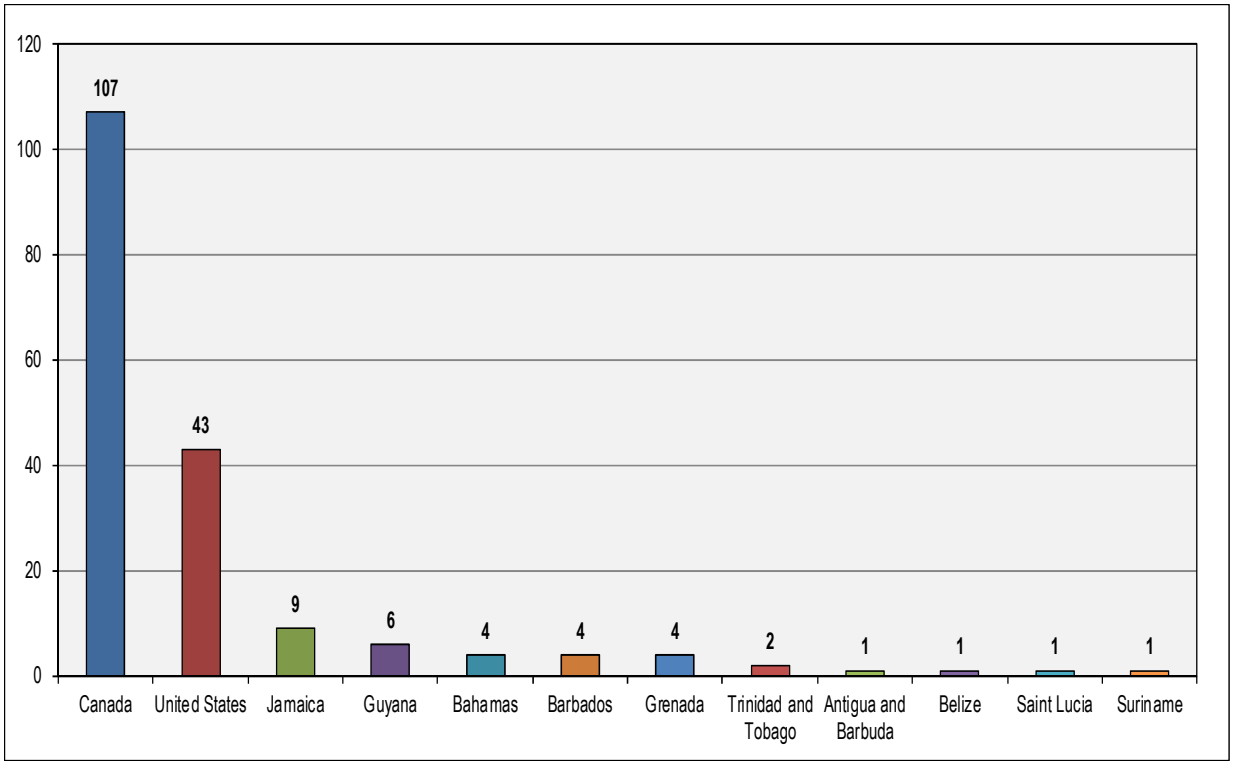
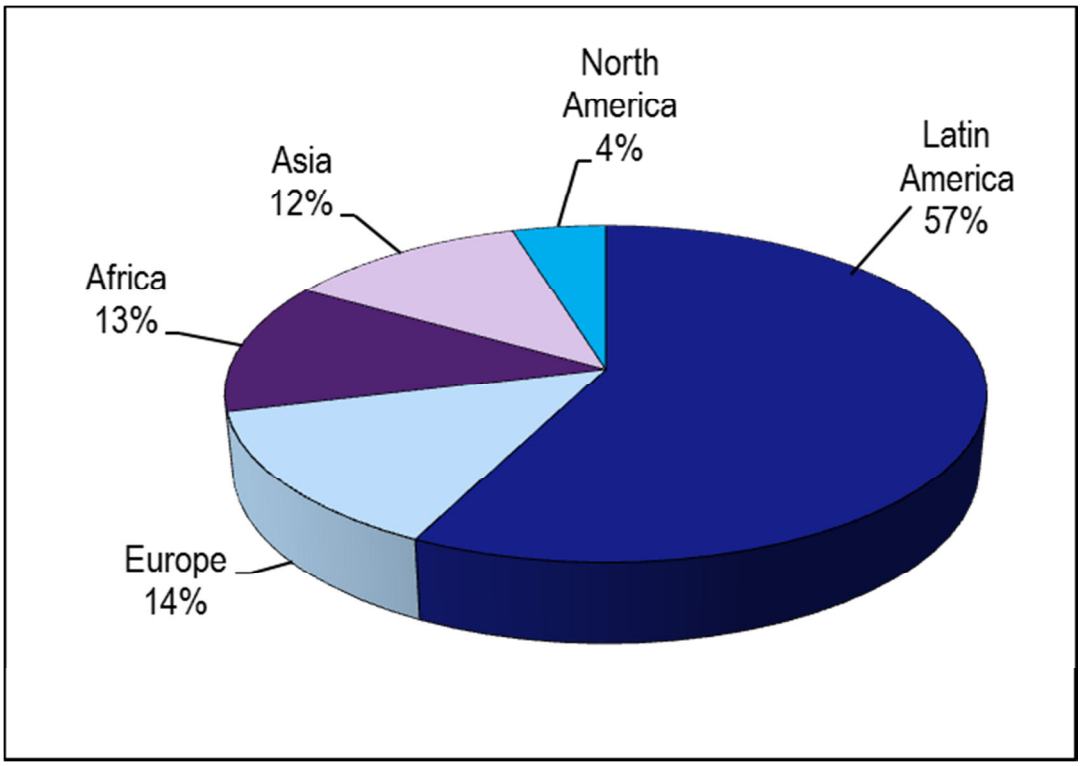


Figure 13. Complaints presented before the Committee on Freedom of Association, by region (1995–2015)



Document No. 64

GB.329/INS/5, The Standards Initiative: Follow-up to the joint report of the Chairpersons of the Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association - Consolidating tripartite consensus on an authoritative supervisory system, March 2017

INTERNATIONAL LABOUR OFFICE

Governing Body

329th Session, Geneva, 9–24 March 2017

GB.329/INS/5

Institutional Section

INS

Date: 6 March 2017
Original: English

FIFTH ITEM ON THE AGENDA

The Standards Initiative: Follow-up to the joint report of the Chairpersons of the Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association

Consolidating tripartite consensus on an authoritative supervisory system

Purpose of the document

In follow-up to its earlier decisions in relation to the *Joint report* of the two Chairpersons in the context of the Standards Initiative, the Governing Body is invited to approve the workplan for the strengthening of the supervisory system; to request the Office to take the necessary steps to implement it based on the guidance received from the Governing Body, report on progress made at its 331st Session (November 2017) and review the workplan, as may be adjusted by the Governing Body during its 331st Session, in the context of its broader review of the Standards Initiative at its 332nd Session (March 2018) (see the draft decision in paragraph 42).

Relevant strategic objective: All four.

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

Policy implications: Will depend on the outcome of the discussion of the Governing Body.

Legal implications: Will depend on the outcome of the discussion of the Governing Body.

Financial implications: Will depend on the outcome of the discussion of the Governing Body.

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

Author unit: International Labour Standards Department (NORMES).

Related documents: GB.328/PV/Draft; GB.328/LILS/2/2; GB.328/INS/6; GB.326/PV; GB.326/LILS/3/1; GB.323/PV; GB.323/INS/5.

Introduction

1. At its 323rd Session (March 2015), the Governing Body requested the Chairpersons of the Committee of Experts on the Application of Conventions and Recommendations and of the Committee on Freedom of Association 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] In receiving the *Joint report*, the Governing Body requested further consultations [2] and recommendations for its consideration in March 2017. [3] Separate consultations with the three groups were held in January and February 2017, ensuring tripartite involvement in the development of the proposals below.

2. Under the ILO Constitution, the supervisory system is the heart of the ILO. Ratification and effective implementation of international labour standards are vital to the fulfilment of the ILO's mission to promote social justice. The ILO supervisory system is a functioning system of interrelated procedures, each of which has a distinctive mandate and should operate in a way that enhances complementarity and eliminates unnecessary overlap. Its impact depends on how it works as a whole. The strengthening of the supervisory system contributes to the way in which the ILO is equipping itself to respond to the changes in the world of work and to give leadership in the global goal of ensuring decent work for all women and men.

3. Challenges and areas in which the supervisory system could be strengthened have been identified by the tripartite constituents. The *Joint report*, reflecting some of those views, referred to issues concerning transparency, visibility and coherence; mandates and the interpretation of Conventions; and workload, efficiency and effectiveness. [4] In considering the functioning of the supervisory system as a whole, the *Joint report* raised the question whether its complexity may lead to overlap between, or a duplication of, procedures; and whether 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. It also indicated that extra efforts could be made to make the system more user-friendly and clear. [5]

4. This document presents proposals to address the challenges raised by the constituents, including those reflected in the *Joint report* and those expressed during the consultations in January and February 2017, against a backdrop of previous Governing Body decisions. [6]

[1] GB.323/PV, para. 84. See further GB.323/INS/5, Appendix I, including statements from the Government group and a joint statement from the Workers' and Employers' groups.

[2] GB.326/PV, para. 502.

[3] GB.328/PV/Draft, para. 594.

[4] See GB.326/LILS/3/1 (the *Joint report*), paras 125–144.

[5] *Joint report*, para. 126.

[6] Notably, the recognition by the Governing Body of the Committee of Experts' statement of its mandate, the critical importance of the effective functioning of the Committee on the Application of Standards and the need for steps to improve the working methods of the supervisory system, including through the examination of their working methods by the supervisory bodies: GB/320/PV, para. 596. See also joint statement of the Workers' and Employers' groups in GB323/INS/5/Appendix I, Annex I.

The consultations provided helpful and constructive guidance to the Office, and confirmed that the package of ten complementary concrete proposals was an acceptable starting point.

5. The Governing Body will continue its usual governance role in relation to the supervisory system, including raising issues that are addressed by the supervisory bodies' ongoing reviews of their methods of work. [7] The overall review by the Governing Body of the implementation of the Standards Initiative at its 332nd Session (March 2018) will be a further opportunity for it to consider the supervisory system. [8]

Common principles guiding the strengthening of the supervisory system

6. Constituents have expressed diverse views on the functioning of the supervisory system and its specific procedures. At the same time, there is convergence on the expected outcome of measures to ensure a well-functioning and effective supervisory system within the constitutional framework.

The value of the supervisory system is incontrovertible …

7. The role of the supervisory system is to give practical effect to the ILO founding values and constitutional objectives. The tripartite constituents have highlighted the importance of the system as a whole, as well as of the individual supervisory procedures, for the discharge of the ILO's mandate. Any evolution of the supervisory system must be based on its well-established strengths. Equally, there is consensus that the system could be strengthened.

… and the responsibility to further strengthen the supervisory system lies with the tripartite constituents.

8. There is a collective view that it is the joint responsibility of the tripartite constituents to consider further strengthening the supervisory mechanisms. The tripartite structure adds value to the supervisory system, and is an important reason for its authoritativeness. It is the responsibility of the ILO constituents to guarantee the functioning and evolution of the system in line with the Constitution, supported and assisted by the Office in the discharge of its constitutional role. Solutions lie with the tripartite constituents and decisions will be taken on a consensual and participatory basis by the ILO governance bodies. The tripartite structure adds value to the supervisory system, and is an important reason for its authoritativeness. In addition to recognizing their role in the functioning of the system, the tripartite constituents have committed to engaging fully in the process of strengthening it.

Improvements must result in a robust, relevant and sustainable system …

9. The supervisory system must remain relevant to the existing world of work. This will enable it to continue to guide the ILO in achieving progress and social justice in a constantly changing environment, remaining pertinent and retaining global significance. Fundamentally, within the constitutional framework, the system must enjoy committed tripartite support that is manifested in constructive involvement and genuine engagement. A

[7] The Committee of Experts, the Committee on the Application of Standards and the Committee on Freedom of Association have ongoing processes for reviewing their working methods. See *Joint report*, paras 138–140.

[8] GB.328/PV/Draft, para. 108.

strong supervisory system inspires confidence, while enabling the ILO and its Members to be resilient to change.

… and its procedures should be efficient and effective.

10. Effectiveness and efficiency are important components of the supervisory system. In supervising the application of international labour standards, it must continue to fulfil its purpose and make the best use of available resources. Its recommendations must be followed up and implemented. An organized and coherent system contributes to the achievement of the ILO's strategic objectives through the ratification and effective application of standards in member States.

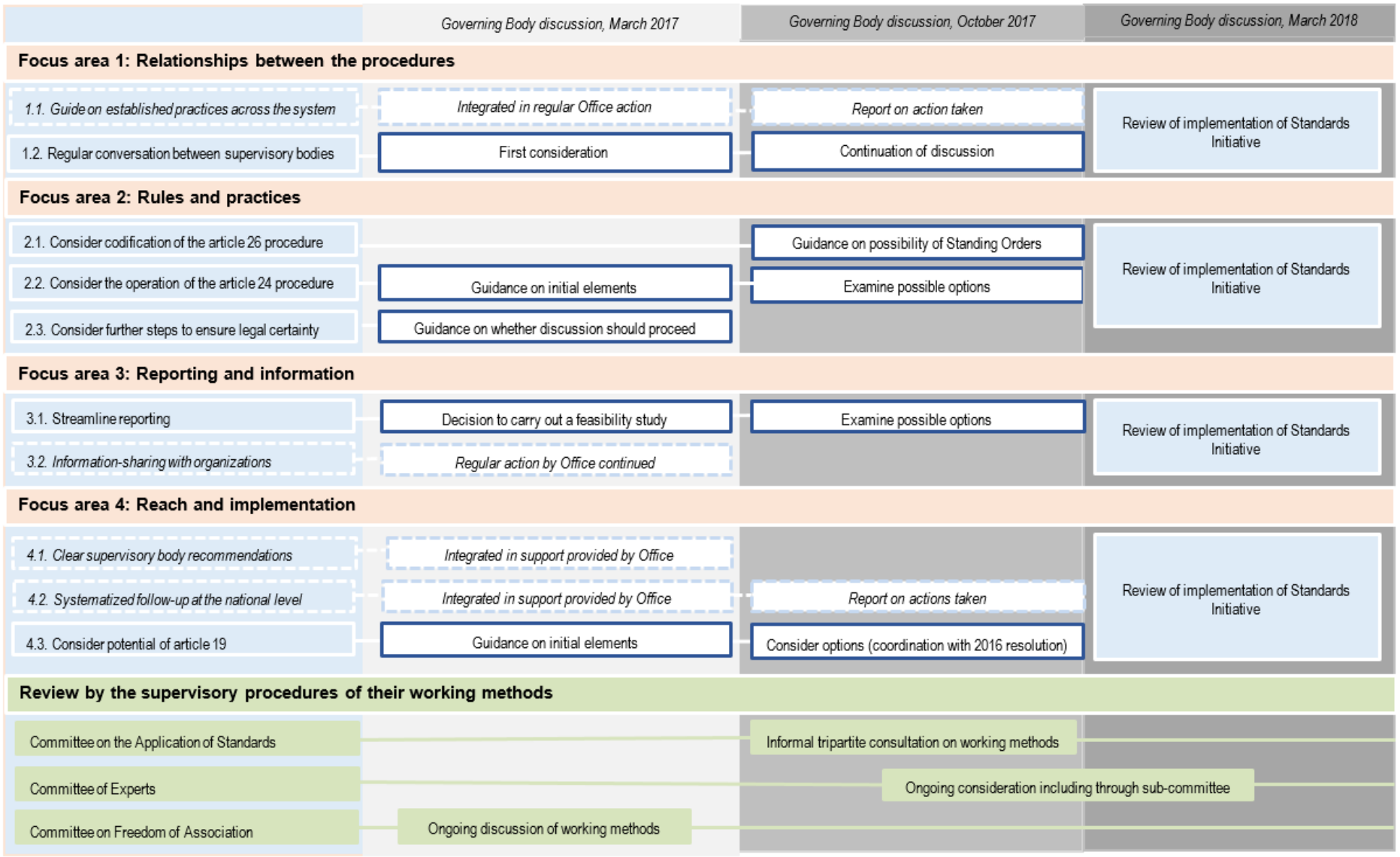
The supervisory system must be transparent, fair and rigorous, leading to consistent and impartial outcomes.

11. Transparency and integrity in the system are essential. Due process and procedural fairness should be guaranteed, including through necessary procedural safeguards, and the supervisory system must operate on the basis of consistent and impartial practices. Comments, decisions and recommendations that are understood to be the outcome of a balanced, objective and rigorous process are essential to the credibility and authority of the system.

Concrete proposals

12. To contribute to the consolidation of tripartite consensus, the document presents proposals on which the constituents could build a tripartite process to strengthen the supervisory system. The ten proposals are grouped under four complementary focus areas. A workplan describing the set of proposals and their timing is set out below.

Work plan and timetable for Governing Body discussions



Focus area 1: Relationships between the procedures

Main aims of the proposals, based on the common principles of: enhanced transparency, coherence, predictability and sustainability

13. Many views expressed by the constituents concern the supervisory system systemically, highlighting the fact that it is a functioning system of interrelated and complementary individual procedures. [9] Constituents have underlined the need to consider the functioning of the system as a whole, and to improve understanding of its procedures and the linkages between them, as well as to avoid unnecessary overlap and to take extra efforts to make it more user-friendly and clear.

14. The proposals included within this focus area aim to respond to those challenges and issues. Concrete proposal 1.1 addresses the need to ensure clarity in relation to the individual supervisory procedures. Concrete proposal 1.2 addresses the need to consider the relationships between the individual procedures and consider the functioning of the system as a whole.

1.1. Guide on practices across the supervisory system

15. The Office would create a user-friendly and clear guide for the supervisory system, bringing together useful information and ensuring a level playing field of knowledge. In practical terms, such a guide would build on existing descriptions of the supervisory system and its procedures. As illustrated in Appendix I, it will set out, in a step-by-step format, the practices for each supervisory procedure, including admissibility criteria, timelines and implementation of the recommendations. The guide will be regularly updated to reflect the evolution of working methods or any decisions of the Governing Body.

16. The development of the guide would be integrated into regular Office action and would be reported on at the Governing Body's session in October 2017.

1.2. Regular conversation between the supervisory bodies

17. As set out in the *Joint report*, [10] a regular conversation between the supervisory bodies could complement the existing dialogue between the Committee on the Application of Standards and the Committee of Experts.

18. For example, an annual meeting could take place between the Committee on the Application of Standards, the Committee of Experts, the Committee on Freedom of Association and representatives of the articles 24 and 26 procedures. The supervisory bodies could be represented by their Officers and the Officers of the Governing Body in their role in relation to the articles 24 and 26 procedures. The meeting could be envisaged as an informal exchange with two parts. The first part could be a forum for the representatives of the supervisory bodies to address together synergies or any unnecessary duplication between the

[9] See *Joint report*, para. 126.

[10] See *Joint report*, para. 127.

procedures. A second part could be an information session with representatives of governments. [11]

19. At its March 2017 session, the Governing Body could discuss how to enhance the interaction between the supervisory bodies, including considering options for a regular conversation other than an annual meeting.

Focus area 2: Rules and practices

Main aims of the proposals, based on the common principles of: enhanced accessibility, transparency, clarity and due process

20. The constituents have underlined the need to consider the functioning of the individual supervisory bodies and to preserve their distinct roles and features. In particular, the *Joint report* recorded issues concerning the mandates and working methods of the supervisory bodies, and the question of interpretation of the Conventions.

21. The proposals within this focus area concern rules and practices. Concrete proposal 2.1 addresses the article 26 procedure; and concrete proposal 2.2 addresses the operation of the article 24 procedure. Concrete proposal 2.3 concerns legal certainty and, in particular, the interpretation of Conventions.

22. These proposals complement the ongoing work of the Committee on the Application of Standards, the Committee of Experts and the Committee on Freedom of Association to review their working methods. In that regard, it should be recalled that the Committee on Freedom of Association will report to the Governing Body on its review of its working methods in March and June 2017. [12]

2.1. Consider codification of the article 26 procedure

23. The practices related to the complaint procedure set out in articles 26–34 of the ILO Constitution are not currently codified beyond the rules set out in the Constitution. While the proposed guide above would set out the practice in relation to the article 26 procedure, codification suggests formalized rules, such as Standing Orders. Taking into account the views expressed during the consultations in January and February 2017, the possible codification of the article 26 procedure could be discussed in November 2017 after a first

[11] This could be modelled on the meeting held in 2013 where the Committee of Experts responded to questions raised by Government representatives. See the Report of the Committee of Experts to the Conference in 2014 (ILC.103/III(1A)), para. 30.

[12] Further information on the ongoing examination of the methods of work can be found as follows:

- The report of the Committee on the Application of Standards to the 105th Session of the Conference presents the latest decisions of the Committee in relation to its work. The oral report of the Chairperson of the Working Party on the Functioning of the Governing Body and the International Labour Conference at the 328th Session (October–November 2016) of the Governing Body presents information on the most recent informal tripartite consultations on the working methods of the Committee;
- The report of the Committee of Experts submitted to the 106th Session (2017) of the Conference presents information on the consideration of its methods of work during its 87th Session.
- The 377th report of the Committee on Freedom of Association, raising in particular concrete steps to improve its functioning and its interface with constituents.

discussion of the operation of the article 24 procedure, while ensuring coherence between the two discussions.

2.2. Consider the operation of the article 24 procedure

24. During the consultations in January and February 2017, the constituents indicated that consideration of the operation of the article 24 procedure could commence in March 2017. In the context of the *Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the ILO*, a first tripartite discussion could consider the operation of the procedure, in the context of the initial elements set out in Appendix II. These elements include a possible standing committee, admissibility, time limits, linkages with other supervisory procedures and follow-up of recommendations, as well as linkages with national procedures.

25. At its March 2017 session, the Governing Body could provide guidance based on those initial elements and any other aspects of the operation of the article 24 procedure. On that basis, possible options for the strengthening of the operation of the article 24 procedure could be discussed by the Governing Body at its November 2017 session.

2.3. Consider whether to take steps to ensure further legal certainty

26. Legal certainty is important for the continued credibility and effectiveness of the supervisory system. The *Joint report* proposed steps to be taken in relation to the question of how to interpret Conventions. [13] At its March 2017 session, the Governing Body may wish to decide whether to take this issue forward.

Focus area 3: Reporting and information

Main aims of the proposals, based on the common principles of: enhanced relevance and efficiency

27. Submission of reports is at the core of the functioning of the supervisory system. Notably, the constituents have expressed views on workload; the reliability and quality of information; new technologies; and ensuring the best use of available resources.

28. The proposals within this focus area concern the communication of reports and other information for the purposes of the supervisory procedures. Concrete proposal 3.1 addresses the streamlining of reporting and proposal 3.2 addresses exchanges of information with other international organizations.

3.1. Streamline reporting

29. Building on a proposal set out in the *Joint report*, [14] steps will be taken to streamline reporting, optimizing the use of technology and meeting the needs of constituents.

30. As a first step, a feasibility study will address: (i) options for the full computerization of the reporting/supervisory system; and (ii) the streamlining of reports and information requested. Through this feasibility study, the prime users of the system – government officials

[13] *Joint report*, paras 133–136.

[14] *Joint report*, para. 130.

responsible for providing reports to the ILO supervisory system – could set out their views, experiences and suggestions on possible improvements to the reporting process. Views would be sought electronically from governments through a set of concise questions [15] soon after the March 2017 session of the Governing Body, to be followed by consultation with the groups' secretariats.

31. Based on the feasibility study, detailed proposals will be submitted to the Governing Body at its November 2017 session as a second step.

32. At its March 2017 session, the Governing Body could decide to implement the two-step approach. Progress would be reported to the November 2017 session of the Governing Body, together with proposals of further steps to be taken and their cost estimates.

3.2. Information sharing with international organizations

33. The Office has numerous current exchanges and collaborations with other international organizations in supervising the implementation of standards. Based on the views expressed during the January and February 2017 consultations, the Office will continue its regular exchange of information with other international organizations.

Focus area 4: Reach and implementation of recommendations of the supervisory bodies

Main aims of the proposals, based on the common principles of: enhanced efficiency and effectiveness

34. There is tripartite agreement on the need to improve the efficiency, effectiveness and reach of the supervisory system within the constitutional framework. The comments of the supervisory procedures should contribute to the impact of international labour standards at the country level.

35. Proposals 4.1 and 4.2 address the implementation of the outcomes of the supervisory system. Proposal 4.1 aims to ensure that the recommendations of the supervisory bodies are effective, by enhancing their clarity, and proposal 4.2 aims to ensure that the recommendations inform all ILO work and that technical assistance is available to member States to facilitate national level measures to ensure their implementation. Concrete proposal 4.3 aims to strengthen the reach and implementation of the supervisory system, by addressing the potential of article 19(5)(e) and 6(d) to consider the effect given to all instruments by member States, regardless of ratification and to provide information on the obstacles to ratification.

36. During the consultations in January and February 2017, there was broad support for all three proposals. The Office will continue to integrate the actions under proposals 4.1 and 4.2 in its ongoing work, in light of the comments made by the constituents during the consultations. In response to a request for further information on proposal 4.3, additional elements are included in Appendix III.

[15] Inputs would be sought on: (i) the greatest difficulties in fulfilling reporting obligations; (ii) the greatest strengths of the existing reporting process; (iii) the best ways to incorporate national circumstances; and (iv) concrete examples of national and international level processes, systems and methodologies which could inspire the streamlining.

4.1. Clear recommendations by the supervisory bodies

37. The recommendations made by the supervisory bodies should be clear and provide practical guidance to member States. In its secretariat role, the Office will pursue this objective with the supervisory bodies as they continue to review their working methods, mindful of the recent experience of the Committee on the Application of Standards. [16]

4.2. Systematized follow-up at national level

38. To enhance the reach of the comments generated by the supervisory system, the Office will continue its work to systematize the technical assistance member States choose to take up in follow-up to the comments of the supervisory bodies and ensure their integration into other ILO work and Decent Work Country Programmes. [17] In this context, the Office will promote the use of recognized social dialogue mechanisms, including those established under the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).

39. Currently, the Office reports on the technical assistance it provides through reports to the Governing Body relating to the programme and budget. In the latest programme and budget proposals, it was indicated that "[t]he ILO supervisory bodies have noted increased ratification and improved application of international labour standards, where a virtuous cycle exists between the ILO's normative function, Decent Work Country Programmes and technical assistance". [18] Systematizing technical assistance would encourage more detailed reporting to the Governing Body on good practices which may be of assistance to governments.

4.3. Consider potential of article 19 to extend reach and implementation of standards

40. The request for concrete action arises from the Conference in its 2016 resolution on Advancing Social Justice through Decent Work. [19] The initial elements set out in Appendix III respond to the constituents' request for additional information.

41. On the basis of the Governing Body's discussion at its March 2017 session, the Office could compile elements detailing the various uses of article 19 to facilitate the Governing Body's discussion in November 2017. [20]

[16] See footnote 12 above.

[17] See GB.328/PFA/2, paras 23–32 and paras 120–122.

[18] GB.329/PFA/1, para. 63.

[19] See subparagraphs 15(1) and 15(2)(b) of the 2016 resolution.

[20] In November 2017, the Governing Body will consider a revised framework for recurrent discussions under the follow-up to the 2016 resolution, which would address the linkages between the discussions of the General Surveys by the Committee on the Application of Standards and the recurrent discussions (see GB.328/INS/5/2 and GB.328/PV/Draft, para. 102(c)).

Draft decision

42. ***The Governing Body:***

(a) approves the workplan for the strengthening of the supervisory system;

(b) requests the Office to take the necessary steps to implement the workplan based on the guidance it provides and to report on progress made at its 331st Session (November 2017), following consultations with the tripartite constituents; and

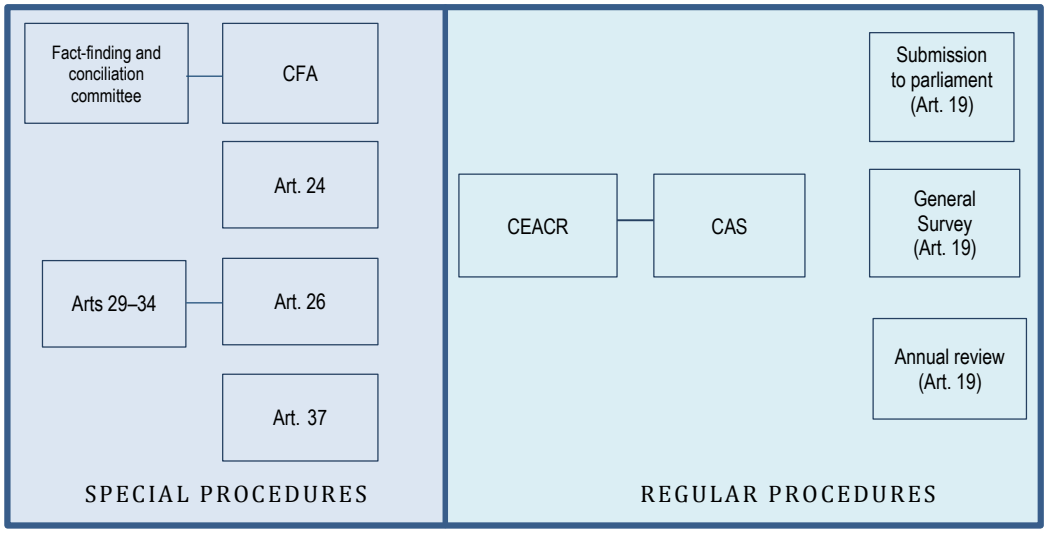
(c) decides to review the workplan, as may be adjusted by the Governing Body during its 331st Session, in the context of its broader review of the Standards Initiative at its 332nd Session (March 2018).

Appendix I

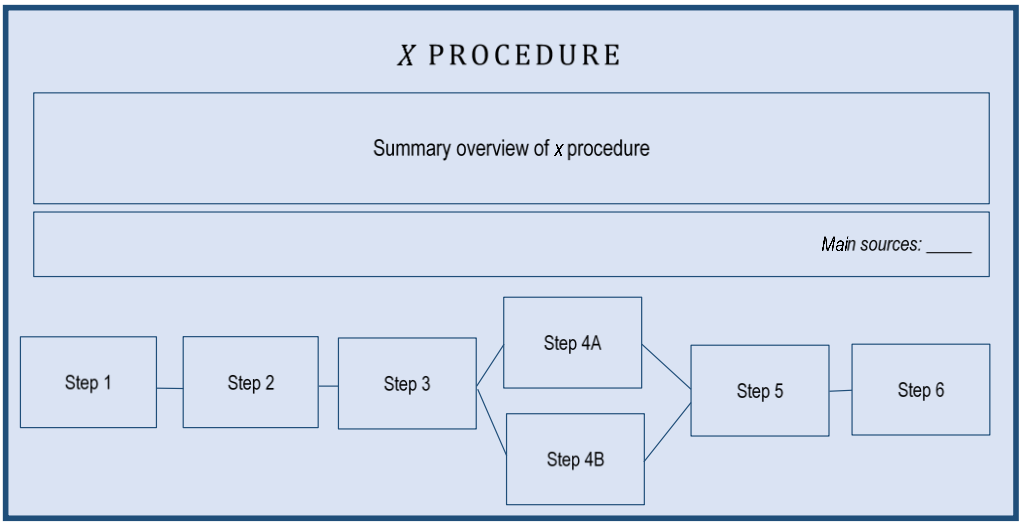
Outline of guide on practices related to the operation of the procedures (proposal 1.1)

The *expected format* of the guide would be a web-based tool, organized in a step-by-step way for each procedure, and regularly updated to reflect any changes to the practices over time. It would provide user-friendly information about the operation of the supervisory procedures in practice.

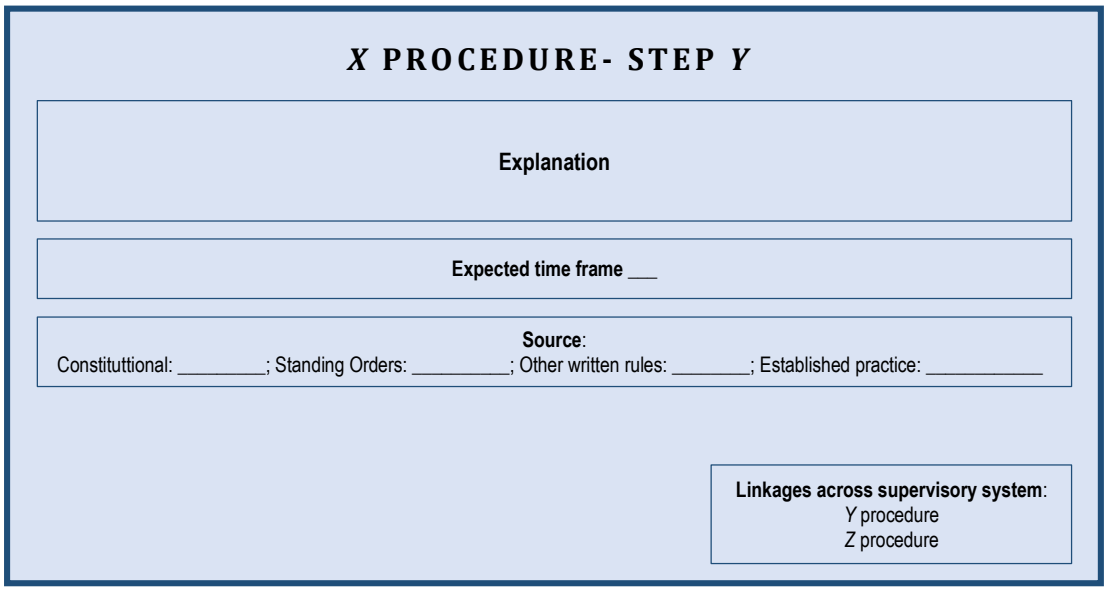
An *entry screen* would identify each of the supervisory procedures to be addressed in the guide. An example of such an entry screen could be:



There would then be *separate pages for each of the supervisory procedures* set out in that entry screen, which would commence with a main screen providing a summary overview and links to the main sources. An example of the main screen for each procedure could be:



There would then be a *series of screens for each step in the procedure*, each of which would provide an explanation of the step and relevant information including the expected time frame, the source, and linkages with other procedures. An example of the screens for steps in the procedure could be:



Appendix II

Initial elements concerning the operation of article 24 procedure (proposal 2.2)

Statistical information about the use and operation of the article 24 procedure [1]

- At present, there are nine pending article 24 representations. At the beginning of 2016, there were 20 pending representations, 11 of which were resolved by the end of the year.
- Article 24 representations usually take between nine and 24 months to resolve from the time that they are determined to be receivable until the time that the tripartite committee submits its report to the Governing Body. Most often, this involves two–three meetings of the tripartite committee over two, not necessarily consecutive, Governing Body sessions.
- Representations have been made against 71 of the 187 member States of the ILO. Of those 71 member States, 24 have been the subject of only one representation and seven have been the subject of eight or more.
- The receivability of a representation is usually determined within 3–6 months from the time that it is lodged, dependant on the timing of the Governing Body sessions. In some cases, the question of receivability is considered twice by the Officers of the Governing Body, in which case the timeline may be extended to one year.
- Normally, the tripartite committee is established in the same session of the Governing Body that the representation is deemed receivable, or in the months before the next session of the Governing Body. In the case of renewal of the Governing Body, the groups may wish to delay the establishment of the committee until the new membership is appointed.

Establishment of standing committee to deal with article 24 representations

- At present, article 24 representations are usually dealt with by tripartite committees set up by the Governing Body on a case-by-case basis. It has been suggested that a standing committee be established, to which representations would be referred.
  - In general, standing committees are open-ended committees that meet regularly to deal with a particular subject; ad hoc committees are established for a limited time to address a specific issue. Ad hoc committees have a membership that is tailored to the specific representation, with relevant subject matter and language skills; in comparison, members of a standing committee would have a general expertise in examining representations. In terms of logistics, the appointment of an ad hoc committee will take the time needed to identify appropriate members, while the members of a standing committee would be appointed once for each renewal of the Governing Body or each year, as determined by the Governing Body.

[1] This information is in addition to the figures concerning article 24 representations produced in the *Joint report*; see figures 1–3 of Appendix II.

  - A standing committee to examine article 24 representations could involve an independent chairperson; a pool of available and expert members; and an expressly determined mandate including matters such as timelines and follow-up.

- The establishment of a standing committee could have the *positive effect* of enhancing timeliness and competence.
- Alternatively, it could have the *negative effect* of adding a further supervisory body; possibly inducing an increase in the number of representations submitted.

Other suggestions made by the tripartite constituents

Receivability of representations

- At present, the Officers of the Governing Body determine the receivability of representations based on the Standing Orders concerning the article 24 procedure. There has been a call from some constituents to examine the criteria on which receivability is decided, [2] notably including linkages with national procedures and other supervisory bodies.
- Examination of the receivability criteria could have the *positive effect* of reducing overlap with other procedures.
- Alternatively, it could have the *negative effect* of possibly unduly restricting access to the procedure by employers' and workers' organizations, and reducing the use of the procedure by the Governing Body.

Introduction of time limits

- At present, there are no time limits set out in the Standing Orders in relation to the establishment of a tripartite committee or its examination of the representation. The tripartite committee can determine time limits in relation to its requests for information in the course of its examination. Some constituents have suggested that attention be paid to the application of clear time limits.
- The introduction of clear time limits could have the *positive effect* of increasing effectiveness, clarity, timeliness and transparency in the process.
- Alternatively, it could be considered to have the *negative effect* of reducing the time needed for a proper examination of more complex representations.

Follow-up to recommendations of tripartite committees

- At present, the recommendations of tripartite committees are followed up by the Committee of Experts within its regular review. Some constituents have suggested enhancing the follow-up, including through time-bound elements and considering the link with national procedures.
- Enhancing follow-up would have the *positive effect* of increasing effectiveness, visibility and accountability.
- Alternatively, it could have the *negative effect* of adding to the workload of the Governing Body, the supervisory bodies and the Office.

[2] These criteria are set out in 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.

Appendix III

Initial elements on the potential of article 19 to extend the reach and implementation of the standards (proposal 4.3)

The request for concrete action arises from the Conference in its 2016 resolution on Advancing Social Justice through Decent Work.

The Conference calls on the ILO to "(e)nsure that there are appropriate and effective linkages between the recurrent discussions and the outcomes of the Standards Initiative, including exploring options for making better use of article 19, paragraphs 5(e) and 6(d), of the ILO Constitution, without increasing the reporting obligations of member States". [1] This includes the adoption of appropriate modalities to ensure the contribution of General Surveys and the related discussion by the Committee on the Application of Standards to recurrent discussions. [2]

The *Joint report* referred to the implementation of article 19 to improve the impact and effectiveness of international labour standards. In particular, it indicated that more attention to non-ratifying Members could improve the impact and effectiveness of international labour standards. [3]

Currently, article 19(5)(e) and (6)(d) is mainly used to gather information for the General Surveys prepared by the Committee of Experts and discussed in the Committee on the Application of Standards. The Governing Body has adapted the number of instruments covered by General Surveys and the report form to address specific priorities it has identified.

The use of this provision is not, however, limited to General Surveys. It is currently also encompasses the annual follow-up to the 1998 ILO Declaration on Fundamental Principles and Rights at Work under which reports are requested from governments which have not ratified one or more fundamental Conventions. A number of other uses have been made in the past on a more ad hoc basis. [4]

The variety of uses reflects the multifaceted function of article 19(5)(e) and (6)(d) and the discretion that the Governing Body can exercise as regards its application. The article constitutes an important tool for the impact of the standards system across the ILO membership and in particular to assist member States in giving effect to ILO instruments, including by overcoming obstacles to ratification, and by enabling the ILO to ensure that standards-related actions respond to the needs identified in Members' reports.

[1] Subparagraph 15.1 of the resolution. The follow-up to the Social Justice Declaration emphasizes the need for "the fullest possible use" of all the means of action provided under the Constitution of the ILO to fulfil its mandate. This could include adapting existing modalities of the application of article 19(5)(e) and (6)(d), without increasing the reporting obligations of member States. In practice, the adaptation of these modalities has focused on the arrangements for the General Surveys and their discussion by the Committee on the Application of Standards to ensure coordination with recurrent discussions.

[2] Subparagraph 15(2)(b) of the resolution.

[3] Para. 143.

[4] These included periodic reports on Convention No. 111 and/or use in the context of an integrated approach to standards adopted by the Governing Body in 2000.

Through the Standards Initiative, the Governing Body has the opportunity to consider a modern use of article 19(5)(e) and (6)(d). A coherent and broad approach must avoid increased reporting obligations.

The choice of options for how the Governing Body could use article 19 will depend on the specific aspects of its function it wishes to emphasize. In turn, this would determine the type of information it would request. Whichever approach is taken, these options would address the scope of reports; their format and design; how to best ensure that the information gathered leads to meaningful discussions and outcomes, including the appropriate tripartite forums, timing and format; and technical assistance in reporting and follow-up, in particular within Decent Work Country Programmes.

To facilitate the discussions of the Governing Body in November 2017, the Office would prepare a working paper gathering all elements relating to the various uses made of article 19(5)(e) and (6)(d) so far.

Document No. 65

Minutes of the 329th Session of the Governing Body, March 2017, paras 95-148

INTERNATIONAL LABOUR OFFICE

Governing Body

329th Session, Geneva, 9–24 March 2017

GB.329/PV

Minutes of the 329th Session of the Governing Body of the International Labour Office

Conventions and to the 1998 Declaration, and to support continued collaboration between UN Women and the ILO in the follow-up to the agreed conclusions.

93. *Speaking on behalf of the Africa group,* a Government representative of Ghana welcomed the fact that more member States were ratifying Conventions Nos 182 and 29 and the Protocol of 2014, which should accelerate the process of eliminating forced labour. The review also brought to the fore challenges faced by member States with regard to ratification and observance of the principle of freedom of association and the right to collective bargaining. His group therefore urged the Office to continue to provide the necessary technical assistance to enable member States to strengthen social dialogue and tripartism, which were the key to the realization of freedom of association and collective bargaining. With regard to the format of annual reports, the Africa group was of the view that a matrix format would improve the readability of reports and make it easier to compare country data, and therefore suggested that future reports could be submitted in that format. Moreover, the Office should shorten and simplify the questions in the questionnaire and avoid duplication, which would facilitate the submission of reports.

Decision

94. ***The Governing Body took note of the information presented under the Annual Review of the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work for the period from October 2015 to 31 December 2016 and decided to:***

(a) invite the Director-General to further take into account its guidance on key issues and priorities;

(b) reiterate its support for the mobilization of resources with regard to further assisting member States in their efforts to respect, promote and realize fundamental principles and rights at work, through universal ratification and action, and in particular to combat the global scourge of forced labour including human trafficking;

(c) hold the next review of the follow-up of the Declaration in March 2018.

(GB.329/INS/4(Rev.), paragraph 362.)

Fifth item on the agenda

The Standards Initiative: Follow-up to the joint report of the Chairpersons of the Committee of Experts on the Application of Conventions and Recommendations and the Committee on Freedom of Association
(GB.329/INS/5 and GB.329/INS/5(Add.)(Rev.))

95. *The Employer spokesperson* said that both the Employers and the Workers attached great importance to considering the functioning of the supervisory system as a whole and to improving understanding of its procedures and the linkages between them. Both groups had reaffirmed their commitment to the Joint Statement of the Workers' and Employers' groups

(23 February 2015), consolidating the results achieved. Notably, that included clarification of the mandate of the Committee of Experts on the Application of Conventions and Recommendations (CEACR), a meaningful and results-oriented tripartite dialogue in the Committee on the Application of Standards (CAS), and the establishment and first meetings of the Standards Review Mechanism Tripartite Working Group. As an outcome of intense consultations, the Employers and the Workers were pleased to be able to present a Joint Position of the Workers' and Employers' groups on the ILO Supervisory Mechanism (13 March 2017). [3] It was intended as a platform to allow the ILO to move forward and to make the necessary changes to the supervisory system. Key points included: the presentation to the Governing Body of specific proposals by the Committee on Freedom of Association (CFA) on elements with repercussions on the whole supervisory system, including on the compendium of conclusions and recommendations; a commitment to use article 24 in a proper manner, involving further consultations; analysis of the article 24 procedure with a view to addressing existing weaknesses, including the promotion of recourse to national-level mechanisms in the first instance; efforts to avoid the duplication of cases under different supervisory procedures; a commitment from the Employers' and Workers' groups to use article 26 as a last resort only; and recognition of the need to secure tripartite governance in the conclusions and recommendations of the various supervisory mechanisms. The time frame included in document GB.329/INS/5 for the implementation of the changes proposed was another step towards improving the functioning of the supervisory system, which was a matter of urgency. Over the past century, the system had become increasingly complex, as it had adapted to changing needs, the expansion of ILO membership, the adoption of numerous new Conventions and the significant increase in the number of ratifications. Discussions on possible improvements to the supervisory system must be undertaken continuously to ensure that it remained effective, relevant and credible. Care, as well as courage and ambition, were needed in the process.

96. *The Worker spokesperson* also expressed pleasure that the Workers' and Employers' groups had achieved consensus on a Joint Position, and reaffirmed the February 2015 Joint Statement committing both groups to a functioning supervisory mechanism. The two groups concurred that the issues at stake lay at the heart of the Organization. As to document GB.329/INS/5, his group agreed that ratification and effective implementation of international labour standards, which must go hand in hand with a functioning supervisory system, were vital to the fulfilment of the ILO's constitutional mission to promote social justice, and welcomed the section on common principles guiding the strengthening of the supervisory system. With regard to focus area 1, his group supported the development of a user-friendly and clear guide for the supervisory system (proposal 1.1). The proposed regular conversation between the supervisory bodies (proposal 1.2) could be of interest, but required further consideration and therefore should not yet be included in the workplan. To enhance interaction between the supervisory bodies, the Joint Position of the Workers' and Employers' groups recommended that the Chairperson of the CFA could submit a report of activities to the CAS, after the report of the CEACR as of 2018; cases examined by the CAS in the previous year could be published in a separate part of the CEACR report, with further scrutiny of measures taken to respond to the conclusions; and mission reports concerning CAS conclusions should be published, in NORMLEX or elsewhere. In that framework, the mandate of the CEACR as defined in its 2015 and 2016 reports should be emphasized.

97. With regard to focus area 2, the Workers' group did not support the proposed discussion on codification of the article 26 complaint procedure (proposal 2.1), as codification would limit the methods used by the Governing Body to handle cases. Complaints under article 26 should be deemed receivable if they met the objective criteria set out in the ILO Constitution. Furthermore, the Workers' and Employers' groups were committed to using the article 26 procedure only as a last resort; in cases in which a commission of inquiry was not yet

[3] The Joint Position is included in Appendix II.

established, it was necessary to balance the importance of attention against the need to avoid unnecessary duplication. In relation to the article 24 procedure (proposal 2.2), the group was prepared to examine the necessary conditions for the eventual creation of a standing committee to replace ad hoc committees with a view to greater coherence. Any additional receivability criteria, as indicated in the Joint Statement of February 2015, would reaffirm those set out in the Constitution and Standing Orders and could include an explanation of measures taken at the national level to resolve issues and the degree of success, but there should be no obligation to exhaust domestic remedies. The Officers of the Governing Body should continue to determine the receivability of representations based on article 2(2) of the Standing Orders concerning the article 24 procedure. Any postponement or dismissal of representations must be taken by consensus. The Workers committed to using the possibilities to submit article 24 representations in a proper manner. It was recommended that a tripartite-agreed, standard form for representations should be developed and made available for download from the ILO website, in which information could be required on the content and result of any national-level tripartite dialogue on the issue. The International Trade Union Confederation and the International Organisation of Employers should have the possibility to support their members in finding a national-level solution and resolving the case prior to its being discussed in the tripartite committee. The Workers' group believed that, barring extraordinary circumstances, governments should not be allowed to fail to respond to a representation for more than one Governing Body session. Further, it supported the enhancement of the follow-up to recommendations of tripartite committees, including through time-bound elements. Technical assistance from the Office in developing time-bound action plans for national-level implementation of the recommendations of ad hoc committees and commissions of inquiry, and also of the CAS and CFA, would be beneficial. With regard to legal certainty (proposal 2.3), in the light of the divergent views and disputes concerning the interpretation of Conventions, a tripartite exchange of views on the elements and conditions necessary for the operation of an independent body under article 37(2) of the ILO Constitution would be useful. Such an exchange should be included in the workplan, and the Governing Body should consider its modalities in November 2017.

98. With regard to focus area 3, the Workers' group supported the proposal to conduct a feasibility study on streamlining reporting (proposal 3.1), which would consider options for the full computerization of reporting. However, there was no need to further streamline the reports themselves and the information requested, as clear and detailed observations from the supervisory mechanisms were crucial for a better understanding of their recommendations. The proposal to continue the exchange of information between the Office and other international organizations (proposal 3.2) was welcomed.

99. As to focus area 4, the Workers' group reaffirmed the commitments made in the Joint Statement of February 2015. It was for the various committees to define their own rules to ensure action-oriented and clear recommendations. The CAS evaluated and adapted its procedures and working methods yearly, including informal tripartite consultations on its working methods. The CFA was currently holding such discussions and the Governing Body would consider specific proposals at its present session. [4] It had already introduced a number of important changes to its working methods to enhance efficiency and transparency, as reported to the Governing Body in March 2016. With regard to systematized follow-up at the national level (proposal 4.2), updated information on technical assistance provided to member States to follow up on the comments of the supervisory bodies and ensure their integration into other ILO work and Decent Work Country Programmes should be posted under the country profiles on the ILO website. A consistent and transparent follow-up system at the level of the Organization as a whole was particularly important. Further, structured ILO interventions should increase compliance through detailed, time-bound memorandums of understanding or similar mechanisms, and the Office should report back to the Governing

[4] GB.329/INS/17(Add.).

Body at its November 2017 session. Lastly, the Workers' group supported proposal 4.3 to prepare a working paper on the various uses made of article 19(5)(e) and 19(6)(d) thus far, which should lead to a plan for better implementation and ratification rates.

100. A Government representative of Mexico presented the views of the Government group. The full text of his statement is reproduced in Appendix II.

101. A Government representative of the Islamic Republic of Iran presented the views of ASPAG. The full text of his statement is reproduced in Appendix II.

102. A Government representative of Panama presented the views of GRULAC. The full text of his statement is reproduced in Appendix II.

103. A Government representative of Kenya presented the views of the Africa group. The full text of her statement is reproduced in Appendix II.

104. A Government representative of Canada presented the views of IMEC. The full text of his statement is reproduced in Appendix II.

105. *Speaking on behalf of the Association of Southeast Asian Nations (ASEAN)*, a Government representative of Cambodia said the review of the supervisory system must take into account the principles of transparency, consistency, impartiality, accountability and, most importantly, constructive engagement. The system should focus on capacity building and technical cooperation, with fact-finding missions being a last resort. Receivability criteria should be improved in order to avoid redundancy or duplication of actions, conserve ILO resources, strengthen credibility, clarify the basis for States' reporting obligations and enhance tripartite consultations. The criteria for selection of cases for consideration by the CAS should be clarified and improved, to ensure a balance of cases across regions and Conventions. Specific country context must be factored into the process. Options for non-judicial settlement at the country level should be explored prior to any involvement of the ILO supervisory system, and the ILO must recognize and respect the finality of judicial decisions, especially those handed down by the highest court of a member State.

106. *Speaking on behalf of the BRICS countries* (Brazil, Russian Federation, India, China and South Africa), a Government representative of China supported strengthening the supervisory system to enhance its transparency, visibility, coherence, efficiency and effectiveness, and to reduce member States' reporting obligations and overlap between procedures. Due process and procedural fairness should be guaranteed. The current consultation process could include tripartite exchanges. He supported the proposed annual meeting between the representatives of the supervisory bodies (proposal 1.2); an informal exchange would allow representatives to address unnecessary duplication between procedures. The role of governments in that process should be safeguarded. He looked forward to examining proposals on the format, budget and dates of a first meeting.

107. At the current time it would be premature to push forward the matter of interpretation of Conventions (proposal 2.3), and he did not support establishing a standing committee for the article 24 procedure (proposal 2.2). A feasibility study should be conducted on streamlining reporting and optimizing the use of technology (proposal 3.1), in line with constituents' needs. The ILO should provide technical assistance to facilitate the implementation of national and international labour standards (proposal 4.2), and ensure consultation with all recipients and due regard for local circumstances. Receivability criteria for the supervisory procedures should be reviewed to take national procedures into account. His group supported the draft decision.

108. *A Government representative of India* welcomed the proposed guide to understanding the supervisory system (proposal 1.1), regular interaction between supervisory bodies and governments (proposal 1.2), and technology-based reforms (proposal 3.1), as ease of compliance would take away the burden of compliance. Recommendations by the supervisory bodies should be clear (proposal 4.1), and, in addition, criteria for receivability, as well as closure of cases should be well defined. In relation to legal certainty (proposal 2.3), questions concerning the interpretation of Conventions should be brought before the Conference, perhaps through the General Surveys taking into account national frameworks, before considering any new forum.

109. *A Government representative of Japan*, referring to proposal 4.2 on systematized follow-up at national level, said that clear and practical recommendations by the supervisory bodies were not sufficient for them to be properly implemented in member States. The Office should integrate such recommendations into its technical assistance programmes. Coherent efforts in that regard would promote a virtuous circle of the ILO's normative function and technical assistance, yielding positive results.

110. *A Government representative of Spain* said that the Government of Switzerland supported his statement. The supervisory system was the heart of the ILO and composed of interrelated procedures that should function as an integrated whole to avoid unnecessary duplication. Responsibility for further strengthening the supervisory system lay with the tripartite constituents and, in particular, the governments, to which the comments of the supervisory bodies were primarily addressed; governments had an interest in ensuring that such measures were clear, practical and achievable, and in accordance with national contexts and legislation. The Joint Position of the Workers' and Employers' groups was a necessary step in the process, but insufficient without the guidance that only governments could provide to the Office on the legal and social contexts out of which complaints and representations were born, grew to maturity and, through consensus, were resolved.

111. The guide referred to in proposal 1.1 should include details of the receivability criteria and reach of each supervisory body. Concerning proposal 1.2, the conversation between the supervisory bodies should take place within the framework of the International Labour Conference. With regard to proposals 2.1 and 2.2, the preference for discussing the article 24 procedure before the article 26 procedure sought to guarantee coherence between those discussions, rather than pre-empting a final outcome. That was a good example of the principle that should govern all discussions: analysing possible improvements while maintaining an overview of the different bodies and the synergies between them. On proposal 2.3, he urged progress towards establishing a permanent tribunal under article 37(2) of the ILO Constitution, which should be non-bureaucratic in its functioning and flexible in its composition. Concerning proposal 3.1, better use should be made of new technologies for reporting, thereby reducing the burden on the Office and member States. With regard to proposal 4.1, any recommendations by supervisory bodies had to be clear and achievable, given their importance in supporting the implementation of Conventions.

112. *A Government representative of France* said that he welcomed the proposal to streamline reporting (proposal 3.1). France stood ready to contribute to the feasibility study that was envisaged following the present session of the Governing Body. That study should address the volume of reports, the seriousness or urgency of a situation, the link between experts' requests and questions and the contents of Conventions, and the emergence or not of new developments since the previous report, among other aspects. Legal certainty (proposal 2.3) was a particularly important issue for the Organization as it approached its centenary. Differences in interpretation among constituents could lead to a serious crisis or even paralysis in the functioning of the Organization. There was an urgent need to consider together a legitimate instrument to address those differences. France accordingly supported the recognition, as expressed in the Joint Position of the Workers' and Employers' groups,

that there could be value in a tripartite exchange of views on the elements and conditions necessary for the operation of an independent body under article 37(2) of the ILO Constitution.

113. *A Government representative of China* said that annual briefings on the ILO supervisory system could be provided to staff of member States' permanent missions in Geneva. Further technical support should be provided to member States for the ratification and implementation of Conventions. In view of the CFA's growing case review workload, consideration of the receivability of complaints should be improved, in order to avoid duplication with other supervisory bodies. He supported the draft decision.

114. *A Government representative of Cuba* said that it was important to continue to review the proposed changes to the working methods of the supervisory bodies. The proposals put forward still neither answered concerns regarding the transparency and impartiality of the mechanisms employed nor addressed the shortcomings whereby those mechanisms could be applied selectively or used for political manipulation. She did not support proposals calling for the establishment of new supervisory mechanisms but favoured the drafting of guidelines on the procedures to be followed by the supervisory bodies, as those remained unclear beyond the provisions of the ILO Constitution. Reviews by ad hoc committees established within the framework of the Governing Body should continue. The review process for admissibility criteria should aim to ensure that complaints could be filed only by organizations that were representative within the meaning of the ILO's basic texts. She requested more information on the application of the measures proposed, taking into account the Director-General's proposals for a zero real growth budget for the 2018–19 biennium. Cuba supported the draft decision.

115. *A representative of the Director-General* (Director, International Labour Standards Department (NORMES)) said that the rich discussion had provided the Office with guidance on the proposals contained in the document. Given the wealth of suggestions made, and in view of the Joint Position of the Workers' and Employers' groups, she proposed that the workplan should be revised in the light of the discussion and the revised version presented to the Governing Body the following week for review and adoption.

116. *The Worker spokesperson* said that he agreed with the proposal to consider the draft decision the following week. Experience had shown that a systemic view of the supervisory bodies should not be followed too strictly; the way in which cases were handled depended on their content. While the streamlining and computerizing of reports could be helpful, it should not be at the expense of the quality of the work of the ILO supervisory bodies. In relation to the proposal for an annual meeting between the representatives of the supervisory bodies, further thought was needed in relation to its concrete objective, role and terms of reference, as it could not be a forum for debates about the relevance of the supervisory system. Discussions on the operation of the article 24 procedure should start from the problems being faced, and consider what could be a good result. The establishment of a standing committee for the article 24 procedure could be such a solution. As it was unusual that an article of the Constitution was not executed, a tripartite discussion on the implementation of article 37(2) was justified. Criteria for the receivability of cases should be strengthened, but no concrete proposals to that end had yet been made; exhaustion of domestic remedies – albeit important – could not be the sole criterion, since the appropriate national bodies were not in place in all countries. With regard to the article 26 procedure, the Employers' and Workers' groups had committed to use it as a last resort, but at present commissions of inquiry were not being established and therefore it was difficult to suspend the examination of a case under the other supervisory procedures.

117. *The Employer spokesperson* supported the proposal to defer adoption of the decision. The complexity of the situation meant that it had been easier to identify problems than to propose solutions, but progress had been made and certain issues could be taken up again. The whole process of tripartite discussions, including informal consultations, had enabled more flexibility and openness to discuss solutions. It was nevertheless essential to move forward with urgency and ambition.

118. *The Government representative of Mexico* supported the proposal to postpone the draft decision and looked forward to considering the new workplan.

119. *A Government representative of Brazil* said that he would welcome a brief statement from the Office reflecting the discussion that had been held, particularly given the diverging views on some issues, including legal certainty. Governments would benefit from hearing the views of the Workers' and Employers' groups before coming to sessions of the Governing Body, and forthcoming consultations should therefore have a tripartite element.

120. *The representative of the Director-General* (Director, NORMES) said that she was hesitant to summarize on the spot the discussions as she was not in a position, given the wide range of responses and comments made, to do justice to the members' interventions. Her department would systematically review the comments and suggestions made and, on that basis, draw up a revised workplan. The revised workplan would be submitted to the Governing Body the following week for review and adoption.

121. When the discussion resumed, *the Employer spokesperson* said that, since the revised workplan and timetable fully reflected the discussion that had taken place, the Employers supported the revised draft decision.

122. *The Worker spokesperson* said that the revised workplan and timetable took full account of the discussions in the Governing Body and so the Workers agreed with the revised draft decision. He requested that the Joint Position of the Workers' and Employers' groups should be annexed to the official final document, as that position would guide both groups in discussions with the Office and governments in the different bodies of the supervisory system and during consultations on the supervisory system.

123. *Speaking on behalf of GRULAC*, a Government representative of Panama said that GRULAC welcomed the revision of the workplan to reflect the discussions that had taken place earlier in the session. GRULAC reiterated the issues that it had raised on that occasion and understood that the current exercise was not one that could be carried out in the short term. While some preliminary comments had been made during the current session, GRULAC would go into greater substantive detail on the specific proposals during the next round of consultations. Any decision taken on the item should clearly reflect that.

124. GRULAC considered that proposal 4.3 was not ready to be discussed nor decided upon in November 2017. The governments in the region continued to have doubts regarding the nature of the proposal and the implications of any decision. Proposal 4.3 would be better moved to the group of proposals requiring guidance on next steps. In November, additional information could be sought on the matter, so that the Governing Body could have in-depth discussions in the future.

125. On the other hand, GRULAC considered that specific elements related to proposal 1.2, on a regular conversation between the supervisory bodies, could be discussed in November 2017. Those elements would allow for a decision on the timing, composition and budget of, and tripartite involvement in, those meetings. In that regard, proposal 1.2 should be included in the group of proposals to be examined by the Governing Body in November 2017.

126. Finally, GRULAC had appreciated the discussions on the supervisory bodies' methods of work, although it had expected more details, for example on the CFA. It would be useful if more information on developments with regard to those discussions could be provided during the consultations. Additionally, a document should be drawn up on that subject for November, in order to prepare for the broader discussion of the review of implementation of the Standards Initiative planned for March 2018. In the light of those comments, GRULAC had proposed an amendment to the draft decision. It had been circulated and was being considered by the various groups.

127. The Governing Body was adopting a workplan that would guide the consultations to be held on the supervisory system. That workplan should be agreed by all tripartite constituents. For that reason, the workplan could not remain in an addendum that had been prepared by the Office, when the tripartite constituents had not had the opportunity to negotiate any of its terms. GRULAC was flexible in terms of the best way to achieve that. The elements of the workplan could be included in the draft decision, or the agreed workplan could remain in a revised addendum. The GRULAC proposal did not make any substantive change to the workplan; rather it provided clarity about what was being adopted. A clear workplan, agreed by all three parties, would be key to the successful development of the future consultations that were to be carried out on the matter.

128. *Speaking on behalf of the Africa group*, a Government representative of Kenya said that the revised workplan took account of discussions in the Governing Body. Although his group therefore supported the revised draft decision, it could accept the consensus view on the amendment tabled by GRULAC.

129. *Speaking on behalf of IMEC*, a Government representative of Canada said that IMEC took note of the revised workplan, which built on the Governing Body's discussion earlier in the session and on the Joint Position of the social partners, and which integrated some of its suggestions. Of the ten proposals in the revised workplan, four would be integrated into the Office's work and six would remain on the Governing Body's agenda; three of the latter would be the subject of deeper discussions at the session of the Governing Body in November 2017, while three remained for further guidance on next steps.

130. In light of its continuing strong support for and confidence in the ILO supervisory machinery, and with a view to further strengthening it, IMEC was willing to contribute constructively to the debate on the remaining six proposals. It welcomed the good cooperation between the Workers' and Employers' groups and saw that as a positive and necessary component of a functioning supervisory system. At the same time, it insisted that consultations for improving the supervisory system needed also to include a tripartite exchange of views. It was therefore disappointed that paragraph 5 of document GB.329/INS/5(Add.) did not reflect that necessity, and it emphasized that the "broad and inclusive consultation process" must include opportunities for tripartite exchange of views.

131. IMEC was flexible on whether the decision took the form of the revised draft version contained in paragraph 6 or the amendment from GRULAC. Regarding the proposal of the Workers and Employers to attach their Joint Position as an appendix, IMEC suggested that the statements made by the Government group and the regional groups on document GB.329/INS/5 should also be attached in an appendix.

132. *A Government representative of Brazil* said that, while his region had strongly supported the whole process of reviewing the supervisory system, it had stated throughout the consultations that proposal 4.3 required clarification. It would be satisfied with a revision of the workplan, without any change to the draft decision, by incorporating proposal 4.3 in paragraph 4(b), so that it would be the subject of guidance from the Governing Body in November, and by moving proposal 1.2 to paragraph 4(a), so that it would be discussed by

the Governing Body in November. The only language change in the amendment proposed by GRULAC was the replacement of "taken" with "under consideration" in the second sentence of the subparagraph on proposal 1.2, to reflect the situation that the point had not yet been adopted but was still under review. He asked the social partners to allow GRULAC's views to be reflected in the workplan; the region was committed to the supervisory system, to the notion of decent work and to defending the rights of workers. The discussions by the supervisory bodies of their working methods should feed into discussions of the review of the supervisory system. If that was understood, then GRULAC's amendment in that regard could be abandoned.

133. *The Worker spokesperson* said that, while he agreed to altering the phrase "actions taken" to read "actions under consideration", he would prefer to keep the workplan as it stood. Proposal 4.3 on the potential of article 19 to extend the reach and implementation of standards was following up on a decision taken by the International Labour Conference, and so should be discussed in November. While proposal 1.2 was a priority for GRULAC, for the Workers it depended on the conditions and criteria for a good system of contact between the supervisory bodies, and accordingly required further tripartite discussions, before concrete decisions could be taken.

134. *The Employer spokesperson* said that, while he agreed to amending the phrase "actions taken" to read "actions under consideration", he was against opening a discussion on the structure of the addendum. It seemed incongruous to move proposal 4.3 to paragraph 4(b), which started with the words "Guidance on next steps will be sought".

135. *A Government representative of the United States* asked the Office what it meant for a proposal to be under paragraph 4(a) or (b) of the addendum, or in other words, what it meant for a proposal to be discussed in November 2017 rather than for the Governing Body to provide guidance in November 2017.

136. *The Chairperson* asked whether the Office could provide assurances that the consultation process to which reference was made in paragraph 5 would include a tripartite exchange of views.

137. *A representative of the Director-General* (Deputy Director-General for Management and Reform) said that in preparing the workplan the Office had tried to establish a balance among the diverse views and priorities identified by the constituents in the two comprehensive rounds of consultations held in January and February 2017. It had also considered the workload capacity of the International Labour Standards Department, as well as decisions of the Governing Body on implementing the programme of work to give effect to evaluation of the impact of the Social Justice Declaration and the agenda of the International Labour Conference. [5] That was particularly relevant for proposal 4.3 which involved the modalities of the General Surveys and their contribution to recurrent discussions, which in turn played an important role in the setting of the Conference agenda. Those were important elements to ensure a cohesive and strategic approach between the corresponding discussions of the Governing Body and its consideration of reporting of policy outcomes. He further noted that the only difference between the workplan suggested by the Office and the amendment proposed by GRULAC was the order of dealing with proposals 1.2 and 4.3. There would be strategic value in retaining the order of tackling proposal 4.3 first because it was integral to other institutional priorities, while proposal 1.2 was less critical at the current stage.

[5] GB.329/INS/3/1.

138. Replying to the Chairperson's question, he confirmed that there would be various levels of consultation, including tripartite consultation. Replying to the representative of the United States, he explained that concrete action should be taken in November 2017 on the group of proposals in paragraph 4(a), and that guidance would be sought for a second round of consultations after November on the proposals in paragraph 4(b).

139. *Speaking on behalf of GRULAC*, a Government representative of Panama said that his group had listened very attentively to the comments of the Employers and the Workers and the explanations given by the Deputy Director-General. The truth was that every time GRULAC made a statement, it was for the good of the Organization; every proposal was made from the viewpoint that they were governments responsible for ensuring entrepreneurial development combined with decent work, and for providing a framework where all that took place. They had an historic responsibility to agree on those matters with everyone round the table and to seek the common good, which was what the Organization was seeking in its fundamental principles.

140. While GRULAC statements were listened to, agreed with and replied to, it often felt as though the resulting documents watered down their proposals or presented them in a weaker or more tenuous manner. They strongly believed in the Organization and that it could help to solve the problems of the world and tackle the future of work. All the important subjects that had been discussed, the explanations of the Deputy Director-General, and the Organization's and the Officers' intentions to find a solution must be recorded in clearly drafted minutes. As the centenary approached, the Organization's supervisory mechanism had to be improved, because the Organization had an important role to play in the future of humanity. GRULAC countries came not just to talk, they wanted to get things done and they wanted practical solutions to be found for all parties. They wanted the minutes to record their proposals, their statements and their amendments. For the sake of consensus, they could accept the small amendment of the word "taken" to "under consideration". They wanted everything that they had proposed to be taken into account.

141. *A Government representative of Spain* said that often it seemed as if note was simply taken of substantive and significant statements, and that that created the impression that there was no improvement in the governance of the Organization. His Government supported the amendment and the inclusion in the minutes of all the statements not only of regional groups but also of national governments, in order to provide a complete and real picture of a lively debate.

142. *Speaking on behalf of IMEC*, a Government representative of Canada recalled his group's request for the attachment of the statements made by the Government group and regional groups. With respect to the broad and inclusive consultation process, he underscored that that process must include opportunities for tripartite exchange of views.

143. *Speaking on behalf of ASPAG*, a Government representative of the Islamic Republic of Iran said that ASPAG understood that the supervisory system was of particular importance for the constituents. He encouraged the Office to give due consideration to the points raised during the discussion, and took note of GRULAC's arguments.

144. *The Government representative of Spain* repeated that he had requested the inclusion of governments' statements in the record.

145. *A representative of the Director-General* (Deputy Director-General for Management and Reform) reminded the members of the Governing Body that all interventions were summarized and recorded in the minutes of the session, and that in past cases such as the item under consideration, formal group statements had also been appended when requested.

146. *A Government representative of Uruguay* asked for clarification regarding whether the Governing Body was considering adoption of the original or the revised draft decision, whether the addendum would be amended, whether the phrase "actions taken" would be replaced by "actions under consideration", and which statements would be appended in full.

147. *A representative of the Director-General* (Deputy Director-General for Management and Reform) said that his understanding was that document GB.329/INS/5(Add.) would be revised so that "actions taken" was replaced by "actions under consideration", and that a reference to "including tripartite consultations" was included in paragraph 5. In line with previous practice, the Joint Position of the Workers' and Employers' groups and statements by the Government group and regional coordinators would be appended to the minutes.

Decision

148. ***The Governing Body:***

(a) approved the revised workplan for the strengthening of the supervisory system;

(b) requested the Office to take the necessary steps to implement the revised workplan based on the guidance it provided and to report on progress made at its 331st Session (November 2017), following consultations with the tripartite constituents;

(c) decided to review the revised workplan, as might be adjusted by the Governing Body during its 331st Session, in the context of its broader review of the Standards Initiative at its 332nd Session (March 2018).

(GB.329/INS/5(Add.)(Rev.), paragraph 6.)

Sixth item on the agenda

Progress report on the implementation of the Enterprises Initiative (GB.329/INS/6)

149. *The Employer spokesperson* noted that the ILO's strategy to engage with the private sector was a priority for the Employers. The Office's engagement with enterprises of all sizes and in all regions allowed it to better understand the challenges they faced and thereby develop a more practical approach to problem-solving at the policy level. It also facilitated a two-way exchange of specialized information, which could be leveraged to achieve the Office's goals. The progress report listed an impressive number of activities in which the Office engaged with the private sector. The fact that small and medium-sized enterprises (SMEs) and cooperatives were included reflected the Organization's recognition of the diversity within the sector.

150. The Employers strongly encouraged all departments of the Office to avail themselves of the Bureau for Employers' Activities (ACT/EMP) as an entry point, as established in the revised methodology adopted by the Governing Body at its 321st Session (June 2014). ACT/EMP should also be the entry point for outreach to enterprises to ensure that they were fully informed about the motives behind requests for engagement and to enable ACT/EMP to

Document No. 66

GB.335/INS/5, The Standards Initiative: Overall review of its implementation, March 2019

INTERNATIONAL LABOUR OFFICE

Governing Body

335th Session, Geneva, 14–28 March 2019

GB.335/INS/5

Institutional Section

INS

Date: 8 March 2019
Original: English

FIFTH ITEM ON THE AGENDA

The Standards Initiative: Overall review of its implementation

Purpose of the document

The document captures the concrete outcomes to date of the Standards Initiative, which has aimed to enhance the relevance of international labour standards through a Standards Review Mechanism (SRM) and to consolidate tripartite consensus on an authoritative supervisory system. Review of actions pursued under the latter objective will be done following the workplan approved by the Governing Body in March 2017. The document presents a draft decision reflecting areas where guidance is sought for work that remains to be done after the Centenary (see paragraph 84).

Relevant strategic objective: All four strategic objectives.

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

Policy implications: Will depend on the outcome of the discussion by the Governing Body.

Legal implications: Will depend on the outcome of the discussion by the Governing Body.

Financial implications: Will depend on the outcome of the discussion by the Governing Body (paragraph 23 of GB.332/INS/5(Rev.) provides estimates on possible budget implications).

Follow-up action required: Will depend on the outcome of the discussion by the Governing Body.

Author unit: International Labour Standards Department (NORMES).

Related documents: GB.332/INS/5(Rev.); GB.332/PV; GB.331/INS/5; GB.331/INS/3; GB.331/POL/2; GB.331/PFA/5; GB.331/PV; GB.329/PV; GB.329/INS/5; GB.329/INS/5(Add.)(Rev.); GB.328/PV; GB.328/LILS/2/2; GB.328/INS/6; GB.326/PV; GB.326/LILS/3/1; GB.323/PV; GB.323/INS/5.

Contents

Appendices

Introduction

1. At its 334th Session (October–November 2018), the Governing Body requested the Office to present at its 335th Session (March 2019), following consultations with the tripartite constituents, a report on progress towards completing the Standards Initiative workplan as revised by the Governing Body in March 2017, including information on progress made with regard to the review and possible further improvements of their working methods by the supervisory bodies in order to strengthen tripartism, coherence, transparency and effectiveness. The full text of the Governing Body decision of November 2018 is reproduced in Appendix I.

2. The Standards Initiative originates from a decision of the Governing Body taken at its 323rd Session (March 2015) following the Tripartite Meeting on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike and the modalities and practices of strike action at national level. In essence, that decision envisaged that the Standards Initiative would encompass: (a) the establishment under the Standards Review Mechanism of a tripartite working group (SRM TWG); and (b) a request to 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) 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.

3. As proposed by the Director-General in his report to the 102nd Session of the International Labour Conference (ILC) in 2013, [1] the Standards Initiative became one of seven centenary initiatives, strengthening the ILO's normative role for its second century through a clear, robust and up-to-date body of international labour standards and an authoritative system for the supervision of these standards, resting on a consolidated tripartite consensus.

4. The Governing Body discussed the Joint Report of the Chairperson of the CEACR and the Chairperson of the CFA at its 326th Session (March 2016). At its 329th Session (March 2017), the Governing Body approved a revised workplan for the strengthening of the supervisory system, setting out ten proposals centred around four focus areas. The Governing Body considered proposals under this revised workplan at its 331st Session (October–November 2017) and 332nd Session (March 2018). An updated version of the workplan is attached in Appendix II. In parallel, the supervisory bodies engaged in a series of discussions to review their working methods. [2]

5. At its 331st Session (October–November 2017), the Governing Body approved the measures and costs relating to the setting up of an electronic document and information management system for the supervisory bodies and the preparation of a guide on established practices across the supervisory system. Further deliberations produced further convergence of the views expressed by various groups and culminated in the consolidated tripartite consensus expressed in the decision adopted at the 334th Session (October–November 2018). Meanwhile, the SRM TWG met four times, presenting consensual tripartite recommendations to the Governing Body following each of its four meetings. It will meet

[1] Report of the Director-General, Report 1(A) *Towards the ILO centenary: Realities, renewal and tripartite commitment,* International Labour Conference, 102nd Session, Geneva, 2013.

[2] GB.329/PV, para. 148.

for a fifth time in September 2019, when the Governing Body has decided it will review eight instruments on employment policy in its initial programme of work, and examine the follow-up taken to an additional employment policy instrument previously determined to be outdated. [3]

Objective 1 – Enhance the relevance of international labour standards through a Standards Review Mechanism

6. The SRM TWG has met four times since it was established in 2015: in March and October 2016, September 2017 and September 2018. Following its first meeting, the Governing Body approved its adoption of an initial programme of work composed of 235 international labour standards [4] and referred 68 instruments to the Special Tripartite Committee (STC) established for addressing matters relating to the Maritime Labour Convention, 2006, as amended (MLC, 2006). [5] A first group of 34 instruments was submitted for review to the third meeting of the STC (April 2018), [6] and a second group of 34 instruments will be presented at its fourth meeting (April 2021). At its second meeting, the SRM TWG examined the follow-up taken to 63 instruments previously determined to be outdated, involving approximately 21 subtopics. [7] At its third and fourth meetings, it reviewed 28 instruments in its initial programme of work on occupational safety and health, labour inspection and labour statistics. [8] One instrument, (the Employment (Transition from War to Peace) Recommendation, 1944 (No. 71), has been replaced by the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205). As a result, out of the 235 international labour standards included in the SRM TWG's initial programme of work, 75 instruments remain to be reviewed.

7. At the time of the Governing Body's overall review of the Standards Initiative in October–November 2016, [9] the SRM TWG had held its first two meetings. At its following session in March 2017, the Governing Body conducted a first evaluation of the SRM TWG's functioning. [10] On the basis of a report provided by the SRM TWG's Chairperson and Vice-

[3] GB.334/LILS/3, para. 4.

[4] Note that the number of instruments included in the SRM TWG's initial programme of work was amended from 231 to 235 at the second meeting of the SRM TWG.

[5] GB.326/LILS/3/2.

[6] Recommendations concerning the classification of the instruments reviewed and possible follow-up action are set out in GB.334/LILS/2(Rev.).

[7] GB.328/LILS/2/1(Rev.).

[8] At its third meeting, the SRM TWG reviewed 19 instruments concerning OSH (general provisions and specific risks): GB.331/LILS/2. At its fourth meeting, the SRM TWG reviewed nine instruments concerning OSH (specific branches of activity), labour statistics and labour inspection; and examined the follow-up to be taken to a further two outdated instruments falling within those subject areas that had been examined for the first time by the SRM TWG at its second meeting in October 2016: GB.334/LILS/3.

[9] GB.328/INS/6 and GB.328/PV, para. 108.

[10] Pursuant to paragraph 26 of the terms of reference of the SRM TWG, the "Governing Body shall evaluate the functioning of the SRM Tripartite Working Group at regular intervals".

Chairpersons, the Governing Body noted that the SRM TWG had started its work and decided to undertake a further evaluation no later than March 2020. [11]

8. A review of the implementation of the SRM TWG involves consideration of its achievements in fulfilling its mandate. Pursuant to its terms of reference, the SRM TWG's mandate is to review standards with a view to making recommendations to the Governing Body on: [12]

(a) the status of the standards examined, including up-to-date standards, standards in need of revision, outdated standards, and possible other classifications;

(b) the identification of gaps in coverage, including those requiring new standards;

(c) practical and time-bound follow-up action, as appropriate.

Consensual tripartite recommendations to the Governing Body

9. The SRM TWG has made consensual tripartite recommendations to the Governing Body following each of its four meetings. Its discussions have been characterized by the frank, constructive and committed approach of its Members, building on their often contrasting experiences and views in relation to the complex and wide-ranging issues under discussion. [13] Constructive tripartite dialogue allowing innovative solutions to be developed was particularly necessary given the complexity of the work. [14] The SRM TWG has stressed the crucial institutional role that it plays in ensuring that the ILO has a clear, robust and up-to-date body of international labour standards that respond to the changing patterns of the world of work, for the purpose of the protection of workers and taking into account the needs of sustainable enterprises; [15] and the corresponding need to ensure the effectiveness and impact of its continuing work, also in terms of closing regulatory gaps and encouraging the ratification of up-to-date Conventions and Protocols. [16]

Classification of standards

10. The first element of the SRM TWG's mandate is the classification of standards. Significantly, in this regard, the SRM TWG simplified and streamlined the classification of standards through its adoption of a three-classification system of "up to date", "requiring

[11] GB.329/LILS/2, para. 3; GB.329/PV, paras 580–589.

[12] Para. 9 of the terms of reference of the SRM TWG. The SRM TWG recalled the achievements of its first meetings in this regard in September 2018: GB.334/LILS/3, Annex to the appendix (SRM TWG recommendations), para. 3.

[13] GB.326/LILS/3/2, para. 3 ("constructive discussion"); GB.328/LILS/2/1(Rev.), appendix (report of meeting), para. 4 (the discussion was "thorough, wide-ranging and constructive"); GB.331/LILS/2, appendix (report of meeting), para. 3 ("constructive and committed approach"); and GB.334/LILS/3, appendix (report of the meeting), para. 3 ("committed and frank discussions").

[14] GB.334/LILS/3, appendix (report of the meeting), para. 3.

[15] Para. 8 of the terms of reference of the SRM TWG.

[16] GB.328/LILS/2/1(Rev.), appendix (meeting report), paras 7–8; GB.331/LILS/2, appendix (meeting report), para. 7; GB.334/LILS/3, Annex to the appendix (SRM TWG recommendations), paras 3–4.

further action to ensure continued and future relevance" and "outdated" instruments for the purposes of its work in reviewing standards. [17] The SRM TWG stressed that all standards, including those included in its initial programme of work, were active in terms of legal status until any time that the Conference takes the decision to abrogate, withdraw or juridically replace them. [18] Their ratification and/or effective implementation should, therefore, continue to be promoted.

11. The SRM TWG has reviewed 28 international labour standards concerning occupational safety and health, labour inspection and labour statistics, classifying them according to the new classification system. The Governing Body decided that those instruments should be considered to have the classifications recommended by the SRM TWG and requested the Office to take the necessary follow-up action in that regard. [19]

Table 1. Outcome of the SRM TWG process: Governing Body decisions concerning classification of standards

Classification	2017	2018	Total
Up-to-date standards	8	6	**14**
Standards requiring further action to ensure their continued and future relevance	10	0	**10**
Outdated	1	3	**4**
Total	**19**	**9**	**28**

12. In relation to the 68 maritime instruments referred to the STC to the MLC, 2006, for review, the STC reviewed the first 34 instruments at its third meeting in April 2018. [20] On the basis of the STC's recommendations, and using the three-classification system adopted by the SRM TWG, the Governing Body decided that all 34 instruments should be classified as outdated. It will review the remaining 34 maritime instruments at its fourth meeting.

13. Accordingly, 75 international labour standards out of the 235 instruments included in the SRM TWG's initial programme of work remain to be reviewed by the SRM TWG, eight of which will be the subject of its fifth meeting in 2019.

Identification of gaps in coverage requiring standard-setting action

14. In relation to the second element of the SRM TWG's mandate, it has identified five gaps in coverage or other follow-up requiring standard-setting action, be addressed by the Organization.

[17] GB.331/LILS/2, appendix (meeting report), para. 10.

[18] ibid., Annex to appendix (recommendations), para. 9.

[19] ibid., para. 5(d); GB.334/LILS/3, para. 5(b).

[20] GB.334/LILS/2(Rev.).

Table 2. Outcome of the SRM TWG process: Governing Body decisions concerning standard-setting

Standard-setting required	Recommendation approved	Current status
Regulatory gap identified in relation to apprenticeships	October–November 2016 *(328th Session of the Governing Body)*	Standard-setting item placed on agenda of 110th Session (2021)
Biological hazards: revision of R.3 through a new instrument addressing all biological hazards Consolidation of six chemicals instruments, in the context of C.170 and R.177 Revision of C.119 and R.118 on guarding of machinery Revision of C.127 and R.128 to regulate ergonomics and update approach to manual handling	October–November 2017 *(331st Session of the Governing Body)*	Proposals for standard-setting items on occupational safety and health expected to be made to a future session of the Governing Body

15. At its fourth meeting in September 2018, the SRM TWG started an ongoing discussion about the options for ensuring coherence and consistency in its recommendations on occupational safety and health. [21] In this regard, the SRM TWG requested the Office to further elaborate mainly an approach involving some degree of "thematic integration", taking also into account questions and points raised regarding "partial integration" and "consolidation" approaches in preparation for its fifth meeting in September 2019. [22] At the same time, the SRM TWG also considered options for addressing the impact of the SRM TWG recommendations on the Conference agenda and the Office, touching on the need to avoid a "traffic jam" of standard-setting items forming. [23]

Practical and time-bound follow-up action

16. In relation to the third element of its mandate, the SRM TWG has stressed the need for practical and time-bound follow-up to be prioritized by the Organization as part of comprehensive and interrelated packages.

17. The SRM TWG has examined the follow-up to be given in relation to the 63 instruments previously determined to be outdated – both during its second meeting in October 2016 that was dedicated to these standards, and during subsequent meetings when such standards have been examined together with instruments concerned with the same subtopic – and in relation to the 28 instruments that it classified during its third and fourth meetings in September 2017 and 2018. Such follow-up action has primarily involved promotional campaigns, technical assistance with implementation, other non-normative action, and recommendations that the ILC consider the abrogation or withdrawal of outdated instruments.

[21] GB.334/LILS/3, appendix (meeting report), paras 30–35.

[22] ibid., appendix (meeting report), para. 35.

[23] ibid., appendix (meeting report), paras 36–37.

Table 3. Outcome of the SRM TWG process: Governing Body decisions concerning follow-up action required

Follow-up action recommended by the SRM TWG	Recommendation approved by the Governing Body	Current status
Promotional action		
Campaign to promote the ratification of 17 up-to-date conventions related to 30 Conventions previously identified as outdated	October–November 2016 *(328th Session of the Governing Body)*	Under way in 136 member States
Campaign to promote ratification of key OSH instruments and specific promotion of a further four up-to-date OSH Conventions	October–November 2017 *(331st Session of the Governing Body)*	Under way
Campaign to promote ratification of five up-to-date Conventions on OSH, labour inspection and labour statistics	October–November 2018 *(334th Session of the Governing Body)*	Planning started
Encourage ratification of relevant up-to-date Conventions by member States in which outdated instruments recommended for abrogation are in force, including technical assistance	October–November 2018 *(334th Session of the Governing Body)*	Started
Call by ICLS to member States to consider ratification of up-to-date Conventions on labour statistics	October–November 2018 *(334th Session of the Governing Body)*	Completed
Technical assistance with implementation		
Technical assistance on implementation of two OSH Conventions, including research on obstacles to ratification; improve awareness of a code of practice	October–November 2017 *(331st Session of the Governing Body)*	Under way
Other non-normative action		
Juridical replacement of 14 Recommendations noted	October–November 2016 *(328th Session of the Governing Body)*	Completed
Publication of technical guidelines on biological and chemical hazards; and regular review of code of practice on safety and health in the use of machinery	October–November 2017 *(331st Session of the Governing Body)*	Planned for implementation in next biennium
Study on gender equality in mining; review of code of practice on construction; development of guidelines on labour inspection	October–November 2018 *(334th Session of the Governing Body)*	Planning started

Follow-up action recommended by the SRM TWG	Recommendation approved by the Governing Body	Current status
ILC consideration of abrogation or withdrawal of instruments		
Abrogation or withdrawal of six Conventions and three Recommendations recommended	October–November 2016 *(328th Session of the Governing Body)*	Instruments abrogated/withdrawn *(107th Session, ILC (2018))*
Withdrawal of one Recommendation at the earliest date possible	October–November 2017 *(331st Session of the Governing Body)*	Item on agenda of 109th Session, ILC (2020)
Withdrawal of one Recommendation in 2022 and abrogation of four Conventions in 2024	October–November 2018 *(334th Session of the Governing Body)*	Items on agendas of 111th (2022) and 113th (2024) Sessions, ILC

Follow-up action recommended by the STC	Recommendation approved by the Governing Body	Current status
Promotional action		
Encourage ratification of MLC, 2006, by member States in which certain outdated maritime instruments are in force; and extension of application of MLC, 2006, to non-metropolitan territories	October–November 2018 *(334th Session of the Governing Body)*	Under way
Other non-normative action		
Juridical replacement of two Recommendations noted	October–November 2018 *(334th Session of the Governing Body)*	Under way
ILC consideration of abrogation or withdrawal of instruments		
Withdrawal of ten Recommendations and nine Conventions, and abrogation of eight Conventions, in 2020	October–November 2018 *(334th Session of the Governing Body)*	Item on agenda of 109th Session (2020), ILC

Ensuring impactful recommendations, lessons learned and future directions

18. With the objective of ensuring that the SRM TWG's work is effective and impactful, the Governing Body has reiterated the SRM TWG's call on the Organization to take appropriate measures to follow up on its recommendations relating to standard-setting as well as to the time-bound element of all recommendations resulting from its review of standards, including follow-up action involving abrogation and withdrawal of outdated standards, giving due consideration to the availability of technical assistance to encourage ratification of up-to-date instruments. [24] Effective follow-up of the SRM TWG recommendations requires committed and concrete actions to be taken by governments and social partners, both at national level and within the ILO Governing Body and International Labour Conference; in

[24] ibid., para. 5(c). See further, appendix (meeting report), para. 7.

addition, the role of the Office in providing technical support to enable those actions is essential. [25]

19. This is pertinent to the SRM TWG's ongoing consideration of the institutional implications of its work, acknowledging the significance of its work on broader standards policy. [26] The practical and time-bound follow-up undertaken throughout the Organization – by the Conference, the Governing Body and the Office – has given a new impetus to ILO standards policy both at global and national levels, calling for full tripartite support and commitment. With such tripartite support and commitment, the ongoing work of the SRM TWG will continue to contribute to a purposeful and invigorated standards policy that responds to the needs and concerns of constituents. This will involve the adoption of new standards, the promotion of the ratification and implementation of up-to-date standards by member States, the identification of outdated standards requiring revision or which could be considered for abrogation or withdrawal, and the beginning of a far-reaching conversation about the shape of new standards and the processes for their adoption and revision. The SRM TWG has acknowledged the complementarity of the integrated and balanced packages of practical and time-bound follow-up action it developed for the topics under review, each comprising interrelated elements that require active implementation. [27]

20. As the tables above illustrate, progress has been made in relation to following up on the SRM TWG's recommendations with one standard-setting item [28] placed on the agenda of the Conference, and four on the abrogation or withdrawal of 27 outdated instruments, [29] while campaigns to promote the ratification and implementation of approximately 30 instruments. [30] The impact of the Organization's follow-up of the recommendations concerning ratification campaigns, as well as the follow-up of the SRM TWG's identification of further instruments as requiring revision, should be assessed at a later stage.

21. The SRM TWG has identified a number of lessons learned from past experiences and from its own first meetings. In particular:

- The SRM TWG has stressed the complexity of the task of reviewing the international labour standards entrusted to it by the Governing Body. [31] In that context, it has authorized the attendance of eight advisers to assist the Government members at its third, fourth and fifth meetings. It has also stressed the need for coherence with other institutional initiatives. [32]

[25] ibid., Annex (recommendations), para. 6.

[26] See para. 16 above.

[27] GB.334/LILS/3., appendix (meeting report), para. 6.

[28] See table 2 above: item related to apprenticeships.

[29] See table 3 above. Note that it refers to Governing Body decisions in relation to both the recommendations of the SRM TWG and the STC.

[30] See table 3 above.

[31] GB.328/LILS/2/1(Rev.), appendix (report of meeting), paras 16–17.

[32] GB.326/LILS/3/2, appendix (report of meeting), para. 4; GB.328/LILS/2/1(Rev.), appendix (report of meeting), para. 8; GB.331/LILS/2, appendix (report of meeting), para. 28; GB.334/LILS/3, appendix (report of meeting), para. 38.

- The SRM TWG has been mindful that its work should not result in gaps in coverage for workers, [33] while ensuring a clear, robust and up-to-date body of international labour standards that responds to the changing patterns of the world of work, for the purpose of the protection of workers and taking into account the needs of sustainable enterprises. [34] To this end, the SRM TWG considered recommendations on the abrogation and withdrawal of obsolete instruments to be one means of implementing ILO standards policy, in addition to recommendations concerning concrete and time-bound follow-up action by the Office and member States, including those concerning the ratification and implementation of up-to-date standards. [35]

- The SRM TWG agreed that there was a need for a new classification system that aimed to simplify and streamline the previous system. [36] As a result, at its third meeting the SRM TWG decided to adopt a three-classification system for its work in reviewing standards. [37] The new three-classification system was used by the SRM TWG in reviewing standards at its third and fourth meetings, as well as by the STC in its work in reviewing the maritime standards that had been referred to it.

- The SRM TWG has been aware of the institutional importance of its actual and potential role for the Organization as it enters its second century, requiring the follow-up to its work to be effective, sustainable and an institutional priority. [38] The SRM TWG has acknowledged that integrated and balanced packages of follow-up action are the optimal way in which to ensure that its recommendations are impactful and fulfil the mandate given to it by the Governing Body. [39] Follow-up should be concrete, time-bound and monitored by the SRM TWG at its subsequent meetings. [40] In this regard, it is clear that there have been considerable successes, while challenges exist. Notably, in order to ensure that its follow-up has substantial and sustainable impact, the Governing Body will be asked to consider the need for additional resources at its October–November 2019 session.

Objective 2 – To consolidate tripartite consensus on an authoritative supervisory system

22. It was foreseen from the outset that the implementation of the workplan was to be monitored by the Governing Body in accordance with its governance role. In particular, the common

[33] GB.328/LILS/2/1(Rev.), Annex I (recommendations), para. 4.

[34] GB.325/LILS/3, appendix (terms of reference), para. 8.

[35] GB.328/LILS/2/1(Rev.), appendix (report of meeting), para. 6.

[36] GB.326/LILS/3/2, appendix (report of meeting), para. 8.

[37] GB.331/LILS/2, para. 5(c); appendix (report of meeting), para. 10; Annex (recommendations), para. 9.

[38] GB.334/LILS/3, appendix (report of the meeting), paras 3–5; GB.331/LILS/2, appendix (report of meeting), para. 3.

[39] GB.334/LILS/3, appendix (report of the meeting), para. 6.

[40] GB.328/LILS/2/1(Rev.), appendix (report of meeting), para. 7; Annex I (recommendations) para. 6; GB.334/LILS/3, Annex (recommendations), para. 5.

principles guiding the strengthening of the supervisory system submitted to the Governing Body at its 329th Session operate as the benchmark for the review of the implementation of the workplan in the context of the broad review of the Standards Initiative. [41]

Common principles guiding the strengthening of the supervisory system [42]

23. Constituents have expressed diverse views on the functioning of the supervisory system and its specific procedures. At the same time, their views have converged on the expected outcome of measures to ensure a well-functioning and effective supervisory system within the constitutional framework.

The value of the supervisory system is incontrovertible …

24. The role of the supervisory system is to give practical effect to the ILO founding values and constitutional objectives. The tripartite constituents have highlighted the importance of the system as a whole, as well as of the individual supervisory procedures, for the discharge of the ILO's mandate. Any further evolution of the supervisory system must be based on its well-established strengths. Equally, there is consensus that the system could be strengthened.

… and the responsibility to further strengthen the supervisory system lies with the tripartite constituents

25. Tripartite constituents hold the collective view that it is their joint responsibility to consider further strengthening of the supervisory mechanisms. It is their responsibility to guarantee the functioning and evolution of the system in line with the Constitution, supported and assisted by the Office in the discharge of its constitutional role. Solutions lie with the tripartite constituents and decisions will be taken on a consensual and participatory basis by the ILO governance bodies. The tripartite nature of ILO governance bodies underpins the authority of the supervisory system. In addition to recognizing their role in the functioning of the system, the tripartite constituents have committed to engaging fully in the process of strengthening it.

Improvements must result in a robust, relevant and sustainable system …

26. The supervisory system must remain relevant to the existing world of work. This will enable it to continue to guide the ILO in achieving progress and social justice in a constantly changing environment, remaining pertinent and retaining global significance. Fundamentally, within the constitutional framework, the system must enjoy committed tripartite support that is manifested in constructive involvement and genuine engagement. A strong supervisory system inspires confidence, while enabling the ILO and its Members to be resilient to change.

[41] GB.329/INS/5, paras 5–11.

[42] ibid.

… and its procedures should be efficient and effective

27. Effectiveness and efficiency are important components of the supervisory system. In supervising the application of international labour standards, it must continue to fulfil its purpose and make the best use of available resources. Its recommendations must be followed up and implemented. An organized and coherent system contributes to the achievement of the ILO's strategic objectives through the ratification and effective application of standards in member States.

The supervisory system must be transparent, fair and rigorous, leading to consistent and impartial outcomes

28. Transparency and integrity in the system are essential. Due process and procedural fairness should be guaranteed, including through necessary procedural safeguards and the supervisory system must operate on the basis of consistent and impartial practices. Comments, decisions and recommendations that are understood to be the outcome of a balanced, objective and rigorous process are essential to the credibility and authority of the system. Progress in implementing the ten proposals aimed at strengthening the supervisory system is reviewed below against the above-mentioned guiding principles.

Focus area 1: Relationships between the procedures

29. This focus area considers the functioning of the system as a whole, highlighting the need to improve understanding of its procedures and the linkages between them, as well as to avoid unnecessary overlap and to strengthen efforts to make it clearer and more user-friendly.

1.1. Guide on established practices across the system

30. The Guide was mandated to be "a user-friendly and clear guide for the supervisory system, bringing together useful information and ensuring a level playing field of knowledge. In practical terms, such a guide would build on existing descriptions of the supervisory system and its procedures. … it will set out, in a step-by-step format, the practices for each supervisory procedure, including admissibility criteria, timelines and implementation of the recommendations. The guide will be regularly updated to reflect the evolution of working methods or any decisions of the Governing Body." [43]

31. Note has been taken of guidance indicating that this tool should highlight both the distinct features of the various supervisory procedures and the coherence of the system as a whole; avoid pre-empting any Governing Body decision on the codification of the article 26 complaint procedure; and include information relating to the selection and appointment of persons serving on the supervisory bodies.

32. The Office, in cooperation with the International Training Centre of the ILO in Turin (ITC-ILO) is developing a Guide in the three official languages, consisting of a web-based tool on the ILO supervisory procedures, presenting the established practices step-by-step and the linkages among procedures. The Guide will be hosted on the ITC-ILO server and will be accessible from both the ILO website and the ITC-ILO eCampus. It is fully integrated with the NORMLEX database; the relevant web pages of the ILO "Labour Standards" website;

[43] ibid., para. 15.

as well as the ITC-ILO training offerings for constituents on international labour standards and standards-related procedures, including reporting.

33. The Guide will also be made available as pdf downloadable documents for each procedure; and a fully customized application for tablets and smartphones. Both the web-based tool and the application for handheld devices will be made available to Governing Body members for informal consultation in March. Members will be given a month to provide comments on the online interface as well as on the text made available in downloadable format. The tools are expected to be available on the public ILO website before the Centenary session of the Conference and the Office will report on the delivery of the guide to the Governing Body at its 337th Session (October–November 2019).

1.2. Regular conversation between supervisory bodies

34. In March 2017, the Joint Position of the Workers' and Employers' groups on the ILO Supervisory Mechanism proposed that on the basis of a proper "clarification of the role and mandate of the CFA … vis-à-vis regular standards supervision" (Joint Statement of 2015), every year the Chairperson of the CFA could present to the Conference Committee on the Application of Standards (CAS) a report of activities, after the report of the Chairperson of the CEACR. That information would be important for the work of the CAS, showing the complementarity of the committees and could limit double procedures for the same cases. Following the appointment of Evance Rabban Kalula as Chairperson of the CFA in June 2018, and the presentation of the CFA's first annual report to the Governing Body at its 333rd Session (June 2018), the Governing Body is now invited to decide that the annual report of the CFA be presented by its Chairperson to the CAS as from 2019.

35. Since its 88th Session (November–December 2017), the CEACR has dedicated a section of its General Report to the follow-up to the conclusions of the CAS. The conclusions of the CAS form an integral part of the Committee's dialogue with the governments concerned. At its most recent session in 2018, for example, the Committee has examined the follow-up to the conclusions adopted by the CAS during the last session of the International Labour Conference (107th Session, June 2018) in all 23 cases discussed by the Committee.

36. It has become the practice for the Chairperson of the CEACR to attend the general discussion of the Conference Committee and the discussion on the General Survey as an observer, with the opportunity to address the Conference Committee at the opening of the general discussion and to make remarks at the end of the discussion on the General Survey. Similarly, the Employer and Worker Vice-Chairpersons of the Conference Committee are invited to meet the Committee of Experts during its sessions and discuss issues of common interest within the framework of a special session held for that purpose.

37. Against that background and based on the guidance of the informal consultations, the proposal that an annual meeting could take place between the CAS, the CEACR, the CFA and representatives of the articles 24 and 26 procedures was not pursued further. At the same time, regular informal exchanges between representatives of the various bodies were encouraged.

Focus area 2: Rules and practices

38. This focus area considers the functioning of the individual supervisory bodies with a view to preserving their distinct roles and features and resolving the question of the interpretation of Conventions in the interest of legal certainty.

2.1. Consider codification of the article 26 procedure

39. The proposal to consider a possible codification of the complaints procedure provided for in articles 26–34 of the Constitution stems from the fact that the procedure governing the period between the submission of a complaint and the decision of the Governing Body to either establish a Commission of Inquiry or close the procedure without establishing a Commission of Inquiry, follows practice rather than codified rules.

40. Some members of the Governing Body have stressed that clear, transparent, and accessible information regarding the article 26 procedure could help members prepare for cases; improve time management in Governing Body discussions; and enhance understanding of the linkages with other procedures. Some members have expressed concern that codification would limit the possibility for the Governing Body to use the different methods to handle cases taking into account the content of the case and country situation, as currently obtains. Other members have been of the view that article 26, regardless of any codification of its procedure, does not warrant a further proliferation of methods and should prompt the Governing Body to establish a Commission of Inquiry unless alternative measures to address the issues underlying the complaint can obtain a swift tripartite consensus.

41. A consensus emerged on a staged approach whereby, as a first stage, the clarification of existing rules and practices, and linkages with other procedures, would be addressed through the Guide on established practices (see section 1.1). Should that not prove sufficient, a tripartite discussion of the possible codification of the article 26 procedure could be continued at a later stage.

2.2. Consider the operation of the article 24 procedure

42. 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. The review of the operation of the representation procedure stemmed from a number of recognized weaknesses in its three main phases: (i) the receipt of a representation and its processing until the Governing Body takes a decision on how it will be handled (for example, appointment of a tripartite committee); (ii) consideration of the merits of the representation and its outcome (for example, approval by the Governing Body of the recommendations of the tripartite committee); and (iii) follow-up to the procedure, including the implementation of the recommendations (for example, through technical assistance). Expected improvements relate to transparency in relation to national procedures and in the timeline for examining the receivability of a representation; coherence in examining the merits of the case; and visibility of the follow-up at the national level of the recommendations issued.

43. Following in-depth discussions, the Governing Body introduced several measures to enhance the transparency, visibility and coherence of the procedure, namely it:

(a) Introduced a model electronic form for the submission of a representation under article 24 of the ILO Constitution.

(b) Created the possibility for the ad hoc tripartite committee to suspend the examination of the merits of the representation in order to address the allegations by seeking conciliation or other measures at the national level for a maximum period of six months, subject to the agreement of the organization making the representation and the agreement of the Government; and with the possibility for the organization making the representation to request the procedure to resume at an earlier moment should the conciliation/other measures fail.

(c) Established timelines for the Office to provide members of ad hoc tripartite committees and members of the Governing Body with information, documents and reports.

(d) Established ratification of the Conventions concerned as a condition for membership of governments in ad hoc committees unless no government titular or deputy member of the Governing Body has ratified the Conventions concerned.

(e) Reinforced integration of follow-up measures in the recommendations of committees and a regularly updated document on the effect given to these recommendations for the information of the Governing Body, as well as continuing to explore modalities for follow-up action on the recommendations adopted by the Governing Body concerning representations.

(f) Instructed the CFA to examine representations referred to it according to the procedures set out in the Standing Orders for the examination of article 24 representations, to ensure that representations referred to it be examined according to the modalities set out in the Standing Orders.

(g) Approved maintaining existing measures and exploring other possible measures to be agreed upon by the Governing Body for the integrity of procedure and to protect ad hoc committee members from undue interference.

44. In respect of (b), it was understood that the six-months suspension for the purpose of conciliation at the national level: (1) would leave open the possibility for the tripartite committee to decide on a limited further extension of the suspension should the initial conciliation or other measures need a further period of time to successfully resolve the issues raised in the representation; and (2) would have to be reviewed by the Governing Body after a two-year trial period, that is in November 2020.

45. In respect of (g), it was decided not to pursue at this stage the discussion about further possible measures to protect ad hoc committee members from undue interference.

2.3. Consider further steps to ensure legal certainty

46. In March 2016, the Governing Body considered the Joint Report of the Chairperson of the CEACR and the Chairperson of the 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. The Joint report proposed steps to be taken in relation to the interpretation of Conventions. More specifically, the Joint Report pointed out that the question of uniformity of interpretation was "inextricably tied up with the discussions surrounding the present supervisory mechanism review", and the establishment of an in-house ILO Tribunal might "be considered when trying to further the debate concerning the roles and mandates of the supervisory bodies". Legal certainty has been considered important for the continued credibility and effectiveness of the supervisory system, and therefore needed to be considered in the context of a review of the rules and practices of the supervisory system aimed at enhancing its accessibility, transparency, clarity and respect for due process.

47. The revised workplan for the strengthening of the supervisory system, approved by the Governing Body in March 2017, provided for guidance to be sought from the Governing Body on the modality of a possible future tripartite exchange of views on article 37(2) of the Constitution and the elements and conditions necessary for the operation of an independent body to interpret Conventions. This decision built on the March 2017 Joint Position of the Workers' and Employers' groups which observed that "divergent views and disputes about the interpretation of Conventions continue to be a reality".

48. In November 2017 and March 2018, the Governing Body provided further preliminary guidance on the issue of legal certainty. Some Government members underlined the need to pursue measures to enhance legal certainty by activating the option provided in article 37(2), while other Government members preferred to continue exploring avenues for consensus-based interpretation of Conventions. The Worker and Employer members supported a proposal to have informal consultations on this first. In November 2018, the Governing Body decided to request the Office to provide concrete proposals to prepare the discussion on consideration of further steps to ensure legal certainty, "including, but not limited to, organizing a tripartite exchange of views in the second semester of 2019 on article 37(2) of the Constitution" to facilitate a tripartite exchange of views on the elements and conditions necessary for the operation of an independent body under article 37(2).

49. During the informal consultations, the following questions were proposed for a possible exchange of views:

(1) How many instances of significant disagreement around major issues of interpretation of international labour standards are currently existing within the supervisory system?

(2) Does legal certainty around major issues of interpretation of international labour Conventions need to be strengthened?

(3) Is the existing ILO internal machinery for handling questions relating to the interpretation of international labour Conventions adequate to respond to current needs?

(4) Should the existing ILO internal machinery not be considered adequate, what can be done by the existing supervisory bodies, including the CEACR and the Office (which provides support to avoid diametrically opposed positions on certain instruments)?

(5) What are the possible alternatives to establishing a tribunal? Will article 37(1) continue to provide the opportunity for issues of interpretation of Conventions to be referred to the International Court of Justice for decision should a tribunal be established, and under what conditions?

(6) What are the pros and cons of establishing a tribunal under article 37(2) of the ILO Constitution?

(7) What are the costs associated with the establishment of such tribunal and can we meet that cost?

(8) If a tribunal were to be established, what would be the elements and conditions necessary for an independent tribunal to enjoy the support of the tripartite ILO constituency for the expeditious determination of any dispute or question relating to the interpretation of ILO Conventions?

50. The parameters of a possible tripartite exchange of views on legal certainty could include:

- informal consultations followed by tripartite exchange of views after the meeting of SRM TWG in October 2019; and

- the Office to prepare a paper with background information to facilitate a possible exchange of views on the elements and conditions necessary for the operation of an independent body under article 37(2) as well as of any other consensus-based options.

Focus area 3: Reporting and information

3.1. The streamlining of reporting

51. The streamlining of reporting pursues a number of objectives which, if met together, enhance the relevance and efficiency of the supervisory system. First, to guarantee the sustainability of the supervisory system in the light of a rising number of ratifications and near universal membership of the Organization. Secondly, to reduce the reporting burden on member States in the light of this trajectory. Thirdly, the important role of employers' and workers' organizations in raising pressing issues which call for examination by the supervisory bodies without delay. The focus of this streamlining effort is not just to reduce the number of reports requested each year and to alleviate the associated workload, but more broadly to rationalize the reporting (for example, by grouping Conventions by subject for reporting purposes, which also allows for a more comprehensive thematic review). An important consideration is to enhance the role of employers' and workers' organizations, putting in place safeguards to ensure the access of constituents to the CEACR outside the reporting cycle.

52. Based on the guidance received from the Governing Body and a technical and financial feasibility assessment, the following measures are being implemented:

(i) Following a thorough business process review, the Office is finalizing the technical and budgetary specifications for an electronic document and information management system for the CEACR, the CAS and the CFA to be rolled out in stages, starting in 2019. This should result in significant time and cost savings and permit resources to be directed to strengthening the Office support to the supervisory system, particularly to providing technical assistance at the country level.

(ii) Developing a smarter e-reporting system through e-report forms remains a valid objective: a comprehensive online reporting system that meet the needs of the ILO constituents would not only offer simplified reporting obligations, but would also lead to easier management of electronic archiving, both at the national level and for the Office. [44] However, it should first be piloted at various stages so as take into account the operational constraints raised by some governments, in particular where national processes involve multiple drafters and internal clearance requirements. In a first stage, the idea would be to establish baseline information on the application by member States of ratified Conventions, as proposed under point (viii) below. In a second stage, the baseline information established would allow the option to complete reporting obligations online (while keeping the option to submit completed baseline reports by electronic means but offline). Only then, based on the experience gained, taking into account States' technological capacities as supported by tailored training tools and in full consultation with the tripartite constituents could it be considered to migrate to fully fledged online e-reporting.

(iii) A revised reporting cycle ensuring greater thematic coherence in requests for reports on all Conventions within a three-year reporting cycle for fundamental and governance Conventions and a six-year reporting cycle for technical Conventions. The new grouping now ensures that ratified Conventions covering related subjects are requested

[44] This would be fully in line with the overall IT Strategy that has been approved by the Governing Body. It may be noted that within the framework of the steps taken by the Office to introduce IT improvements, a pilot under the Follow-up to the 1998 ILO Declaration on Fundamental Principles and Rights at Work, the Office has put in place an optional online tool to facilitate reporting under the Annual Review. Further considerations in this respect are set out in GB.335/INS/4. It is hoped that the implementation of this online tool will benefit from the broader e-reporting developments referred to in this section.

in the same year for a specific country, as shown by the table below for different groups of countries. This ensures thematic coherence by country as well as an examination of all subjects each year, thus generating a positive impact on the objective of the CAS to achieve greater balance in the selection of cases between technical, governance and fundamental Conventions. The new reporting arrangements will be in effect as of 2019.

Table 4. Option 2. Simulation of reports requested 2019–25

2019	2020	2021	2022	2023	2024	2025
Fundamental and governance Conventions (three-year reporting cycle)						
C.87, C.98 (countries A–F)	C.87, C.98 (countries G–N)	C.87, C.98 (countries O–Z)	C.87, C.98 (countries A–F)	C.87, C.98 (countries G–N)	C.87, C.98 (countries O–Z)	C.87, C.98 (countries A–F)
C.100, C.111 (countries G–N)	C.100, C.111 (countries O–Z)	C.100, C.111 (countries A–F)	C.100, C.111 (countries G–N)	C.100, C.111 (countries O–Z)	C.100, C.111 (countries A–F)	C.100, C.111 (countries G–N)
C.29, C.105, C.138, C.182 (countries O–Z)	C.29, C.105, C.138, C.182 (countries A–F)	C.29, C.105, C.138, C.182 (countries G–N)	C.29, C.105, C.138, C.182 (countries O–Z)	C.29, C.105, C.138, C.182 (countries A–F)	C.29, C.105, C.138, C.182 (countries G–N)	C.29, C.105, C.138, C.182 (countries O–Z)
C.144 (countries A–F)	C.144 (countries G–N)	C.144 (countries O–Z)	C.144 (countries A–F)	C.144 (countries G–N)	C.144 (countries O–Z)	C.144 (countries A–F)
C.81, C.129 (countries O–Z)	C.81, C.129 (countries G–N)	C.81, C.129 (countries A–F)	C.81, C.129 (countries O–Z)	C.81, C.129 (countries G–N)	C.81, C.129 (countries A–F)	C.81, C.129 (countries O–Z)
C122 (countries G–N)	C.122 (countries A–F)	C.122 (countries O–Z)	C.122 (countries G–N)	C.122 (countries A–F)	C.122 (countries O–Z)	C122 (countries G–N)
Technical Conventions (six-year reporting cycle)						
Freedom of association and collective bargaining (A-B)	Freedom of association and collective bargaining (G-K)	Freedom of association and collective bargaining (O-S)	Freedom of association and collective bargaining (C-F)	Freedom of association and collective bargaining (L–N)	Freedom of association and collective bargaining (T-Z)	Freedom of association and collective bargaining (A-B)
Industrial relations (A-B)	Industrial relations (G-K)	Industrial relations (O-S)	Industrial relations (C-F)	Industrial relations (L-N)	Industrial relations (T-Z)	Industrial relations (A-B)
Protection of children (O–S)	Protection of children (A–B)	Protection of children (G–K)	Protection of children (T–Z)	Protection of children (C–F)	Protection of children (L–N)	Protection of children (O–S)
Workers with family responsibilities (G–K)	Workers with family responsibilities (O–S)	Workers with family responsibilities (A–B)	Workers with family responsibilities (L–N)	Workers with family responsibilities (T–Z)	Workers with family responsibilities (C–F)	Workers with family responsibilities (G–K)
Migrant workers (G–K)	Migrant workers (O–S)	Migrant workers (A–B)	Migrant workers (L–N)	Migrant workers (T–Z)	Migrant workers (C–F)	Migrant workers (G–K)
Indigenous and tribal peoples (G–K)	Indigenous and tribal peoples (O–S)	Indigenous and tribal peoples (A–B)	Indigenous and tribal peoples (L–N)	Indigenous and tribal peoples (T–Z)	Indigenous and tribal peoples (C–F)	Indigenous and tribal peoples (G–K)
Other specific categories of workers (G–K)	Other specific categories of workers (O–S)	Other specific categories of workers (A–B)	Other specific categories of workers (L–N)	Other specific categories of workers (T–Z)	Other specific categories of workers (C–F)	Other specific categories of workers (G–K)
Working time (T–Z)	Working time (L–N)	Working time (C–F)	Working time (O–S)	Working time (G–K)	Working time (A–B)	Working time (T–Z)
Wages (T–Z)	Wages (L–N)	Wages (C–F)	Wages (O–S)	Wages (G–K)	Wages (A–B)	Wages (T–Z)
OSH (T–Z)	OSH (L–N)	OSH (C–F)	OSH (O–S)	OSH (G–K)	OSH (A–B)	OSH (T–Z)
Maternity protection (T–Z)	Maternity protection (L–N)	Maternity protection (C–F)	Maternity protection (O–S)	Maternity protection (G–K)	Maternity protection (A–B)	Maternity protection (T–Z)

2019	2020	2021	2022	2023	2024	2025
Social security (T–Z)	Social security (L–N)	Social security (C–F)	Social security (O–S)	Social security (G–K)	Social security (A–B)	Social security (T–Z)
Labour administration and inspection (T–Z)	Labour administration and inspection (L–N)	Labour administration and inspection (C–F)	Labour administration and inspection (O–S)	Labour administration and inspection (G–K)	Labour administration and inspection (A–B)	Labour administration and inspection (T–Z)
Skills (L–N)	Skills (C–F)	Skills (T–Z)	Skills (G–K)	Skills (A–B)	Skills (O–S)	Skills (L–N)
Employment policy (L–N)	Employment policy (C–F)	Employment policy (T–Z)	Employment policy (G–K)	Employment policy (A–B)	Employment policy (O–S)	Employment policy (L–N)
Employment security (L–N)	Employment security (C–F)	Employment security (T–Z)	Employment security (G–K)	Employment security (A–B)	Employment security (O–S)	Employment security (L–N)
Social policy (L–N)	Social policy (C–F)	Social policy (T–Z)	Social policy (G–K)	Social policy (A–B)	Social policy (O–S)	Social policy (L–N)
Seafarers Fishers Dockworkers (C–F)	Seafarers Fishers Dockworkers (T–Z)	Seafarers Fishers Dockworkers (L–N)	Seafarers Fishers Dockworkers (A–B)	Seafarers Fishers Dockworkers (O–S)	Seafarers Fishers Dockworkers (G–K)	Seafarers Fishers Dockworkers (C–F)
Total number of reports requested						
1 270	**1 384**	**1 434**	**1 445**	**1 356**	**1 368**	**1 270**

(iv) At its session in November–December 2018, the CEACR considered the extension of the reporting cycle from five to six years and, in the context of the discussion on its own working methods, considered the manner in which it might broaden the very strict criteria for breaking its cycle of review when receiving comments from workers' or employers' organizations under article 23(2), of the ILO Constitution. A report on its discussion and decision is contained in the most recent report of the CEACR [45] and a summary is provided in paragraph 74 below.

(v) Following the guidance of the Governing Body, the CEACR is continuing its recent practice of adopting a single comment to address in a consolidated manner the issues of application arising under various related Conventions. These types of consolidated comments have been adopted in the fields of social security, maritime issues, wages, working time, occupational safety and health, labour inspection and child labour. This has allowed the CEACR to avoid repetitive comments under thematically related Conventions and has helped to ensure greater coherence in the treatment of the related information by country. For the countries concerned, one advantage is that comments are more easily readable and provide a more coherent and holistic analysis by subject of the issues to be addressed.

(vi) The Governing Body approved a new integrated report form for simplified reports to be sent under article 22 of the Constitution. Every year, based on this report form, the Office sends electronically to each member State a single request for all the simplified reports which are due that year. Supervisory comments in respect of which replies are invited are consolidated in an annex to the simplified report form. [46] This should

[45] Report of the CEACR, Report III (Part A), International Labour Conference, 108th Session, 2019.

[46] The annex is established on the basis of the regular reporting cycle and any additional requests for reports addressed to your country by the supervisory bodies for the year in question. It also includes cases in which your country has failed to submit the simplified reports requested the previous year. It does not cover any simplified report due under the MLC, 2006, for which a specific form will be sent to your country, as appropriate.

facilitate the submission of information. Readability would be improved, as the CEACR's comments for which reports are due that year could be presented by subject. It may be emphasized that this proposal will not limit the content or level of detail of the information provided by governments, but will facilitate the submission of information and the discharge of reporting obligations. In addition, the Office communicates to each member State the list of detailed reports which may also be due the year in question. Existing report forms under each individual Convention (the content of which corresponds to detailed reports) would continue to be used for first reports following ratification, or when a detailed report is specifically requested by the supervisory bodies.

(vii) Measures to address the delays in the receipt of reports and the reporting failures. These delays give rise to significant challenges, both for the social partners and for the Office as the secretariat of the CEACR. The social partners have less time to submit article 23 observations, while the late receipt of reports limits the capacity of the Office to prepare files for the CEACR to carry out its work, with the result that the examination of belated reports have to be deferred. Moreover, when the reports requested are not received within the time limits, it is necessary to issue repetitions of outstanding comments and resubmit requests the following year for the reports that have not been received, thus further increasing the number of reports to be treated.

Following up on its annual exchange with the CAS Vice-Chairpersons, the CEACR decided at its 2017 session to take safeguard measures paying closer attention to certain serious cases of failure to report and instituting a practice of launching "urgent appeals". During the review of its working methods at the 2018 session, the Committee decided to reinforce the practice of urgent appeals that it launched in 2017 drawing on experience with the implementation of this decision. Already at the 2018 session, the Committee issued urgent appeals to six countries which failed to send a first report for at least three years. The Committee decided that as of its next session, it will generalize this practice by issuing urgent appeals in all cases where article 22 reports have not been received for three consecutive years. As a result, repetitions of previous comments will be limited to a maximum of three years following which the Convention's application will be examined in substance by the Committee on the basis of publicly available information, where the government has not sent a report, thus ensuring a review of the application of ratified Conventions at least once within the reporting cycle. The repetition language will follow a certain "escalation" in relation to how many times the Government has failed to report:

– first year: simple repetition, the Committee will note that the report has not been received;

– second year: the Committee will note with regret that the report has not been received;

– third year: the Committee will note with deep regret that the report has not been received and issue an urgent appeal, informing the government that if a report is not received in time for examination by the Committee at its next session, the latter will proceed to examine the application of the Convention in the country in question on the basis of information at its disposal;

– fourth year: the Committee will carry out an examination on the basis of publicly available information even if the Government has not replied.

Also, the Committee decided to distinguish more clearly between article 22 reports received after the 1 September deadline the examination of which might be deferred due to their late arrival, and reports received by this deadline, the

examination of which might be deferred for various other reasons (e.g., need for translation into the ILO working languages). The Committee instructed the secretariat to place the late reports in a special category, separate from that of "deferred files", for transparency purposes. The Committee was pleased to note the information provided by the Office on the potential medium term impact of the Governing Body decisions in the framework of the Standards Initiative, from the point of view of maintaining the sustainability and effectiveness of the supervisory mechanism in the light of the constantly increasing number of ratifications and consequent reporting obligations.

(viii) Pilot project on the establishment of baselines. The added value of baseline-based reporting consists in easier, incremental and non-repetitive reporting by governments as well as better information-sharing on compliant practices provided in the context of the supervisory system. Currently, the only visible outputs of the article 22 reporting process are the issues and concerns raised in the comments of the CEACR. The broader picture of how a country is implementing a ratified Convention, including the compliant practices adopted, is not publicly available. The idea would be to extract information about compliant implementation of Conventions from article 22 reports and to present that information in compliance summary tables, which would be made available on the ILO website and serve as the baseline for the next round of reporting.

In light of the Governing Body decision to implement a pilot project on the establishment of baselines on Convention No. 187 (see point 7(e) of the decision adopted at its 334th Session (October–November 2018)), the Office has taken the following measures:

(a) Countries due to report on Convention No. 187 in 2019 have been contacted to confirm their interest in participating in the pilot project.

(b) A model electronic article 22 baseline report on the application of Convention No. 187 has been developed. The draft article 22 baseline report will be sent to the countries concerned together with the request for reports for 2019. Where the countries concerned have ratified other up-to-date OSH instruments, a consolidated thematic draft baseline report will be prepared to cover the corresponding instruments. It will contain the information available to the Office on the measures taken to apply the Convention(s) concerned, including information provided by the government concerned in previous article 22 reports. Where the CEACR has made comments on the application of the Convention(s) concerned, the draft article 22 baseline report will include a cross-reference to those comments in NORMLEX. The government will be expected to validate the information contained in the draft article 22 baseline report and to reply to the CEACR pending comments. The final article 22 baseline report will have to be sent to the Office by 1 September at the latest, in accordance with the existing procedure (submission offline). It will be examined by the CEACR at its 2019 session and the results of the CEACR examination will be published as per the existing procedure (observation and/or direct request, as the case may be).

(c) As per the existing practice, observations of the social partners and the government's responses, could be submitted within the article 22 baseline report or sent directly to the Office.

(d) The new feature would be that, as of early 2020, information about compliant implementation of Convention No. 187 could be extracted from the article 22 reports and presented in compliance summary tables, which could be made available on the ILO website. The baselines could also include any observations made by the social partners if it is decided that the latter should also be made

public. Where the CEACR has made comments on the application of the Convention concerned, the baseline will include a cross-reference to those comments in NORMLEX.

Following an initial evaluation of the pilot project, extension to other/all subject matters could be envisaged.

This initiative will be linked to the computerization measures taken as set out above. In particular, it would make it easier to update the information submitted (see in particular the link with e-reporting under point (ii) above). The Office will continue to provide regular updates to the Governing Body on the development of this pilot project.

3.2. Information-sharing with organizations

53. The Office will continue the exchanges and collaborations in supervising the implementation of standards with other international organizations (e.g. the Council of Europe). Based on the views expressed during the January and February 2017 consultations, the Office continues its regular exchange of information with other international organizations. For example, the Office participates in the Partnership for Effective International Rule-Making managed by the Organization for Economic Cooperation and Development (OECD). The partnership offers a voluntary platform to foster collective action among international organizations and their constituency to promote greater quality, effectiveness and impact of international rules, regardless of their substantive scope. Ultimately, this work helps to build greater confidence of domestic regulators and legislators in international rules and support greater uptake of good quality international instruments in national legislation.

54. The Governing Body at its 334th Session (October–November 2018) welcomed the United Nations General Assembly (UNGA) Resolution of May 2018 "Repositioning of the United Nations development system in the context of the quadrennial comprehensive policy review of operational activities for development of the United Nations System (A/RES/72/279)". A separate report before the Governing Body provides an update as well as an action plan addressing the multiple aspects of implementation of the reform of the United Nations Development System (UNDS), including the implications for the ILO's normative and supervisory work. [47]

55. The repositioning of the UNDS is expected to have a number of implications for both the SRM and the strengthening of the supervisory system:

(a) There can be no sustainable development without social justice. The ILO is the custodian institution of globally recognized standards that define "full, productive and freely chosen employment" and decent work for all as a means and an end to sustainable development. As such, ILO normative work is central to a UNDS repositioned around a rights-based 2030 Agenda for Sustainable Development. The UN Secretary-General has sought to give assurances that "all entities [of the UNDS] are better positioned to fully deliver on their respective mandates, while also achieving greater impact at a system-wide scale." [48]

(b) International labour standards must add value to defining decent work as a means and end to sustainable development. To add value, the standard-setting process itself should be responsive to the changing patterns of the world of work, the protection of workers

[47] GB.335/INS/10.

[48] Letter of the UNSG to the ILO Director-General, dated 7 November 2018.

and the needs of sustainable enterprises. This points to the need for coherence between the recommendations from the SRM and timely agenda-setting of the Conference in relation to closing regulatory gaps with new instruments as well as revising and abrogating obsolete standards.

(c) With respect to the ILO's mandate and responsibility to promote both the ratification of and compliance with international labour standards, it is to be noted that the UNGA has called on all entities of the UNDS to carry out, among other functions: "assisting countries through normative support, as appropriate, in the context of operational activities for development of the United Nation system." [49] The repositioning of the UNDS to enhance integrated policy advice [50] and normative support should be both an incentive to accelerate efforts and an opportunity to improve the impact of the ILO supervisory work. Greater attention will need to be paid to incorporate outputs related to the ratification and supervision of international labour standards in the Decent Work Country Programmes (DWCPs) and the United Nations Development Assistance Framework (UNDAFs), notably technical advice to give effect to recommendations of the SRM TWG in relation to the ratification of up-to-date Conventions and to supervisory comments; assistance with reporting obligations; and assistance to strengthen tripartite consultations on issues under review with the supervisory bodies. Special attention will need to be paid to integrating into UN Common Country Analyses (CCA) the alignment of development efforts with international standards and normative frameworks, including international labour standards. This is particularly important as UN CCAs are set to inform UNDAF priorities. However, even if standards-related aspects are not reflected as priorities in the UNDAF, the ILO will continue to service the supervisory system, including the provision of technical assistance in respect of comments and recommendations of the supervisory bodies.

(d) As an associated measure the ILO is engaging in designing and delivering a training package developed for the new generation of UN Resident Coordinators in collaboration with the ITC-ILO so as to ensure that they are well informed and aware of the Decent Work Agenda and international labour standards as its foundation.

(e) The ILO is engaging in a series of consultations with the Office of the United Nations High Commissioner for Human Rights (OHCHR) and other UN bodies with a view to strengthening the labour standards dimension of the integrated policy support a repositioned UNDS will provide at country level.

Focus area 4: Reach and Implementation

4.1. Clear recommendations of the supervisory bodies

56. The recommendations made by the supervisory bodies should be clear and provide practical guidance to member States so as to enhance their effectiveness. Clarity requires a reader-friendly and up-to-date presentation of the compliance issues and the formulation of actionable recommendations that leave sufficient space for governments in considering the ways and means for achieving compliance. Other measures that can enhance transparency

[49] UNGA Resolution on the Quadrennial comprehensive policy review of operational activities for development of the United Nations system A/RES/71/243, para. 21(b). It is worth recalling that the repositioning of the UNDS as outlined in UNGA Resolution A/RES/72/279 takes place in the context of the QCPR review.

[50] This UNDS function is separately but specifically referred to in para. 21(a) of A/RES/71/243.

and hence clarity of the comments include cross-referencing comments by creating hyperlinks in the electronic version of comments by the CEACR and the CAS. In its secretariat role, the Office is pursuing this objective with the supervisory bodies as they continue to review their working methods.

57. Clarity must not come at the expense of details: a more complete and elaborate report allows for a better discussion of cases by the Conference Committee and better guidance for the constituents on measures conducive to the effective application of ratified Conventions. In that context, measures are pursued to make the report more reader friendly and in particular to achieve clarity in the up-to-date presentation of the issues. Recommendations should be sufficiently specific so as to permit monitoring of any effect given to them.

58. The issue of clarity in the recommendations will continue to be monitored by the subcommittee on working methods of the CEACR and reviewed jointly by the CEACR and the Vice-Chairpersons of the CAS during the annual special session of the Committee of Experts. On the occasion of the most recent joint session of the Committee of Experts and the Vice-Chairpersons, the CEACR recognized the need for constantly introducing gradual improvements to produce more user-friendly, precise and concise comments. This was necessary not only in order to give clear guidance to governments but also to facilitate follow-up action and technical assistance by the Office while remaining consistent in its assessment of compliance. [51] The Committee of Experts also attached great importance to the clarity of the criteria for making a distinction between observations and direct requests, in order to ensure the visibility, transparency and coherence of the Committee's work and legal certainty over time in light of the Committee's evolving membership and practices. The Committee was willing to give due consideration to the suggestions made by the two Vice-Chairpersons in future discussions so as to secure adequate tripartite engagement with supervisory comments. [52]

4.2. Systematized follow-up at national level

59. In their Joint Declaration of 2015, the Employers' and Workers' groups expressed interest in a consistent and transparent follow-up system not only at national level but also at the level of the ILO as a whole. They felt that the work of the supervisory bodies and other ILO engagements needed better coordination at country level through a variety of interventions such as technical assistance, DWCPs, direct contact missions and tripartite meetings.

60. Effect was given to this proposal in the Programme and Budget proposals for 2018–19 and the most significant output of outcome 2. Hence, the Office has started to promote more structured ILO interventions to increase compliance by developing a strategic approach to standards promotion in a number of pilot countries. The aim is to assist countries that have a significant ILO presence and portfolio of standards-related activities with the development of a strategy that promotes standards over a period until 2030 – spanning several DWCP cycles – and covers the full spectrum of standards-related outputs currently found in the programme and budget: ratification, application (in particular giving effect to supervisory comments), responding to the recommendations of the SRM TWG, discharging reporting obligations and capacity building of the social partners to effectively engage in standards-related activity at the national level. Against that background, the Government of Viet Nam has invited the assistance of the Office to develop a roadmap setting ratification and

[51] Report of the CEACR, Report III (Part A), International Labour Conference, 108th Session, 2019, para. 25.

[52] ibid., para. 27.

application targets to be achieved by 2030. The first concrete outcomes in both areas are expected in 2019.

4.3. Consideration of the potential of article 19, paragraphs 5(e) and 6(d)

61. Article 19, paragraphs 5(e) and 6(d), are key constitutional provisions that respond to the inherent need for the ILO supervisory system, and the obligation of member States, to give effect to the standard-setting decisions of the Conference. These provisions were introduced to fulfil different purposes, including to: promote the ratification of Conventions; encourage countries to achieve the objectives of both Recommendations and Conventions; recognize the efforts made by countries to give effect to the instruments adopted by the Conference, even in the absence of ratification; inform technical assistance that could be instrumental in removing obstacles to the ratification of relevant Conventions; and evaluate standards to inform future standard-setting activities.

62. The request for concrete action arose from the Conference in its 2016 resolution on Advancing Social Justice through Decent Work. The Conference called on the ILO to "(e)nsure that there are appropriate and effective linkages between the recurrent discussions and the outcomes of the Standards Initiative, including exploring options for making better use of article 19, paragraphs 5(e) and 6(d), of the ILO Constitution, without increasing the reporting obligations of member States". [53] This includes the adoption of appropriate modalities to ensure the contribution of General Surveys and the related discussion by the CAS to recurrent discussions. [54]

4.3.1. Options for consideration relating to the design, preparation and follow-up of General Surveys

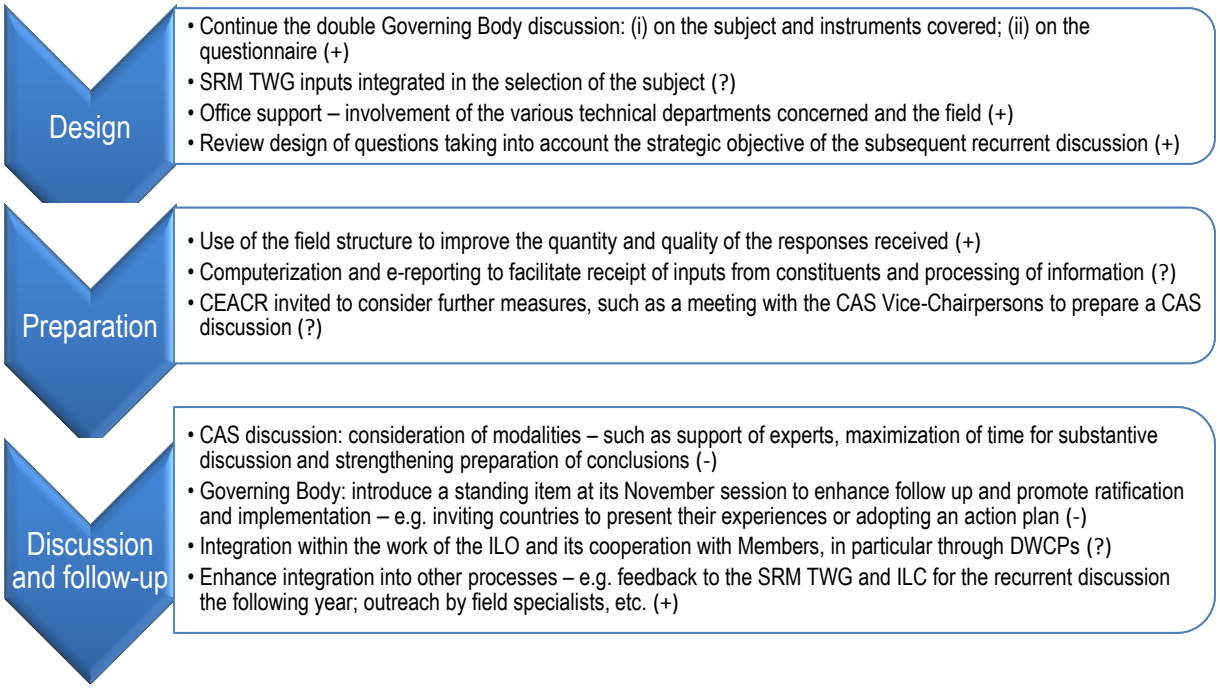
63. Proposals for enhancing the use of article 19 have in the first instance chiefly related to General Surveys, in particular the processes relating to the design, preparation and follow-up of General Surveys. They outline ways of maximizing the value of article 19, paragraphs 5(e) and 6(d), processes and assisting Members to achieve the ILO's strategic objectives, particularly through the ratification and implementation of standards.

64. Various ideas have been put forward, reflected in the table below. Some are part of the current practice (+), some have not reached a conclusion (-), some have not (yet) been considered or are work in progress (?).

[53] Subparagraph 15.1 of the resolution. The follow-up to the Social Justice Declaration emphasizes the need for "the fullest possible use" of all the means of action provided under the Constitution of the ILO to fulfil its mandate. This could include adapting existing modalities of the application of article 19(5)(e) and (6)(d), without increasing the reporting obligations of member States. In practice, the adaptation of these modalities has focused on the arrangements for the General Surveys and their discussion by the CAS to ensure coordination with recurrent discussions.

[54] Subparagraph 15.2(b) of the resolution.

Proposed options



65. At its November 2018 session, the subcommittee on working methods of the CEACR gave particular consideration to the Governing Body's request for proposals with a view to optimizing the use made of article 19, paragraphs 5(e) and 6(d), of the Constitution, in particular measures to improve the presentation of General Surveys, so as to ensure a user-friendly approach and format that maximizes their value for constituents. Based on the advice of the Committee. The secretariat aims at presenting the General Survey in a revised format by 2020. Already this year, the General Survey is featuring an executive summary highlighting salient points. The Committee also discussed various modalities for the examination of General Surveys taking full advantage of the electronic document management system and other IT enhancements under way. The Committee also had an opportunity to discuss the pilot project for the establishment of electronic baselines which would facilitate reporting by governments and information sharing on compliant practices. The Experts were particularly interested in this project and will continue to follow closely its development.

4.3.2. Other possible uses of article 19

66. In the second instance, the Office could explore other possible uses of article 19. Further guidance is sought on whether the Office should prepare additional proposals to make better use of article 19, paragraphs 5(e) and 6(d), bearing in mind the purposes of these provisions, with a view to their discussion at the October–November 2019 session of the Governing Body.

67. The Office could explore using article 19 to follow up on the action taken on recommendations of the SRM TWG in respect of ratification or denunciation so that a subsequent recurrent discussion might, for example, respond more effectively to member States' needs in respect of the effect to be given to these recommendations through a coordinated ILO action. Taking the example of OSH instruments, this initiative could be scheduled as follows.

Table 5. Example

Year 1	SRM TWG completes review of OSH instruments in initial programme of work
Year 2	Governing Body selects these instruments and SRM recommendations for follow-up under article 19 for all those not having ratified up-to-date OSH instruments
Year 3	Governing Body approves report form, inviting information by February 2019
Year 4	The Office compiles article 19 report with baseline information received with a view to informing the next recurrent discussion on social protection (labour protection)

4.3.3. Annual Review under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work

68. The 2017 Conference resolution and conclusions concerning the second recurrent discussion on fundamental principles and rights at work included a call for the annual follow-up to the ILO Declaration on Fundamental Principles and Rights at Work to be more accessible and visible. [55]

69. In 2017, on a pilot basis, member States were given the option of reporting online using an e-questionnaire tool, while the report forms in pdf format were shared at that same time should there be a preference to continue reporting in a hard copy version. The pilot was launched with a view to facilitating reporting for member States, and to enable the compilation of responses received with a view to further analysis.

70. Once again in 2018, the possibility of reporting online was offered to the governments concerned. The online reporting tool also had the necessary features for the circulation of the draft report to the social partners. Fifty-three member States totalling 77 per cent of all responses received have used the online reporting form. This represents a 16 per cent increase from 2017. Further considerations in this regard are set out in document GB.335/INS/4.

Review by the supervisory bodies of their working methods

Conference Committee on the Application of Standards (CAS)

71. Informal tripartite consultations on the working methods of the CAS took place 11 times from June 2006 to 2011. Subsequently, at its 322nd Session (October–November 2014), the Governing Body decided to re-launch informal tripartite consultations to prepare recommendations to the 323rd Session of the Governing Body (March 2015), in the context of decisions taken by the Governing Body concerning the Standards Initiative. [56] The most recent informal tripartite consultations on the working methods of the CAS were held on 3 November 2018.

72. The informal tripartite consultations continued to prove their usefulness in continuously improving the working methods of the CAS. From 2016 to 2018, informal consultations

[55] *Provisional Record* 11-1, ILC, 106th Session, 2017, para. 4(d).

[56] GB.322/PV, para. 209(3).

were convened six times. Based on the guidance received from the informal tripartite consultations, the following improvements are being implemented:

- More efficient time management with set time limits for delegates' intervention and list of registered speakers displayed on screens in the room.

- Document D.1 provides detailed information on the manner in which the final selection of cases is made, although some called for improvements, for example in terms of regional and subregional balance among the cases selected. To increase the visibility of the criteria set out in document D.1, the Office agreed to publish them in a special section on the CAS webpage when the long list of cases is made available.

- Measures regarding the preparation, adoption and follow-up of conclusions have been in effect since the 107th Session of the Conference (2018): the conclusions should be made visible on a screen while being read by the Chairperson; and a hard copy of the conclusions should also be given to the Government representative concerned. Government representatives concerned have the right to take the floor immediately after the adoption of the conclusions in respect of their individual case, rather than having to wait until the conclusions in respect of all individual cases have been read out and adopted.

- Time allocated to the general discussions of the CAS is reduced so as to permit additional time for discussion of the General Survey. With regard to the proposal of inviting experts to contribute to the discussion on the [57] General Survey, the meeting considered that the necessary expertise to support the General Survey discussion resided with the Office and the Conference, and that recourse to external experts would be appropriate only in exceptional circumstances. The item could, however, be discussed further.

- Coordinated sustained measures were needed to deal with cases of serious failure by member States to respect their reporting obligations. The introduction of electronic reporting, longer reporting intervals and simplified report forms would be helpful, and it was expected that the work of the SRM TWG would also help ease the reporting burden. The Committee of Experts' decision to institute a procedure for "urgent appeals" in certain cases was important and governments will be informed that the Committee of Experts may proceed to examine the substance of a matter even in the event of continued failure to report. The Office will continue its efforts to support governments, including through provision of technical assistance to the countries concerned.

- Part II of the CAS report will be produced as a verbatim record. Other parts of the report will also be produced in verbatim format instead of the summary record currently produced, with the outcomes of discussions, conclusions of individual cases and other specific results being placed in Part I of the CAS report and the verbatim discussions in Part II. Internal review has shown that production of a verbatim record would result in significant time and cost savings, which would permit resources to be directed to strengthening aspects of the supervisory system, particularly to providing technical assistance at the country level. Amendments could be made to the verbatim record in the event that there were errors. The issue of the content and structure of Parts I and II remains subject to further consultation and reflection by the same meeting.

73. The next meeting of the informal tripartite consultations on the working methods of the CAS would be held during the 335th Session of the Governing Body (March 2019). It will discuss,

[57] *Provisional Record* 9A(Rev.), ILC, 107th Session, para. 31.

among other matters, a proposal to produce all parts of the CAS report as verbatim records; special centenary arrangements to highlight the achievements and impact of the CAS; a proposal to invite governments on the long list of possible individual cases to provide any updated information on application two or three weeks ahead of the Conference; and the issue of participation in informal tripartite consultations on the working methods.

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

74. In order to guide the CEACR in its reflection on continuous improvement of its working methods, a subcommittee on working methods was set up in 2001. In 2018, the subcommittee on working methods met for the 18th time. The subcommittee on working methods focused its discussions on the Governing Body decision on the Standards Initiative adopted in November 2018 and in particular the manner in which it might broaden the very strict criteria for breaking its cycle of review when receiving comments from workers' or employers' organizations under article 23(2), of the ILO Constitution. Further to paragraph 52(iv) above, the Committee of Experts' views are reproduced below for ease of reference: [58]

> ***Observations made by employers'and workers' organizations***
>
> **94.** At each session, the Committee recalls that the contribution by employers' and workers' organizations is essential for the Committee's evaluation of the application of Conventions in national law and in practice. Member States have an obligation under article 23, paragraph 2, of the Constitution to communicate to the representative employers' and workers' organizations copies of the reports supplied under articles 19 and 22 of the Constitution. Compliance with this constitutional obligation is intended to enable organizations of employers and workers to participate fully in the supervision of the application of international labour standards. In some cases, governments transmit the observations made by employers' and workers' organizations with their reports, sometimes adding their own comments. However, in the majority of cases, observations from employers' and workers' organizations are sent directly to the Office which, in accordance with the established practice, transmits them to the governments concerned for comment, so as to ensure respect for due process. For reasons of transparency, the record of all observations received from employers' and workers' organizations on the application of ratified Conventions since the last session of the Committee is included as Appendix III to its report. Where the Committee finds that the observations are not within the scope of the Convention or do not contain information that would add value to its examination of the application of the Convention, it will not refer to them in its comments. Otherwise, the observations received from employers' and workers' organizations may be considered in an observation or in a direct request, as appropriate.

75. The Committee then distinguished between observations received from employers' and workers' organizations within the year in which the regular government report is due and those received outside a reporting year.

> *In a reporting year*
>
> **95.** At its 86th Session (2015), the Committee made the following clarifications on the general approach developed over the years for the treatment of observations from employers' and workers' organizations. The Committee recalled that, **in a reporting year**, when observations from employers' and workers' organizations are not provided with the government's report, they should be received by the Office by 1 September at the latest, so as to allow the government concerned to have a reasonable time to respond, thereby enabling the Committee to examine, as appropriate, the issues raised at its session the same year. When observations are received after 1 September, they would not be examined in substance in the absence of a reply from the government, except in exceptional cases. Over the years, the

[58] Report of the CEACR, Report III (Part A), ILC, 108th Session, 2019, paras 94–102.

Committee has identified exceptional cases as those where the allegations are sufficiently substantiated and there is an urgent need to address the situation, whether because they refer to matters of life and death or to fundamental human rights or because any delay may cause irreparable harm. In addition, observations referring to legislative proposals or draft laws may also be examined by the Committee in the absence of a reply from the government, where this may be of assistance for the country at the drafting stage.

Outside of a reporting year

98. The Committee recalls that, **in a non-reporting year**, when employers' and workers' organizations send observations which simply repeat comments made in previous years, or refer to matters already raised by the Committee, such comments will be examined in the year when the government's report is due, in accordance with the regular reporting cycle. In this case, a report will not be requested from the government outside of that cycle.

99. Where the observations on a **technical** Convention meet the criteria [set out below], the Committee will request the office to issue a notification to Governments that the article 23 observations received will be examined at its subsequent session with or without a response from the government. This would ensure that Governments have sufficient notice while ensuring that the examination of matters of importance are not further delayed.

100. The Committee would thus review the application of a **technical Convention** outside of a reporting year following observations submitted by employers' and workers' organizations having due regard to the following elements:

– the seriousness of the problem and its adverse impact on the application of the Convention;

– the persistence of the problem; and

– the relevance and scope of the government's response in its reports or the absence of response to the issues raised by the Committee, including cases of clear and repeated refusal on the part of a State to comply with its obligations.

101. With respect to **any Convention (fundamental, governance or technical)**, recalling its well-established practice, the Committee will examine employers' and workers' observations in a non-reporting year in the year received in the exceptional cases [i.e. those where the allegations are sufficiently substantiated and there is an urgent need to address the situation, whether because they refer to matters of life and death or to fundamental human rights or because any delay may cause irreparable harm], even in the absence of a reply from the government concerned.

102. The Committee emphasized that the procedure set out in the paragraphs above aims at giving effect to decisions taken by the Governing Body which have extended the reporting cycle and called for safeguards in that context, to ensure that effective supervision of the application of ratified Conventions is maintained. One of these safeguards consists in giving due recognition to the possibility afforded to employers' and workers' organizations to draw the attention of the Committee to matters of particular concern arising from the application of ratified Conventions, even in a year when no report is due. The approach above also pays particular attention to the importance of providing due notice to governments, except in exceptional circumstances, and in all cases the Committee will indicate its reasons for breaking the cycle.

Committee on Freedom of Association (CFA)

76. The new members of the Governing Body CFA appointed in June 2017 pursued active and constructive discussions on the Committee's working methods in dedicated sittings in October 2017 and in March and October 2018. The Committee has concluded its reflections on a number of questions it had been examining concerning the effective communication of its procedures and mandate to constituents and the strengthening of its tripartite governance. This can be particularly seen in the continuing work of the CFA subcommittee, which identifies priority cases for examination and proposes the agenda of the next Committee meeting with a view to ensuring relative regional balance and rapid treatment of urgent cases.

77. Besides its work on the annual report and consideration of the progress on the case management system and the completion of the compilation of decisions which is described later in this document, the Committee had further discussions on its working methods, its contribution to the ILO centenary, reflections on trends in the use of its procedure and modalities for the examination of article 24 representations referred to it.

78. *Objective of the annual report*. The annual report is intended to provide useful information on the use of the CFA procedure throughout the year, supported by statistical data and other details with regards to the work undertaken by the CFA, the progress made and the serious and urgent cases examined by the Committee. The first annual report covered the period of 2017 (its March, May–June and October–November 2017 sessions). The statistical information on cases treated in 2017 set the baseline for comparison on the use of this special procedure over future years. The Committee will submit an annual report for 2018 at the Governing Body's 335th Session (March 2019). The Committee considered that the presentation of this report to the International Labour Conference CAS offered an important opportunity to improve its communication and visibility.

79. *Modernization of case management and internal methods of work of the Office.* The streamlining of procedures and ensuring greater transparency is being pursued within the framework of the Governing Body's discussion in October–November 2018 on the Standards Initiative (GB.334/INS/5) and the agreement to finance an electronic document and information management system for the supervisory bodies.

80. *Compilation of decisions of the CFA*. Following previous decisions of the Committee and the Governing Body, and recalling the principles of universality, continuity, predictability, fairness and equal treatment, which it must ensure in the area of freedom of association, the Committee completed the compilation in concise form of its decisions in more than 3,200 cases over 65 years. The electronic database of the compilation with simple search features and easy access to the full context of the complaints is now available online and the compilation is also available in hard copy.

81. *Inactive cases.* The Committee has considered the question of cases not resolved for lack of information and the procedures and conditions for considering such cases as closed. The Committee decided that any follow-up cases that have not received information either from the government or from the complainant for the last 18 months (or 18 months from the last examination of the case) will be considered closed. This practice would not be used for serious and urgent cases. Cases concerning countries that have not ratified the freedom of association Conventions will be decided on a case-by-case basis depending upon the nature of the case. Letters will be sent to governments and complainants indicating this decision and the importance of furnishing follow-up information in relation to the Committee's recommendations.

82. *The ILO Centenary.* The Committee expressed its enthusiasm in contributing to the high-level event on freedom of association and collective bargaining called for in the 2018 ILC resolution concerning the second recurrent discussion on social dialogue and tripartism. The Committee also proposed that the Centenary year be used as an opportunity for conversations at the regional and national levels on the promotion of the principles of freedom of association and collective bargaining as well as on the impact of the special procedure for submitting complaints and its optimum articulation with national mechanisms.

83. *Article 24 representations concerning freedom of association.* Having compared its current practice and procedure with that of ad hoc committees constituted by the Governing Body, the Committee decided that three of its members would be appointed (one from each group) to examine a given representation referred to it. The entire case file will be made available to them and they will be able to meet as many times as considered necessary for the

conclusion of their work. Where other Conventions are also raised in the representation, avenues could be explored for ensuring effective communication between the established ad hoc tripartite Committees where appropriate to ensure coherence in the factual understanding. The report as finalized by the three members would continue to be presented as a separate report to the Governing Body and will be able to be considered along with all other article 24 reports at the end of the Governing Body session.

Draft decision

84. ***The Governing Body:***

(a) welcomed the progress reported on the implementation of the two components of the Standards Initiative, namely the Standards Review Mechanism (SRM) and the workplan to strengthen the supervisory system, which was the result of consensual tripartite decisions;

(b) with respect to the component concerning the SRM, noted the information provided on the lessons learned and future directions; requested the Standards Review Mechanism of a tripartite working group (SRM TWG) to take its guidance into account in continuing its work and to provide a report for the Governing Body's second review of the functioning of the SRM TWG in March 2020; and, to guarantee the impact of that work, reiterated its call upon the Organization and its tripartite constituents to take appropriate measures to follow up on all its previous recommendations;

(c) having reviewed, against the common principles guiding the strengthening of the supervisory system, the report on progress in implementing the ten proposals of the workplan, welcomed the progress achieved so far and requested the Office to continue the implementation of the workplan which should be updated according to its guidance;

(d) approving the approach taken and the timelines proposed, requested the Office to ensure that action is taken with respect to producing the guide on established practices across the supervisory system, the operation of the article 24 procedure, the streamlining of reporting, information sharing with other organizations, the formulation of clear recommendations of the supervisory bodies, pursuing systematized follow-up at the national level and consideration of the potential of article 19, paragraphs 5(e) and 6(d);

(e) with respect to the proposal for a regular conversation between the supervisory bodies, invited the Chairperson of the Committee on Freedom of Association (CFA) to present its annual report to the Conference Committee on the Application of Standards (CAS) as from 2019;

(f) with respect to the proposal for codification of the article 26 procedure, recalled the decision to consider the steps to be taken after the guide to the supervisory system is available to constituents, and requested the Office to provide it with further information in that regard in March 2020;

(g) with respect to the proposal to consider further steps to ensure legal certainty, decided to hold informal consultations in October 2019 and, to facilitate that tripartite exchange of views, requested the Office to prepare a paper on the elements and conditions for the operation of an independent body under article 37(2) and of any other consensus-based options;

(h) with respect to the proposal for review by the supervisory procedures of their working methods, invited the CAS, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the CFA to continue their regular consideration of their working methods.

Appendix I

Decision taken by the Governing Body at it 334th Session (October–November 2018) on strengthening the supervisory machinery [1]

The Governing Body, based on the proposals set out in documents GB.334/INS/5 and GB.332/INS/5(Rev.) and the further guidance provided during the discussion and the tripartite consultations:

(1) Approved the following measures concerning the operation of the representations procedure under article 24 of the Constitution:

(a) arrangements to allow for optional voluntary conciliation or other measures at the national level, leading to a temporary suspension for a maximum period of six months of the examination of the merits of a representation by the ad hoc committee. The suspension would be subject to the agreement of the complainant as expressed in the complaint form, and the agreement of the government. These arrangements would be reviewed by the Governing Body after a two-year trial period;

(b) publication of an information document on the status of pending representations at the March and November sessions of the Governing Body;

(c) members of article 24 ad hoc tripartite committees need to receive all information and relevant documents from the Office 15 days in advance of their meetings and members of the Governing Body should receive the final report of article 24 ad hoc tripartite committees three days before they are called to adopt their conclusions;

(d) ratification of the Conventions concerned as a condition for membership of Governments in ad hoc committees unless no Government titular or deputy member of the Governing Body has ratified the Conventions concerned;

(e) maintaining existing measures and exploring other possible measures to be agreed upon by the Governing Body for the integrity of procedure and to protect ad hoc committee members from undue interference; and

(f) reinforced integration of follow-up measures in the recommendations of committees and a regularly updated document on the effect given to these recommendations for the information of the Governing Body, as well as continuing to explore modalities for follow-up action on the recommendations adopted by the Governing Body concerning representations.

(2) Approved the measures proposed on the streamlining of reporting on ratified Conventions concerning:

(a) thematic grouping for reporting purposes under a six-year cycle for the technical Conventions with the understanding that the Committee of Experts further reviews, clarifies and, where appropriate, broadens the criteria for breaking the reporting cycle with respect to technical Conventions; and

(b) a new report form for simplified reports (Appendix II of GB.334/INS/5).

(3) Decided to continue to explore concrete and practical measures to improve the use of article 19, paragraphs 5(e) and 6(d), of the Constitution, including with the purpose of

[1] GB.334/INS/5, para. 21, as amended by the Governing Body.

enhancing the functions of General Surveys and improving the quality of their discussion and follow-up.

(4) Instructed the CFA to examine representations referred to it according to the procedures set out in the Standing Orders for the examination of article 24 representations, to ensure that representations referred to it be examined according to the modalities set out in the Standing Orders.

(5) Encouraged the Committee of Experts to pursue the examination of thematically related issues in consolidated comments; and invites it to make proposals on its possible contribution to optimizing the use made of article 19, paragraphs 5(e) and 6(d), of the Constitution, in particular by considering measures to improve the presentation of General Surveys, so as to ensure a user-friendly approach and format that maximizes their value for constituents.

(6) Invited the CAS to consider, through the informal tripartite consultations on its working methods, measures to enhance its discussion of General Surveys.

(7) Requested the Office to present at its 335th Session (March 2019) following consultations with the tripartite constituents:

(a) concrete proposals to prepare the discussion on actions 1.2 (regular conversation between the supervisory bodies) and 2.3 (consideration of further steps to ensure legal certainty), including, but not limited to, organizing a tripartite exchange of views in the second semester of 2019 on article 37(2) of the Constitution;

(b) a report on progress towards the development of a guide on established practices of the supervisory system, bearing in mind the guidance received on action 2.1 (consideration of the codification of the article 26 procedure);

(c) further detailed proposals on the use of article 19, paragraphs 5(e) and 6(d), of the Constitution, including in relation to the Annual Review under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work;

(d) a report on progress towards the development of detailed proposals for electronic accessibility to the supervisory system for constituents (e-reporting, section 2.1 of GB.332/INS/5(Rev.)) bearing in mind the concerns raised by constituents during the discussion;

(e) more information on a pilot project for the establishment of baselines for the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187) (section 2.2.2.2 of GB.332/INS/5(Rev.)); and

(f) a report on progress towards completing the Standards Initiative workplan as revised by the Governing Body in March 2017, including information on progress made with regard to the review and possible further improvements of their working methods by the supervisory bodies in order to strengthen tripartism, coherence, transparency and effectiveness.

Appendix II

Workplan and timetable for Governing Body discussions on the strengthening of the supervisory system

	Governing Body, March 2017	*Governing Body, October – November 2017*	*Governing Body, March 2018*	*Governing Body, October –November 2018*	*Governing Body, March 2019*
Focus area 1: Relationships between the procedures					
1.1. Guide on established practices across the system	First consideration	*Decision that Office develops a guide*			Review of implementation of Standards Initiative
1.2. Regular conversation between supervisory bodies	First consideration				Review of implementation of Standards Initiative
Focus area 2: Rules and practices					
2.1. Consider codification of the article 26 procedure		Guidance on possibility of Standing Orders	Guidance on possibility of Standing Orders	Guidance on possibility of Standing Orders	Review of implementation of Standards Initiative
2.2. Consider the operation of the article 24 procedure	Guidance on initial elements	Discussion as per guidance	Discussion as per guidance	Discussion as per guidance	Review of implementation of Standards Initiative
2.3. Consider further steps to ensure legal certainty	Guidance on whether discussion should proceed	Guidance on whether discussion should proceed	Guidance on whether discussion should proceed	Guidance on possible tripartite exchange of views	Review of implementation of Standards Initiative
Focus area 3: Reporting and information					
3.1. Streamline reporting	Examination of different options	Examination of options and decision to computerize case-management	Continuation of examination of options	Continuation of examination of options	Review of implementation of Standards Initiative
3.2. Information-sharing with organizations	*Regular action by Office to be continued*				Review of implementation of Standards Initiative
Focus area 4: Reach and implementation					
4.1. Clear supervisory body recommendations	*Integrated in support provided by Office*				Review of implementation of Standards Initiative
4.2. Systematized follow-up at national level	*Integrated in support provided by Office*				Review of implementation of Standards Initiative
4.3. Consider potential of article 19	Guidance on initial elements	First consideration	Further guidance	Further guidance	Review of implementation of Standards Initiative

Review by the supervisory procedures of their working methods	
Committee of the Application of Standards	Informal tripartite consultation on working methods
Committee of Experts	Ongoing discussion of working methods
Committee on Freedom of Association	Ongoing discussion of working methods

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INTERNATIONAL LABOUR OFFICE

Governing Body

335th Session, Geneva, 14–28 March 2019

GB.335/PV

Minutes of the 335th Session of the Governing Body of the International Labour Office

Fifth item on the agenda

The Standards Initiative: Overall review of its implementation
(GB.335/INS/5)

1. General observations on the implementation of the Standards Initiative – draft decision 84(a)

199. *The Worker spokesperson*, highlighting the key relevance of progress made regarding the Standards Initiative, said that her group welcomed the opportunity to evaluate, in a holistic manner, the progress made in relation to the Standards Review Mechanism (SRM) and the strengthening of the supervisory system. The ILO was uniquely placed in the UN system as a result of its normative framework and mandate consisting of standard-setting, ratification, implementation, supervision, enforcement and technical support. With regard to evaluating the progress made so far and future developments, equal importance should be given to various aspects of the Organization's framework and mandate. Noting the decision from the 334th Session of the Governing Body, the Workers' group expressed the hope to further develop the discussion rather than revisit earlier elements that had been discussed extensively and decided with a great majority at the previous session. Considering that that was a document providing a comprehensive review of the Standards Initiative and not a report inviting the Governing Body to consider taking new decisions on strengthening the supervisory machinery, the document should not have been marked GB.335/INS/5.

200. *The Employer spokesperson* expressed his group's disappointment at the late publication of the document. However, it reflected the progress and the outcomes which had been achieved by the Standards Initiative. The Standards Initiative process reflected a strong consensus among ILO constituents to preserve and improve the ILO supervisory system as one of its main means of action to address its existing limitations and to adapt it to new needs in the world of work. He said that, on the occasion of the ILO's Centenary, the supervisory system was particularly needed to guide member States in various labour and social issues. Efforts to improve the transparency, balance and relevance of the system in the world of work should continue through ongoing support to the supervisory mechanism by the Office and constituents. The Employers supported subparagraph (a).

201. *Speaking on behalf of the Africa group*, a Government representative of Namibia recalled that the objectives of the Standards Initiative were to enhance the relevance of international labour standards through the SRM and to consolidate tripartite consensus on an authoritative supervisory system. The Africa group supported the draft decision.

202. *A Government representative of Brazil* said that he was speaking on behalf of a significant majority of governments from Latin America and the Caribbean. He said that the countries in his region had very high rates of ratification of ILO Conventions and were constructive participants in ILO initiatives. Freedom of expression, freedom of association, collective bargaining and social dialogue were key components of their labour legislation and policies. The group of countries that he represented sought to develop solutions to reinvigorate and consolidate true tripartism, drawing inspiration from the best practices of other multilateral organizations; to promote transparency and accountability; and to establish a system free from selectivity and politicization. The fact that most of the cases before the Committee on Freedom of Association (CFA) came from Latin America and the Caribbean was a source of grave concern to the members of his group, as it led them to question the efficiency and effectiveness of the CFA in ensuring respect for freedom of association principles

worldwide. The CFA was not a regional mechanism, and the disproportionate focus on one region could not be explained solely by the number of complaints coming from the region.

203. The current working methods of the CEACR were at odds with any concept of good governance and due process and prevented governments from being able to properly prepare for and participate in its procedures. The introduction of baseline-based report forms, bringing baseline information on thematically related Conventions together in a single form, was welcomed, but raised the question whether countries would be asked to report on all Conventions or only on one of them. The Office should support the implementation of practical suggestions and gradual changes with a view to improving the supervisory system, particularly any proposals regarding the CFA and the CAS that were in line with the approaches put forward by his group in the context of the Standards Initiative. The Office should consider more robust changes to the system and make every effort to avoid the duplication of initiatives and procedures, the saturation of the system, and the overburdening of States brought about by the examination of a single case in the three main supervisory bodies.

204. A guide consisting of a web-based tool on established practices of the ILO supervisory procedures was of vital importance and should include at a minimum: the definition of every supervisory body; the competence of each body; the requirements for the admissibility of cases; the procedure for the examination of cases; the effects of recommendations; the time limits for cases; the terms for the examination of cases; and definitions of what was meant by closed, follow-up and active cases before the CFA. As to the CEACR, he proposed that the Office review the selection process of the members of the CEACR; increase transparency in the selection process; establish a tripartite advisory committee to produce a short-list of proposed experts, which would then be presented to the Governing Body for decision; ensure geographical and gender balance in the composition of the CEACR; and ask the CEACR to explain and justify in detail the grounds for breaking the reporting cycle of a certain country in a certain context. Moreover, the Chairpersons of the CAS and the Government group should be able to meet with the CEACR at its November meeting, as the social partners regularly did.

205. The Office should review and improve the criteria for the selection of cases to be examined by the CAS, with an emphasis on geographical balance and a balance between developed and developing countries, to ensure that such criteria were clear, objective and impartial, and the Governing Body should develop standing guidelines on the selection of cases. The Office should also encourage the use of new technologies to enable the publication, at least 30 days prior to the opening of the Conference, of the final list of the 24 countries to be examined by the CAS. Moreover, it should allow the representatives of the relevant governments to take the floor following the presentation of the proposed conclusions to the cases concerning them prior to the adoption of such proposals by the CAS. Furthermore, the Chairperson of the CAS should be involved in the drafting of conclusions to ensure that the justifications set forth were technical and that priority was given to truly urgent cases. Prior consultations on the General Survey should also be established following the publication of the report of the CEACR to enable proper preparation for the Conference.

206. As to the CFA, voluntary mechanisms based on the recommendation of its subcommittee on working methods should be created to enable the suspension of proceedings so as to permit conciliation efforts or other measures at the national level emulating the mechanism that had been adopted for representations submitted under article 24 of the ILO Constitution. The CFA should also take into consideration structural constraints for addressing complaints at the local level and encourage the strengthening of mechanisms and the resolution of cases at the national level. Lastly, with regard to commissions of inquiry, the Office should codify the article 26 procedure and establish a hierarchy of norms in order to ensure that the article 26 procedure would be used only as a last resort. The Office should also formalize

the rule whereby the establishment of a commission of inquiry suspended the actions of other supervisory mechanisms directly related to the case. In the light of the above, he was not in a position to support the draft decision and proposed replacing the word "welcomed" with "took note of" in order to acknowledge both the progress already made and the steps yet to be taken. It also proposed omitting "which was the result of consensual tripartite decisions", as there was no need to refer to a tripartite consensus, since all Governing Body decisions were based on such consensuses.

207. *Speaking on behalf of IMEC*, a Government representative of the United States said that her group welcomed the progress made thus far under the Standards Initiative. The work of the SRM TWG was well under way, having already reviewed 160 of the 235 international labour standards included in its initial programme of work. The changes to the reporting cycle and the institution of an electronic document management system should enhance the effectiveness and efficiency of the supervisory system, and the modifications to the article 24 procedure should strengthen that process and ensure that it was balanced, objective and rigorous. IMEC commended the commitment of the tripartite partners and the Office to strengthening and upholding the supervisory system and supported subparagraph (a), as originally drafted.

208. *A representative of the Director-General* (Director, NORMES) said that every effort would be made to ensure the timely publication of Governing Body documents in the future.

209. *The Worker spokesperson*, referring to the amendment proposed by the Government representative of Brazil, said that her group considered a tripartite consensus to be a decision supported by a considerable majority of the Governing Body. The Governing Body had adopted a decision, with the support of a considerable majority, at the previous session, and the Workers did not wish to see that consensus challenged in the wording of subparagraph (a) of the current draft decision or elsewhere.

210. *A Government representative of Brazil* said that he was speaking on behalf of a significant majority of governments from Latin American and the Caribbean. He said that a consensus, regardless of whether it was tripartite, was the absence of explicit dissent. His group was not in any way challenging the decision adopted by consensus at the previous session of the Governing Body and simply wished to point out that all Governing Body decisions were essentially the result of tripartite consensus.

211. *The Chairperson* said that, given that the Governing Body was engaged in a tripartite dialogue, it did not seem necessary to mention the word "consensus" every time a decision was taken.

212. *The Worker spokesperson* said that she had understood that the Governing Body would discuss the proposed amendments in detail at the end of the discussion, at which point members might also discuss the difference between unanimity and consensus. It was important to the Workers that the Governing Body should build on the consensus that had been reached at its previous session.

2. Review of the functioning of the Standards Review Mechanism (paragraphs 6–21) – draft decision 84(b)

213. *The Employer spokesperson* said that the SRM TWG had already delivered a major part of its initial programme of work and may need to determine a new programme of work once it was completed. Review of standards by the SRM TWG was only the first step in the process of keeping ILO standards up to date and relevant. SRM TWG decisions should be followed

up by the Office, the Governing Body, the ILC, other ILO tripartite meetings and the constituents in ILO member States. He noted that the SRM TWG had determined follow-up to 63 instruments that had previously been determined to be outdated or in need of revision, and had classified 14 of the 28 standards it had reviewed as either outdated or as requiring further action to ensure their continued and future relevance. In addition, 34 standards had been classified as outdated by the Special Tripartite Committee under the MLC, 2006. To prevent another such "modernization backlog" from recurring in the future, effective measures should be taken to ensure standards were gradually and continuously modernized and updated, without losing sight of the needs of the standards system as a whole. He welcomed the discussion relating to the shape of new standards and processes for their adoption and revision as an opportunity to concentrate, refocus and ensure that the standards system was 'future proofed'. Ratification and implementation of instruments was crucial. The extent to which the pioneering approach of the MLC, 2006, which appeared to have facilitated the promotion of ratification, implementation and supervision of standards, could be adopted in other areas should be explored. In relation to the lessons learned by the SRM TWG, not every gap in regulation needed to be filled by standards as other rule-making could be considered. Further, while the new three classification system was welcomed, eventually "up to date" would be the only classification, as the other two classifications were temporary. In addition, the Employer group supported the proposal to provide additional resources for the SRM TWG and its follow up, the bulk of which should be invested in creating new sustainable standards. Finally, the statement in paragraph 10 of the document concerning promoting the ratification or implementation of all active standards could not be correct, as that included outdated standards proposed for abrogation. His group supported subparagraph (b).

214. *The Worker spokesperson* said that the tripartite agreement that all standards remained legally active unless otherwise decided by the Conference confirmed that all active standards should be promoted, and allowed the SRM TWG review to take place without questioning the validity of the body of standards. She was satisfied that the SRM TWG was performing its mandate to identify gaps in coverage that required standard-setting action as well as practical and time-bound follow-up action in terms of the promotion of the ratification of up-to-date instruments. While the SRM TWG had succeeded in reaching consensual tripartite recommendations over its first four sessions, the discussions had not been easy. The Workers remained concerned about the absence of adequate follow-up action with respect to addressing identified gaps in standards, as opposed to the swift action taken to abrogate or withdraw a large number of instruments. The group would assess the success of its continued engagement in the SRM TWG on the Organization's capacity to place proposals for new standards on the Conference agenda and increase ratification rates of up-to-date standards, especially those replacing older instruments on the same or similar subjects. When considering whether standards were outdated, it was necessary to take into account the fact that there was no automatic obligation on member States to ratify revising Conventions, thereby denouncing older Conventions. Progress in those two critical areas would allow movement towards a coherent standards policy that aligned standards supervision, standard-setting and standards review.

215. The Workers were concerned about the risk of repeating a critical weakness of the Cartier Working Party, namely the failure to galvanize a serious ratification campaign for up-to-date standards, the ratification rates of which remained dangerously low. Consequently, while the action taken by the Office to encourage the ratification of such standards was welcome, a more proactive and ambitious approach was required. Rather than merely writing to member States, the Office should engage directly through technical assistance and DWCPs. Increasing ratification rates of relevant standards also required the political commitment from member States, including the support of the social partners at the national level. She requested the Office to inform the Governing Body at its future sessions about the impact and outcome of the campaign, under way in 136 member States, to promote the ratification

of 17 up-to-date Conventions related to 30 instruments previously identified as outdated. With respect to new standards, the effectiveness and credibility of the SRM TWG required a firm commitment from Employers and Governments to follow up on its recommendations. It was not acceptable for groups to cherry-pick recommendations, after negotiations to reach tripartite consensus. The establishment of institutional arrangements for the Conference to follow up on the standard-setting items identified by the SRM TWG remained an important priority and the Workers hoped that the discussions under way would soon lead to a feasible solution as to how to prevent a traffic jam while ensuring action to place proposals on the Conference agenda. A commitment to dealing with the question of how to transfer ratifications from older to newer instruments was necessary. A key consideration was to ensure that no gaps in protection resulted from decisions taken by the SRM TWG. At the previous meeting, the Workers had reluctantly agreed to recommend abrogation dates for outdated instruments while there continued to be member States bound by them that had not ratified the related up-to-date Conventions. In the absence of mechanisms to ensure that up-to-date Conventions would be ratified in the near future, the Workers would closely monitor the follow-up to recommendations and would want to see effective action to improve the ratification rate of up-to-date instruments in order to prevent gaps in protection. Until her group saw that activities to promote ratification bore fruit, it would not agree to abrogate outdated instruments without ensuring that new instruments were first ratified. With those remarks, the Workers accepted subparagraph (b).

216. *Speaking on behalf of the Africa group*, a Government representative of Namibia commended the SRM TWG on the new three classification system for standards. He called for an increase in the number of Government members participating in SRM TWG meetings and supported continuous improvement of the preparatory process for them, especially the organizing of information sessions with member States and progress towards more transparency. The Africa group reaffirmed its commitment to pursuing efforts to ensure that appropriate working methods and procedures were respected. He supported subparagraph (b).

217. *A Government representative of Brazil* said that he was speaking on behalf of a significant majority of governments from Latin America and the Caribbean. The group of countries that he represented had consistently supported the efforts of the SRM to modernize and improve the standards system, which were in line with his group's own aims in relation to the standards system. The group had always maintained its commitments in relation to the recommendations of the SRM TWG. His group would support subparagraph (b) with no amendments.

218. *Speaking on behalf of IMEC*, a Government representative of the United States said that the relationship between the SRM and standard-setting mechanisms must be strengthened, and she reiterated two main points in that regard. First, the success of the SRM depended not only on the work within the working group, but also on the implementation of the group's recommended practical and time-bound follow-up actions. The discussions of the two option papers in 2018 on the way forward would continue at the 2019 meeting, and it is critical that it has conclusive discussions to ensure that follow-up work is timely, effective and sustainable. This would be crucial for ensuring that the ILO's body of standards was up to date without decreasing the level of protection of workers, and taking into consideration the needs of sustainable enterprises. Second, the outcomes of the SRM should be fully integrated into the activities of the Office, including when proposing items for inclusion on the agenda of the Conference as a matter of institutional priority. IMEC invited the Office to continue its efforts to find ways to ensure concrete and timely follow-up to the SRM TWG recommendations with regard to standard-setting. IMEC would appreciate further explanation from the Office regarding the indication, in paragraph 21, that the Governing Body would be asked to consider the need for additional resources during its 337th Session. Lastly, IMEC requested confirmation that the report of the fifth meeting of the SRM TWG

would be discussed by the Governing Body at the 337th Session, and that the functioning of the SRM would be reviewed at the 338th Session. IMEC supported subparagraph (b).

219. *Speaking on behalf of ASEAN*, a Government representative of Thailand said that his group applauded the SRM TWG for its vital contribution in ensuring the relevance and responsiveness of international labour standards and took note of the lessons learned as well as the remaining challenges. ASEAN looked forward to the review of the functioning of the SRM TWG in March 2020, and to further reflecting on how the Organization could optimize the working group's recommendations in a sustainable and practical manner, and systematize their follow-up for substantial and meaningful results. He supported subparagraph (b).

220. *A representative of the Director-General* (Director, NORMES), responding to the request for clarification made by IMEC in relation to paragraph 21, said that the Office took seriously the Governing Body's insistence on the need for comprehensive and time-bound follow-up to all SRM-related recommendations. The Office had set up a mechanism to coordinate the various follow-up actions taken by colleagues in the field and headquarters, in accordance with the list of necessary follow-up actions that was added to at each successive meeting. While up until now the follow-up had been financed through existing resources, the Office planned to present a concrete proposal with respect to resources to the Governing Body at its 337th Session to ensure the continued quality of its follow-up to the SRM TWG recommendations.

3. Workplan to strengthen the supervisory system – draft decision 84(c)

3.1. Relationships between procedures (paragraphs 30–37) – draft decision 84(d) and (e)

221. *The Worker spokesperson* said that the emphasis in paragraph 24 on the role of the supervisory system in giving effect to the ILO founding values and constitutional objectives was welcome. The Workers would prefer the guide on established practices across the supervisory system to be descriptive and to help improve the transparency of and accessibility to the existing system. The guide itself must not become a vehicle for introducing changes to current practices. Collaboration with the ITC–ILO on the development of the Guide was welcome. The Workers remained opposed to regular meetings of the supervisory bodies, which would undermine the independence of those bodies, thereby weakening them. However, in line with the Joint Position of the Workers' and Employers' groups on the ILO Supervisory Mechanism (13 March 2017), her group supported the presentation by the CFA of the first annual report by its Chairperson to the CAS in 2019. She supported subparagraphs (c), (d) and (e).

222. *The Employer spokesperson* said that, while the proposed guiding principles for the supervisory system presented at the start of the current session had been rather abstract and vague, all constituents agreed that the supervisory system must be transparent, protect workers, take into account the needs of sustainable enterprises to flourish and create jobs, and be flexible enough to adapt to the changing world of work. It would be desirable to make the guide on established practices across the supervisory system available, as an electronic tool, before the Centenary Session of the Conference. It should be regularly updated and not taken as a pretext for ceasing efforts to remedy identified shortcomings in the supervisory procedures. The Employers took it that the invitation to the Chairperson of the CFA by the CAS would operate in line with the March 2017 Joint Position of the Workers' and Employers' groups that required a proper clarification of the role and mandate of the CFA. The CFA did not have the competence to make interpretations of ratified Conventions and

had no supervisory function. Its mandate, as clarified in its first annual report and in the introduction of the new compilation of decisions, should be recalled when its Chairperson was introduced to the CAS to present its annual report. He welcomed the fact that the CEACR had begun systematically examining, in its observations, the follow-up given to the conclusions of cases discussed by the CAS. He urged the Office to ensure that the CEACR fully accepted the CAS's findings, interpretations and conclusions as a basis for its own examinations and observations. In order to facilitate such exchanges between the two Committees, the Office could provide electronic platforms or other channels. The Employers supported subparagraphs (c), (d) and (e).

223. *Speaking on behalf of the Africa group*, a Government representative of Namibia said that his group welcomed the proposal for a regular conversation between the supervisory bodies but would like clarification of when the annual report of the CFA would be submitted and of the role that the report would play in the examination of the implementation of ratified Conventions by the CAS. His group supported subparagraphs (d) and (e) of the draft decision.

224. *A Government representative of Brazil* said that he was speaking on behalf of a significant majority of governments from Latin America and the Caribbean. He reiterated the importance of the guide on established practices across the system and proposed two amendments to subparagraph (c) of the draft decision. Firstly, the word "welcomed" should be replaced by "noted" because, in the view of a significant majority of governments from Latin America and the Caribbean, the progress made in strengthening the supervisory system was insufficient. Secondly, the phrase "and confirmed at its 337th Session" should be added to the end of the sentence to ensure that the Governing Body re-examined the workplan at its next session.

225. *Speaking on behalf of IMEC*, a Government representative of the United States said that her group supported subparagraph (c) of the draft decision. She also noted it is unclear what material was encompassed in subparagraph (d) and requested clarification before adopting. IMEC supported the proposed timeline for providing feedback on the guide on established practices and welcomed information on how it could be accessed during the consultation phase. Her group looked forward to the report from the Office on the guide's delivery at the next session of the Governing Body and agreed that the conversation on the codification of the article 26 procedure could be taken up in March 2020, after the review of the guide had been completed.

226. Her group had supported more regular exchanges between the supervisory bodies, insofar as they would advance the objective of greater coherence across the supervisory system. IMEC appreciated that the proposed annual meeting had not been pursued due to concerns of incurring additional expenses and yielding little utility. She requested further information on the genesis of the invitation extended to the Employer and Worker Vice-Chairpersons of the CAS to meet the CEACR at a special session held for that purpose and asked why the Chairperson and Reporter of the CAS were not also invited. Her group welcomed the proposal to invite the Chairperson of the CFA to present the CFA's annual report to the CAS and supported subparagraph (e) of the draft decision. She also requested clarification on whether the Governing Body could extend the invitation to the CFA Chairperson, as drafted, or whether it must be extended by the CAS itself. In the case of the latter, the Office may wish to propose an amendment to subparagraph (e).

227. *Speaking on behalf of ASEAN*, a Government representative of Thailand said that his comments related to focus areas 1, 2 and 3. His group commended the ongoing improvements to the supervisory system, including efforts to make it more accessible by means of the guide on established practices. However, the guide should not replace regular training and knowledge dissemination at the national level. He reiterated his group's call for

an independent body under article 37 of the ILO Constitution and its support for the proposed informal tripartite exchange of views. The outcomes and proposals of that exchange regarding the establishment of a tribunal should be submitted to the Governing Body by its March 2020 session.

228. His group welcomed the new reporting arrangements, which promised to improve operational clarity and reduce the heavy reporting burden on member States. Nevertheless, regular and accessible training on the online platform should be provided to tripartite constituents at the national level. His group welcomed the pilot project on establishing baselines for the article 22 reporting process, which would complement other changes introduced to streamline reporting. After the pilot project had concluded, it should be evaluated to examine which information had been made public and how it had been used so as to reach a decision on extending the project to other ILO standards.

229. *A Government representative of Brazil* said that he was speaking on behalf of a significant majority of governments from Latin America and the Caribbean. He said that the words "and also invited the Chairperson and Vice-Chairpersons of the Conference Committee on the Application of Standards to meet with the Subcommittee on Working Methods of the Committee of Experts on the Application of Conventions and Recommendations at its November–December meetings of 2019 and 2020" should be added to the end of subparagraph (e) of the draft decision. Paragraph 36 of the document revealed that the Employer and Worker Vice-Chairpersons of the CAS were invited to meet the CEACR to discuss issues of common interest within the framework of a special session held for that purpose; the Chairperson of the CAS should also be invited to the same or similar sessions to afford governments the same opportunity.

230. *The Worker spokesperson* said that the mandate of the CFA included Conventions as well as principles on freedom of association and effective recognition of the right to collective bargaining. This was clarified in the annex to the *Compilation of decisions of the Committee on Freedom of Association*, the entirety of which had been approved by all three groups of constituents and which contained references to Conventions throughout. It was also expressed in the International Labour Conference Resolution of 1970 concerning trade union rights and their relation to civil liberties. The communication between the Employer and Worker Vice-Chairpersons of the CAS and the CEACR focused on improving communication between the two bodies, rather than methodology or content.

231. *A representative of the Director-General* (Director, NORMES) said that Governing Body members would receive a password enabling them to access the draft guide by 15 April 2019 and would have one month to provide feedback. The Office aimed to finalize the guide by the 108th Session (2019) of the Conference, although that would depend on the feedback received. The second annual report of the CFA would be released the week following the current session of the Governing Body and would provide non-country-specific statistical data on its work over the previous year. Subparagraph (d) of the draft decision was intended to summarize the Governing Body's previous discussions and decisions on elements of the workplan.

232. It was true that the CAS retained authority over its agenda and programme of work; the word "invited" in subparagraph (e) of the draft decision should therefore be replaced by "proposed that the Conference Committee on the Application of Standards (CAS) consider inviting the Chairperson of the Committee on Freedom of Association ...". The Office was certainly willing to follow up on the Government representative of Brazil's suggestion of holding consultations on the General Survey to enable proper preparation for the Conference. As to why the Worker and Employer Vice-Chairpersons of the CAS were invited to the special session of the CEACR but a Government representative was not, it was perhaps to ensure continuity, although more investigation into the matter was required.

233. *The Employer spokesperson* said that his group had never agreed to the Worker spokesperson's interpretation of the CFA's mandate. His group could therefore no longer support subparagraph (e) of the draft decision, and CFA members should discuss the matter outside the Governing Body.

234. *The Worker spokesperson* reiterated that her interpretation of the CFA mandate was based on the *Compilation*, which had been drafted and agreed upon by all three groups of constituents. Any discussion on that point should take place during plenary sessions of the Governing Body.

235. *The Employer spokesperson* said that his group's agreement that the Chairperson of the CFA should be invited to the CAS was predicated on the CFA having a clear mandate. As that was no longer the case, the Employer representatives in the CFA needed further consultations so as to clarify the situation for the Governing Body.

236. *The Worker spokesperson* said that she had made her point about the CFA's mandate in plenary so as to involve all parties in the discussion. Subparagraph (e) of the draft decision related only to the presentation of the CFA's annual report to the CAS, as agreed by tripartite consensus the previous November.

237. *A Government representative of Brazil* said that he was speaking on behalf of a significant majority of governments from Latin America and the Caribbean. He said that it was important that the mandate of each body was legally and politically clear. His group would support discussions outside the Governing Body to reach a compromise on the issue, provided that they were tripartite.

3.2. Rules and practices (paragraphs 38–50) – draft decision 84(d), (f) and (g)

238. *The Worker spokesperson* said that the Governing Body could return to the discussion of a codification of the article 26 procedure if the guide on established practices proved to be insufficient. However, she doubted whether codifying the procedure would improve its efficiency. The real challenge it faced was that reaching a consensus for the establishment of a commission of inquiry took a long time and was often impossible, even in serious cases.

239. With regard to the article 24 procedure, her group would be closely monitoring the suspension of the examination of the merits of representations in order to seek conciliation at the national level, a measure that would be reviewed after a two-year trial period, to ensure that it did not create further delays in the procedure. She emphasized the need to maintain a coherent interpretation of Conventions relating to freedom of association and its related principles. She would like to know whether the Office planned to explore the other measures mentioned in paragraph 43(g) of the Office report.

240. Her group supported the proposal to hold informal tripartite consultations on the elements and conditions necessary for the operation of an independent body under article 37(2) of the ILO Constitution. It was important that those discussions should enable the ILO to improve legal certainty with regard to the interpretation of Conventions, especially when it came to fundamental issues. The questions proposed in paragraph 49 required revision. Question (1), rather than asking about the number of instances of significant disagreements on major issues of interpretation, should focus on when an independent body under article 37(2) might be invoked. The Workers would appreciate an explanation of what was meant by "the existing ILO internal machinery for handling questions relating to the interpretation" in question (3). Her group had concerns related to question (4) and was strongly opposed to any measures that could affect the integrity of the current supervisory bodies. Question (5) required revision as the Constitution already made it clear what the possible alternatives to

establishing a tribunal were, notably article 37(1). With regard to question (6), she believed that the pros and cons would become clear after the other questions had been answered. The answer to question (7) also depended on the answers to the other questions, including question (8). The questions should therefore be reordered. Tripartite consultations on that issue should first examine the procedures that could be established under article 37(2) and then consider the cost of those procedures. Potential costs should neither be overestimated, nor be the primary consideration.

241. With regard to the parameters of a possible tripartite exchange of views on legal certainty, the Workers believed that the Office document should focus on the necessary elements for the operation of an independent body under article 37(2), rather than on other possible solutions. It was necessary to fully explore options under articles 37(1) and (2) before considering other suggestions. The informal consultations on those issues should be held after the 336th Session of the Governing Body in order to allow time for discussion of the issues within the group.

242. *The Employer spokesperson* reiterated his group's support for a staged approach to the codification of the article 26 procedure. A codification should be considered only if the clarification of the rules and practices in the guide was insufficient and if it was guaranteed that a codification would not restrict the existing flexibility of the procedure. His group appreciated the efforts to improve the article 24 procedure.

243. His group supported the proposal to hold informal tripartite consultations on the issue of legal certainty in October 2019, and agreed with the content and the order of the questions set out in paragraph 49 as the basis for the consultations. It was important to address the issue in a comprehensive manner, considering all options and not limiting the discussion to article 37(2). The Office document and the related consultations should focus on consensus-based options. The Office should explore approaches to address possible disagreements regarding the interpretation of Conventions before they developed into major controversies. The ILO constituents had the primary responsibility for the functioning of the standards supervisory system. Related decisions should not be easily outsourced to a new body, as would be the case if the chosen option were article 37(2). Nevertheless, the Employers were keen to engage in discussions regarding all possible options. The Employers supported subparagraphs (d), (f) and (g) of the draft decision.

244. *A Government representative of Brazil* said that he was speaking on behalf of a significant majority of governments from Latin America and the Caribbean. He said that article 26 was a key provision of the Constitution and should be seen as the last resort procedure of the supervisory system and as superior to article 24. Such an important provision of the Constitution should be regulated and rely on Standing Orders. More detailed proposals should therefore be developed on how a greater level of legal certainty could be enjoyed in respect of the procedure. He proposed that the words "further information" should be replaced by "detailed proposals" in subparagraph (f).

245. Noting that it was unnecessary and premature to refer to the specifics before the tripartite consultations had taken place, he proposed the deletion of certain references from subparagraph (g), so that it would read: "with respect to the proposal to consider further steps to ensure legal certainty, decided to hold informal consultations in October 2019 and, to facilitate that tripartite exchange of views, requested the Office to prepare a paper on article 37(2) and other consensus-based options".

246. In the light of the comments made by the Worker spokesperson, he emphasized that the cost of establishing a body under article 37(2) should be considered before discussing the consequences of its establishment.

247. *Speaking on behalf of the Africa group*, a Government representative of Namibia reiterated his group's support for subparagraph (d) of the draft decision. In addition, his group supported the amendments proposed by the Government representative of Brazil to subparagraphs (f) and (g).

248. *Speaking on behalf of IMEC*, a Government representative of the United States noted that her group was in favour of a staged approach to the codification of the article 26 procedure and expressed support for subparagraph (f). IMEC welcomed the decision to modify certain aspects of the article 24 procedure on a trial basis. With regard to future steps to ensure legal certainty, IMEC found the questions proposed to be addressed in the Office's background paper for the informal consultations later in the year to be generally appropriate. The document prepared by the Office to guide the consultations must include information on costs, the anticipated workload for such a tribunal, an analysis of its limitations and possible alternatives to be explored. It was important not to pre-empt the outcome of the discussion. Information should also be included on the article 37(2) and 37(1) procedures, including regarding how article 37(1) would work if activated, the options for requesting an opinion and the procedure for obtaining a decision. Participants in the consultations should be able to assess the procedure under article 37(2) in terms of its comparative advantages over the procedure under article 37(1). Her group therefore proposed that the following words should be added at the end of subparagraph (g): "as well as the article 37(1) procedure".

3.3. Reporting and information (paragraphs 51–55) – draft decision 84(d)

249. *The Employer spokesperson* supported the measures proposed for the streamlining of reporting, particularly regarding electronic and online reporting. He welcomed the CEACR's proposed criteria for breaking its cycle of review when receiving comments from workers' or employers' organizations. It was important that observations from the social partners were used to assess compliance with technical Conventions. The CEACR's new practice of addressing in a consolidated manner the issues of application arising under various related Conventions would help avoid repetitive comments. While the Employers supported that approach in principle, they would like to highlight that the underlying reason for repetitive comments was the existence of overlapping provisions in the Conventions. The consolidation of Conventions on related subjects should therefore be considered.

250. It was unacceptable that the examination of reports received by the deadline could be deferred for reasons such as the need for translation into the ILO working languages. If more time was needed for translation, either the deadline should be extended, or the resources for translation should be increased to avoid deferral.

251. His group would like more information regarding the proposed establishment of baseline-based reporting, including the concrete benefits of such a procedure.

252. The Employers wondered how compliant practices would be established and whether any practice that had not been addressed in a comment by the CEACR would be considered to be compliant.

253. The Employers requested the Office to provide specific information more regularly to the Governing Body on information sharing and cooperation with other international organizations, particularly on the objectives and outcomes of such cooperation with regard to standards-related work. His group would also like more information relating to the implications of the reform of the UNDS for the ILO's normative and supervisory work. The Employers supported subparagraph (d).

254. *The Worker spokesperson* said that her group supported greater thematic coherence in reporting but cautioned against blurring the distinct obligations of the member States under the various Conventions. More transparency with regard to the reasons for the deferral of examination of reports would increase the credibility of the work of the CEACR. The Workers would like to see an example of the model electronic article 22 baseline report and would like to know how it would be shared with the social partners and the governments for validation purposes. The Workers supported subparagraph (d).

255. *Speaking on behalf of the Africa group*, a Government representative of Namibia requested the Office to provide feedback to the Governing Body at its 337th Session on the effectiveness of urgent appeals. The practice of urgent appeals must not replace the reporting obligations of member States. The CEACR must note with regret a member State's failure to submit a report in the first year. His group called upon the Office to systematically enhance technical cooperation in order to ensure the effective and timely compliance of governments with their reporting obligations. He reiterated his group's support for subparagraph (d).

256. *A Government representative of Brazil* said that he was speaking on behalf of a significant majority of governments from Latin America and the Caribbean. He supported subparagraph (d).

257. *Speaking on behalf of IMEC*, a Government representative of the United States requested the Office to provide additional, specific information with regard to Focus Area 3 and reiterated its request for clarification of all the timelines set out in paragraph 84(d). Recalling reservations expressed about electronic reporting, her group reiterated its interest to participate in electronic reporting trials and remained willing to take an active role in ensuring that the system was fit for purpose with the expectation that there will be ample opportunities to provide feedback. Her group also advised that the pilot for article 22 baselines should be carefully considered as the initiative develops. IMEC would also like clarification regarding the government validation process for article 22 baselines and whether the process would take place each time a baseline was updated. With regard to information sharing with other international organizations, the ILO should give priority to raising awareness and understanding of its normative work throughout the UN reform process. Her group looked forward to updates in that regard.

258. *A representative of the Director-General* (Director, NORMES) said that in phase 1 of pilot testing of the e-reporting system, the Office would establish a baseline report using information previously submitted by the government and the social partners, and information examined by the CEACR. The baseline report would then be transmitted to the government for validation and updating, and the social partners would be invited to provide their comments. The procedure would be followed only within a reporting year; it was not an additional reporting exercise. The pilot currently involved six member States due to report in 2019 on the Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187). The lessons learned from the pilot phase would be presented in 2020, and any expansion of the procedure would be prepared so that it would take place from 2021. The procedure would reduce the reporting burden on all parties and facilitate the sharing and comparing of compliant practices, namely practices that had not been identified by the Committee of Experts as non-compliant.

259. The Office would heed the calls for more details on information-sharing with other organizations. Increased visibility and understanding of the ILO's normative work was important in view of the coordination of UN work at the country level by resident coordinators. The Office would follow up on the request from the Africa group for technical assistance on reporting.

3.4. Reach and implementation (paragraphs 56–70) – draft decision 84(d)

260. *The Worker spokesperson* sought assurances as to how the ILO would continue to service the supervisory system even if standards-related aspects were not reflected as priorities in the UN Development Assistance Frameworks (UNDAFs), and pursue DWCPs that allowed for broader ILO activities at the country level. On the establishment of ILO country offices and development cooperation projects, the reference in the UN General Assembly resolution to UN norms and standards should ensure that the normative role of the ILO was recognized, but it would be important to see how that worked in practice. With regard to UN resident coordinators, guarantees were needed that ILO standards and the recommendations of the supervisory system would be adequately reflected in country-level priorities. It was to be hoped that systematized follow-up at the national level on recommendations of the supervisory system would lead to increased ratification rates for Conventions.

261. Her group welcomed the proposals to make better use of article 19. Possible follow-up through article 19 could be one of the criteria for the choice of instruments to be reviewed by the SRM TWG. However, the SRM TWG may consider it more appropriate to review instruments following a General Survey, thus the sequence in table 5 would not necessarily apply in all cases. It was unclear whether follow-up on the implementation of recommendations under article 19 would be in addition to the instruments selected for General Surveys. The proposal for the Office to promote denunciations in the context of follow-up to the SRM TWG was a cause of serious concern, unless those were automatic denunciations linked to the ratification of up-to-date ILO instruments. No longer using the General Survey to identify new standards, as indicated in table 5, would defeat one main purpose of the General Survey, and thus required careful consideration.

262. With respect to the annual reviews, the 2017 Conference resolution concerning the second recurrent discussion on fundamental principles and rights at work contained a commitment to assess more fully the efforts made by Members that had not yet ratified the fundamental Conventions and the Protocol, thus permitting the identification of areas for technical assistance. The Organization should therefore not focus solely on making follow-up more accessible and visible, and instead aim to increase ratification levels. She supported subparagraph (d) of the draft decision.

263. *The Employer spokesperson* said that clear recommendations from the CEACR would help governments to take appropriate remedial measures and improve compliance. A balance was needed, however, between preciseness and the inherent flexibility of provisions of the Conventions, for example allowing governments to choose the most appropriate course of action for their situation. A standardized structure and terminology for the CEACR could also help improve clarity.

264. The Employers acknowledged that the Office was piloting a strategic approach to promoting standards in ILO interventions in several countries, but stressed the need to promote a proper pre-ratification process that included full consultation with the social partners. Member States should be assisted, where necessary, in determining the extent to which ratification would meet the country's needs and priorities in labour and social policy, and countries' abilities to implement and meet their reporting obligations for a Convention should be taken into account.

265. As to the design, preparation and discussion of General Surveys and their follow-up, the Employers reiterated their support for the measures that had received tripartite consensus. The Office should focus on obtaining complete and meaningful reports from as many governments as possible and encouraging social partners to contribute. Where no information was provided by governments, the Office should attempt to obtain relevant

information from other reliable sources. Representative conclusions and assessments could be made only when complete information from member States was available, and only then could a solid basis be provided for targeted follow-up actions. In view of the wide acceptance by governments of online reporting on the annual follow-up to the Declaration on Fundamental Principles and Rights at Work, the Office should explore further measures to facilitate reporting. The Employers supported subparagraph (d).

266. *Speaking on behalf of the Africa group*, a Government representative of Namibia commended member States that had submitted online reports on the follow-up to the Declaration on Fundamental Principles and Rights at Work. However, as response rates were low overall, he urged member States to honour their reporting obligations. The Africa group supported subparagraph (d).

267. *A Government representative of Brazil* said that he was speaking on behalf of a significant majority of governments from Latin America and the Caribbean. He emphasized the importance of clarity in the supervisory bodies' recommendations and proposed that the Government group should be included in discussions on producing more user-friendly, precise and concise comments. His group supported subparagraph (d).

268. *Speaking on behalf of IMEC*, a Government representative of the United States requested clarification as to whether the Office was proposing a new report on follow-up to the recommendations of the SRM TWG in addition to that requested to generate the General Survey, noting that the 2016 Conference resolution on advancing social justice through decent work had stated that the reporting obligations of member States should not be increased.

3.5. Review by the supervisory bodies of their working methods (paragraphs 71–83) – draft decision 84(h)

269. *The Employer spokesperson* highlighted that there should be an ongoing review and improvement of the working methods of the supervisory bodies, and noted that the structure of future CAS reports would be discussed in informal tripartite consultations. Efforts by the CEACR to consider proposals on improving their reports were appreciated, as was the extension of criteria to break the review cycle when comments from employers' and workers' organizations were received outside the reporting year.

270. Concerning the CFA, he welcomed efforts to improve efficiency and transparency. It should be noted that representations under article 24 relating to freedom of association and collective bargaining were not automatically referred to the CFA. If referred, they should be treated by the CFA under the article 24 rules, not those of the CFA, meaning that article 24 representations referred to the CFA were considered by an ad hoc committee composed of three members of the CFA. Article 24 representations should not be assigned a case number, to maintain a distinction between them and CFA cases. The Employers supported subparagraph (h).

271. *The Worker spokesperson* said that, during informal consultations, all constituents had supported the production of a verbatim report for the CAS. However, her group was against separating the conclusions from the debate, as they were brief and required the context of the related discussion to be understood. The swift response of the CEACR to the observations received from employers' and workers' organizations outside a reporting year was welcome, providing an essential safeguard for the extension of the reporting cycle.

272. She welcomed the compilation of decisions of the CFA and the annual report for submission to the CAS. The Workers strongly supported the holding of a high-level event on freedom of association and collective bargaining during the Conference, which should involve an

exchange of views on enhancing ratification and implementation rates of Conventions Nos 87 and 98. She asked whether the Office had followed up on the proposal to use the Centenary year to hold regional and national conversations on promoting freedom of association and collective bargaining. The Workers' group supported subparagraph (h).

273. *Speaking on behalf of the Africa group*, a Government representative of Namibia encouraged the continued improvement of the working methods of the supervisory bodies and therefore supported subparagraph (h).

274. *A Government representative of Brazil* said that he was speaking on behalf of a significant majority of governments from Latin America and the Caribbean. He noted the concerns in relation to working methods previously raised by his group. He had no amendments to subparagraph (h); however, as it did not fully develop the ideas considered during consultations and discussions on the review of the Standards Initiative, he proposed the addition of four subparagraphs:

(i) instructed the CFA to include in its working methods the possibility of a suspension of the consideration of the merits of a case in order to address the allegations by seeking conciliation or other measures at the national level for a period of six months, and requested the CFA to provide it with detailed information in that regard for review in March 2020;

(j) requested the Office to present to the Governing Body detailed proposals regarding a review of the receivability criteria of CFA complaints for consideration in March 2020;

(k) requested the Office to present to the Governing Body detailed proposals for consideration in March 2020 on bringing forward the publication of lists of cases regarding which information is requested from governments at the ILC Committee on the Application of Standards;

(l) requested the Office to undertake inclusive tripartite consultations with a view to reviewing the working methods of the supervisory system for consideration in its October–November 2020 session.

275. Subparagraph (i) proposed a suspension of the consideration of merits of a case, in the same way as for representations under article 24, which could be introduced initially for a trial period; the aim was to strengthen national procedures and bodies and avoid overloading the CFA. Subparagraph (j) referred to a review by the Governing Body of the receivability criteria, which would provide instructions or guidance to the CFA. Subparagraph (k) aimed to give governments more time to provide information on specific cases; use of technology should also be considered to allow groups to agree on the list of cases prior to attending the Conference. Subparagraph (l) addressed the need for a more structured discussion of the working methods of the supervisory system.

276. *Speaking on behalf of IMEC*, a Government representative of the United States expressed appreciation for the supervisory bodies' review of their working methods and the resultant improved efficiency and effectiveness. IMEC supported subparagraph (h).

277. *The Worker spokesperson* recalled that the Governing Body had adopted a decision on INS/5 at its 334th Session (October–November 2018) after difficult but fruitful discussions and she had understood that constituents were ready to evaluate the implementation of the Standards Initiative rather than reopen discussions on it. Regarding proposed new subparagraph (i), the Governing Body had agreed to conduct a pilot study on the article 24 procedure, and it would not be helpful to establish a further pilot study on the CFA before the first was complete. As to (j) and (k), the compromise made by the Governing Body was to proceed on the basis of

its November 2018 decision. The intention of (l) was apparently to revisit the inclusive tripartite discussions of recent years and the agreed programme of work. It was inevitable that further improvements to the supervisory system would be needed in future, but the original draft decision reflected the route to be taken as agreed at the 334th Session of the Governing Body. The only outstanding aspect had been the potential application of article 37(2) of the Constitution in the event of major disagreement. Her group supported the original draft decision with the amendment to subparagraph (g) proposed by IMEC.

278. *The Employer spokesperson* said that an ongoing review process was clearly necessary for continuous improvement, and requested time to consult with his group on the proposed new subparagraphs.

279. *A Government representative of Brazil* said that he was speaking on behalf of a significant majority of governments from Latin America and the Caribbean. He sought the Workers' group's views on his proposed amendments to subparagraphs (a), (f) and (g), which had been supported by the Africa group. The amendment to subparagraph (c) was a governance issue. The group of governments he represented were serious about their responsibility to ensure that the supervisory system was up to date and able to address present and future challenges in the world of work. The proposed amendments had been considered carefully and he would welcome careful consideration from the Governing Body. He recalled that countries in his group were the subject of 80 per cent of cases before the CFA.

280. *A Government representative of China* said that he understood the position of the significant majority of governments from Latin America and the Caribbean, as cases had also been brought to the CFA in reference to his country. It was important to constantly work on improvements.

281. *Speaking on behalf of IMEC*, a Government representative of the United States said that her group had considered the proposed amendments and supported the original draft decision with her group's amendment to subparagraph (g), on the understanding that it referred to a review of progress to date rather than an opportunity to reopen discussions on the matter. As the Office had clarified that subparagraph (d) referred to the approach already approved, her group could endorse it.

282. *A Government representative of Brazil* said that he was speaking on behalf of a significant majority of governments from Latin America and the Caribbean. He stressed that he was not suggesting that any previously agreed decisions should be reopened, but that the Governing Body should discuss how to improve the system in the future and address the long-standing concerns raised by his group at sessions of the Governing Body and the CAS.

283. *The Worker spokesperson* clarified that the only amendment accepted by the Workers' group was IMEC's proposed amendment to subparagraph (g). Her group took the concerns of the other groups seriously. The concerns about the working methods of the supervisory system had been addressed in bipartite agreements between the Employers' and Workers' groups in 2015 and 2017 and in all tripartite discussions; decisions on the Standards Initiative had been made on the basis of extensive tripartite consultations since 2012, with agreements in 2015, 2017 and 2018. It was time to move forward on the basis of those agreements.

284. *The Employer spokesperson* expressed his group's desire to complete the discussion at the current session, but requested time to consider the proposed amendments.

285. *Speaking on behalf of the Africa group*, a Government representative of Namibia said that the Governing Body could not endlessly pursue perfection. After some time for reflection, the groups should find consensus.

286. *A Government representative of Brazil* said that he was speaking on behalf of a significant majority of governments from Latin America and the Caribbean. He said that countries in his region had engaged in efforts to strengthen the supervisory system and contributed consistently to the SRM. The amendment to the draft decision that they had presented the previous week sought to further improve the system, which played a fundamental role in the world of work. While progress had been made, there was always room for further improvement, in particular with regard to working methods of the supervisory bodies, and some important topics deserved further consideration. In that light, he put forward a set of revised amendments that did not ask the Governing Body to make any definitive decisions but, instead, requested that the working methods of the supervisory system be put on the agendas of the independent bodies so that they could review the proposals. The revised amendments also called for further discussion on certain topics.

287. He proposed replacing the words "took note of progress" in subparagraph (a) of the draft decision with the words "welcomed the efforts of all constituents and the Office towards the progress" and ending the subparagraph after the words "supervisory system", as the reference to consensual tripartite decisions was superfluous. Taking account of views expressed, he proposed replacing the word "welcomed" with the word "recognized", rather than "noted" in subparagraph (c). He further proposed adding the words "and confirmed in its 337th Session" to the end of the subparagraph. The workplan should be carefully considered and an agenda of discussions established for further progress as the workplan embodied an ongoing process, not a one-time decision.

288. The document referred to a special session of the Committee of Experts to which the Employer and Worker Vice-Chairpersons of the Conference Committee on the Application of Standards were invited. Since there was no voice from the Government bench at that session and since governments would ultimately be responsible for implementing the recommendations of the supervisory bodies, arrangements should be made for their participation.

289. In respect of subparagraph (e), he proposed further amending the words following the date "2019" to read "and also invited the Committee of Experts on the Application of Conventions and Recommendations (CEACR) to welcome the Chairperson of the Government group and the Vice-Chairpersons of the Committee on the Application of Standards to the CEACR's special sittings of 2019 and 2020". In subparagraph (f), the words "further information" should be replaced by the words "further proposals", rather than the "detailed proposals" previously suggested. In subparagraph (g), he withdrew the first part of his earlier proposed amendment but continued to request the deletion of the words "of any".

290. He proposed adding new subparagraphs (i) and (j), which would address the working methods of the CFA and the CAS. Again, the Governing Body would not make any substantive decisions but would call on those bodies to review certain aspects of their working methods and leave the door open for future discussion. Proposed new subparagraph (i) would read: "(i) encouraged further progress of the subcommittee on working methods of the CFA, including through the consideration of receivability criteria and other possible measures in order to address the allegations of complaints at the national level".

291. Proposed new subparagraph (j) would include more options in the consultations on the working methods of the CAS, as his region had requested on a number of previous occasions, and would read: "(j) invited the informal consultations on the CAS working methods to consider information and technical options, to be prepared by the Office, on the possibility of anticipating the publication of the definitive and the preliminary lists of cases regarding which information is requested from governments at the ILC Committee on the Application of Standards."

292. He recalled that, at the previous session of the Conference, the governments he represented had indicated that they did not agree with the working methods adopted by the CAS. Therefore, he requested the Governing Body to take account of that statement and the concerns that had been raised. It was important to strengthen the supervisory system to ensure that it was prepared to face the transformations, opportunities and challenges of the world of work.

293. *The Worker spokesperson* said that while she appreciated the commitment of governments in Latin America and the Caribbean to strengthening the supervisory system, she preferred the original text of the draft decision. However, she would be prepared to accept the inclusion, proposed by IMEC, of the words "as well as the article 37(1) procedure" at the end of subparagraph (g) if there was consensus. Furthermore, since her group wished to prepare for the proposed informal consultations during the 337th Session of the Governing Body, she reiterated her request to change the date of those consultations to late January 2020.

294. *The Employer spokesperson* said that although he wanted his previous comments with regard to subparagraph (e) to remain on the record, he would be prepared to support the adoption of the subparagraph as amended. With regard to subparagraph (g), he agreed with the change of date of the proposed informal consultations to January and supported the amendment proposed by IMEC. Having reflected and consulted on a number of other matters, his group agreed that work should be ongoing and would prefer not to further amend the draft decision for the time being. The Employers would work with GRULAC to ensure that the necessary improvements would be made as the need for them arose.

295. *Speaking on behalf of the Africa group*, a Government representative of Namibia said that he supported the amendments proposed by the significant majority of governments from Latin America and the Caribbean to subparagraphs (a), (b), (c), (f) and (g), and the original text of subparagraphs (d) and (e). With regard to proposed new subparagraphs (i) and (j), the consideration of receivability criteria and other possible measures to address the allegation of complaints at the national level, as well as the advance publication of cases, were matters that should be addressed in the context of subparagraph (h). The CAS, Committee of Experts and the CFA should continue to explore new proposals in order to improve their working methods. The Africa group supported the text of subparagraph (h) as drafted by the Office.

296. *Speaking on behalf of ASPAG*, a Government representative of Australia said that since the Standards Initiative was complex, it was crucial to maintain momentum by following the steps set out in the agreed workplan. It was also important to ensure that the Governing Body had sufficient time to consider any new proposals for substantive reform before they were discussed.

297. *Speaking on behalf of IMEC*, a Government representative of Canada reiterated her group's support for the original draft decision, with the small amendment to subparagraph (g) that she had previously proposed. IMEC supported the workplan as previously decided upon by the Governing Body and was reluctant to introduce new proposals without having fully considered their merits and implications. Several of the new proposals concerned matters that could be, and in some cases already were being, discussed in the context of the supervisory bodies' informal review of their working methods. As highlighted in subparagraph (h) of the draft decision, IMEC would encourage the CAS, the CEACR and the CFA to continue their regular consideration of their working methods, taking into account the views and concerns expressed by all tripartite constituents. Understanding that views differed on the level of progress achieved under the Standards Initiative, IMEC would be open to accepting the amendments proposed to subparagraph (a) by the significant majority of governments from Latin America and the Caribbean, as well as their proposal to replace the word "welcomed" with the word "recognized" in subparagraph (c). With regard

to the timing of the informal consultations on the operation of article 37(2), IMEC was willing to be flexible about the date.

298. *A Government representative of Brazil* said that he was speaking on behalf of a significant majority of governments from Latin America and the Caribbean. He said that he valued the support of the Africa group and urged the Office to consider the views of both regions, given that both regions were under the constant purview of the supervisory mechanisms. Furthermore, he highlighted that the workplan contained in Appendix II of the document ended in March 2019, noting that there appeared to be no agreed workplan for the future. He proposed that the Governing Body should review the workplan in November once it had been revised by the Office. He took account of the views expressed by the Workers' and Employers' groups and said that he had no issue with adjusting the date for informal consultations in subparagraph (g); he also accepted the IMEC proposal to include a reference to the article 37(1) procedure in subparagraph (g). He requested further information on whether the Office intended to put the ideas relating to working methods contained in proposed new subparagraphs (i) and (j) to the CFA and the CAS.

299. *The Worker spokesperson*, drawing attention to subparagraphs (c) and (g) of the draft decision and the workplan contained in Appendix II of the document, said that the Standards Initiative required the Governing Body to conduct an evaluation in March 2019, whereas the Governing Body was proposing to hold that consultation at the end of 2019 or in January 2020. There seemed to be consensus in the Governing Body to build on the progress made so far. In the spirit of compromise, the Workers would join IMEC in accepting the amendment to subparagraph (a).

300. *A representative of the Director-General* (Director, NORMES) said that the workplan was designed to provide a visual representation of work completed to date. A new workplan would be developed on the basis of the decisions taken by the Governing Body and its implementation would continue, in line with subparagraph (c) of the draft decision. Under the workplan, discussions on working methods were ongoing in all three of the supervisory bodies, and would continue. The Office had informed the supervisory bodies of the Governing Body's guidance, and would continue to do so; the supervisory bodies took action on the basis of that guidance, which was also taken into consideration in the discussions on working methods.

301. *Speaking on behalf of the EU and its Member States*, a Government representative of Romania said that he concurred with the comments made by the Worker spokesperson and supported the amendment proposed by IMEC to the draft decision.

302. *The Employer spokesperson* expressed support for the amendment proposed to subparagraph (a) by the significant majority of governments from Latin America and the Caribbean.

303. *A Government representative of Brazil* said that he was speaking on behalf of a significant majority of governments from Latin America and the Caribbean. He said that those governments would support the draft decision with its proposed amendment to subparagraph (a) and the amendment proposed by IMEC to subparagraph (g), with a view to reaching consensus and continuing a constructive dialogue. His region was engaged with the supervisory system and committed to continuing to examine proposals under the Standards Initiative and discuss working methods. The supervisory system was important and needed to be modernized.

Decision

304. ***The Governing Body:***

(a) welcomed the efforts of all constituents and the Office towards the progress reported on the implementation of the two components of the Standards Initiative, namely the Standards Review Mechanism (SRM) and the workplan to strengthen the supervisory system;

(b) with respect to the component concerning the SRM, noted the information provided on the lessons learned and future directions; requested the Standards Review Mechanism Tripartite Working Group (SRM TWG) to take its guidance into account in continuing its work and to provide a report for the Governing Body's second review of the functioning of the SRM TWG in March 2020; and, to guarantee the impact of that work, reiterated its call to the Organization and its tripartite constituents to take appropriate measures to follow up on all its previous recommendations;

(c) having reviewed, against the common principles guiding the strengthening of the supervisory system, the report on progress in implementing the ten proposals of the workplan, welcomed the progress achieved so far and requested the Office to continue the implementation of the workplan which should be updated according to its guidance;

(d) approving the approach taken and the timelines proposed, requested the Office to ensure that action was taken with respect to producing the guide on established practices across the supervisory system, the operation of the article 24 procedure, the streamlining of reporting, information sharing with other organizations, the formulation of clear recommendations of the supervisory bodies, pursuing systematized follow-up at the national level and consideration of the potential of article 19, paragraphs 5(e) and 6(d);

(e) with respect to the proposal for a regular conversation between the supervisory bodies, invited the Chairperson of the Committee on Freedom of Association (CFA) to present its annual report to the Conference Committee on the Application of Standards (CAS) as from 2019;

(f) with respect to the proposal for codification of the article 26 procedure, recalled the decision to consider the steps to be taken after the guide to the supervisory system was available to constituents, and requested the Office to provide it with further information in that regard in March 2020;

(g) with respect to the proposal to consider further steps to ensure legal certainty, decided to hold informal consultations in January 2020 and, to facilitate that tripartite exchange of views, requested the Office to prepare a paper on the elements and conditions for the operation of an independent body under article 37(2) and of any other consensus-based options, as well as the article 37(1) procedure; and

(h) with respect to the proposal for review by the supervisory bodies of their working methods, invited the CAS, the Committee of Experts on the Application of Conventions and Recommendations (CEACR) and the CFA to continue their regular consideration of their working methods.

(GB.335/INS/5, paragraph 84, as amended by the Governing Body)

Sixth item on the agenda

Progress report on the implementation of the Enterprises Initiative (GB.335/INS/6(Rev.))

305. *The Employer spokesperson* recalled that SDG 17 recognized the essential role of the private sector in the implementation of the 2030 Agenda and the need for partnerships with the sector. His group fully supported the Office's assessment that engagement with enterprises would enhance the scale, impact and sustainability of its work. Engaging with enterprises of all sizes and in all regions afforded the Office a better insight into the challenges they faced, which would help it to develop more practical approaches to problem-solving. He applauded the diverse nature of the ILO's engagement with enterprises, including through the business networks and programmes described in the document. Working with groups of companies was highly valuable, as collaboration across the private sector often helped enterprises to face systemic challenges requiring comprehensive resources and would result in useful benefits to the ILO and those it served. He also applauded the Office's engagement in 133 public–private partnerships (PPPs).

306. However, the Enterprises Initiative must be more than just a process. The ILO and enterprises should take steps to leverage the value of their engagement, and the Initiative must reflect a coherent and purposeful approach. Companies had suggested that the processes for engaging with the ILO should be quicker and less bureaucratic; the clearance process for PPPs should take 30 days. Undue levels of ILO bureaucracy could prompt enterprises to engage instead with peers or in other initiatives. The Office should establish a clear process with appropriate deadlines to protect its reputation as a reliable partner and to grant companies a reasonable level of predictability and certainty.

307. With regard to the Common Approach to Due Diligence for Private Sector Partnerships, which was highly relevant to the Enterprises Initiative, it was illogical that the inter-agency task team had not consulted with the private sector in its work. Furthermore, some of the provisions in the outcome document were questionable, such as the exclusionary criteria and the role given to the UN Global Compact. The Governing Body should receive a full update on the Common Approach and then decide on its application to the ILO.

308. Despite the acknowledged importance of the Enabling Environment for Sustainable Enterprises (EESE) programme, it had not been expanded, as decided at the 104th Session (2015) of the International Labour Conference and confirmed at the 2017 Meeting of Experts on Decent Work in Export Processing Zones, and was instead still in a review process. The Office should scale up EESE and roll it out in further countries without delay.

309. As productivity was key to decent work and the discussions on the future of work, the ILO should have a clear focus on productivity, informed by engagement with companies and highly productive countries in a holistic approach.

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ILO, The Committee of Experts on the Application of Conventions and Recommendations: Its dynamic and impact, 2003, pp. 1–17

THE COMMITTEE OF EXPERTS ON THE APPLICATION OF CONVENTIONS AND RECOMMENDATIONS: ITS DYNAMIC AND IMPACT

Eric GRAVEL
Chloé CHARBONNEAU-JOBIN

INTERNATIONAL LABOUR OFFICE GENEVA

Introduction

Since its establishment in 1919, the International Labour Organization[1] has constantly availed itself of international law, and more precisely international labour standards, as an instrument for the promotion of social justice. From the very beginning, it has been evident that without effective standards this objective would not be achieved. The Organization therefore took this as its central concern and progressively developed various supervisory bodies which make it possible to monitor, after their adoption by the International Labour Conference and their ratification by member States, the effect given to Conventions and Recommendations in practice.

The Constitution of the ILO, adopted when the Organization was first established, set out the obligation for member States to submit regular reports on their national practice for each of the Conventions that they had ratified.[2] However, it did not set up a supervisory body with the specific task of examining these reports, and it therefore fell to the International Labour Conference to supervise the application of standards during the first years. It rapidly became apparent that the Conference could not continue to carry out this task in view of the constantly increasing number of ratifications and reports, quite apart from the adoption of new standards every year. In 1926, at its Eighth

[1] Hereinafter the "ILO" or the "Organization".

[2] Articles 19, 22 and 35 of the *Constitution of the ILO*.

Session, the Conference therefore adopted a resolution providing for the establishment of a Committee responsible for examining the reports submitted, thereby marking the birth of a body which was to become one of the most important and influential in the ILO, namely the Committee of Experts on the Application of Conventions and Recommendations.[3] Together with the Conference Committee on the Application of Standards, the Committee of Experts has become the principal body for the regular supervision of the application of standards. Its work constitutes the cornerstone of the ILO's supervisory system.[4] The present study is intended to analyse both the institutional development and practical impact of the work of the Committee of Experts on the Application of Conventions and Recommendations over the years, make an assessment of it and, in so far as possible, draw certain lessons for the future. However, as a similar study was undertaken in 1977,[5] the present study is confined to the work of the Committee of Experts over the past 25 years. Furthermore, even though the Committee of Experts celebrated its 75th anniversary in 2001, it has only been systematically enumerating cases of progress since 1964. The cases of progress listed by the Committee therefore necessarily cover only this period.

The present study is also limited to a thematic analysis of cases of progress relating to the fundamental Conventions, which should not in any way serve to obscure the importance of, nor the fact that numerous cases of significant progress have occurred over the years with regard to the application of the so-called priority or technical Conventions.[6] The study therefore proposes to demonstrate, based on a selection of the examples listed over the past 25 years, the dynamic nature of the Committee's supervisory work. To do so, the first part of the study covers

[3] Hereinafter the "Committee of Experts" or the "Committee".

[4] For a description of the functioning of these two Committees, please refer to the publication by the International Labour Standards Department entitled *Handbook of procedures relating to international labour Conventions and Recommendations*, ILO, Geneva, 1998.

[5] See: *The impact of international labour Conventions and Recommendations*, ILO, Geneva, 1977.

[6] See in annex 1 a non-exhaustive list of cases of progress relating to priority and technical Conventions over the past 15 years.

the composition and functioning of the Committee of Experts. The second part, which is more empirical, draws up a non-exhaustive list of the cases of progress enumerated in relation to the application of the eight fundamental Conventions.[7]

[7] In so doing, this study responds to the call made by the Director-General of the ILO, Mr Juan Somavia, for the reports of the supervisory bodies to review the status of the application of standards in general by region or by subject area. Such a review could highlight more success stories and genuine efforts to improve in the various regions of the world. See: *Decent work*, Report of the Director-General, International Labour Conference, 87th Session, Geneva, 1999, p. 20.

I. The Committee of Experts on the Application of Conventions and Recommendations: Composition and functioning

1. Composition

The Committee of Experts on the Application of Conventions and Recommendations was set up by the Governing Body, in accordance with the resolution adopted by the International Labour Conference in 1926, to examine government reports on the application of Conventions and other obligations relating to international labour standards set out in the ILO Constitution. The Committee held its first session in May 1927. Then composed of eight members, it examined 180 reports from 26 of the 55 member States. At that time, the Conference had adopted 23 Conventions and 28 Recommendations, and the number of ratifications registered was 229.

Today the number of Conventions adopted by the Conference has risen to 184, together with 194 Recommendations, while the number of ratifications registered was 7127 as of April 2003.[8] There have also been over 1980 declarations of the application of Conventions to non-metropolitan territories. Furthermore, the International Labour Organization now has 176 member States.

The 20 members of the Committee are high-level jurists (judges of supreme courts, professors of law, legal experts, etc.) appointed by the Governing Body for renewable periods of three years. Appointments are made in a personal capacity of persons who are impartial and have the required technical competence and independence. From the very beginning, these characteris-

[8] For constantly updated information on the number of Conventions, Recommendations and ratifications, please consult the Organization's official Internet site: www.ilo.org.

tics were found to be essential and of vital importance in ensuring that the Committee's work enjoys the highest authority and credibility. The experts are in no sense representatives of governments. This independence is guaranteed by the fact that the experts are appointed by the Governing Body on the recommendation of the Director-General, and not by proposal of the governments of the countries of which they are nationals. The members of the Committee are from all the regions of the world so that the Committee benefits from direct experience of the various legal, economic and social systems. Each member of the Committee acts in a personal capacity.

2. Terms of reference and organization of the Committee's work

2.1 Terms of reference

In the beginning, the Committee of Experts was responsible for considering ways and means of "making the best and fullest use" of the reports submitted on ratified Conventions. This originally simple mandate was developed and modified by the Governing Body at its 103rd Session in 1947 following constitutional reforms.

Since then, the Committee has been called upon to examine:

- the annual reports under article 22 of the Constitution on the measures taken by Members to give effect to the provisions of Conventions to which they are parties, and the information furnished by Members concerning the results of inspection;
- the information and reports concerning Conventions and Recommendations communicated by Members in accordance with article 19 of the Constitution;
- the information and reports on the measures taken by Member in accordance with article 35 of the Constitution.

The Committee is also called upon to carry out certain tasks in relation to instruments adopted under the auspices of other international organizations. For example, it examines the reports by member States which have ratified the European Code of Social Security.

On the occasion of its 60th anniversary in 1987, the Committee of Experts recalled the fundamental principles underlying its work and examined its terms of reference and methods of work.[9] The Committee's task consists of pointing out the extent to which the law and practice in each State appears to be in conformity with the terms of ratified Conventions and the obligations that the State has undertaken by virtue of the ILO Constitution. "Its function is to determine whether the requirements of a given Convention are being met, whatever the economic and social conditions existing in a given country. Subject only to any derogations which are expressly permitted by the Convention itself, these requirements remain constant and uniform for all countries. In carrying out this work, the Committee is guided by the standards laid down in the Convention alone, mindful, however, of the fact that the modes of their implementation may be different in different States."[10] The Committee recalled that, as they are international standards, the manner in which their implementation is evaluated must be uniform and must not be affected by concepts derived from any specific social or economic system.

2.2 Competence of the Committee

In its evaluation of the conformity of national legislation, the Committee of Experts exercises a competence which has often been qualified as quasi judicial, even though it is not a tribunal.[11] It has broad discretion in respect of the application of international provisions. Despite the fact that the Committee carries out an exercise involving the interpretation of international standards and that over the years its case law has acquired considerable moral force, it is nevertheless the case that by virtue

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[9] International Labour Conference, 73rd Session, 1987, Report III (Part 4A), pp. 7-19, paras. 9-49.

[10] *Ibid.*, para. 20.

[11] N. Valticos: *Traité du droit du travail*, 2nd Edition, Dalloz, 1983, p. 587, No. 756.

of article 37 of the ILO Constitution, only the International Court of Justice is competent to make "definitive interpretations" of Conventions.[12] It is therefore more precise to emphasize that the Committee of Experts' observations constitute assessments of the conformity of the national laws of a member State with the Conventions that it has ratified, and not definitive interpretations. To fulfil its function of evaluating the implementation of Conventions, the Committee has to consider and express its views on the meaning of certain provisions of Conventions.[13]

To make such assessments, the Committee of Experts bases itself on the reports submitted by governments in accordance with their constitutional obligations.

2.2 Reports submitted by governments

In 1949, the Committee decided to pay special attention to first reports following ratification (over 200 first reports now have to be examined nearly every year) and it therefore requested the Office to prepare comparative analyses of them. Up to 1959, an annual report was required for each ratified Convention. This system had to be modified in view of the constantly increasing number of reports and it was decided only to request a report on the various Conventions every two years, with a simple general report each year. In 1976, the cycle for detailed reports was extended to four years, except for the most important Conventions, for which the frequency of reporting continued to be every two years.

In 1993, the Governing Body decided to modify the reporting system, with detailed reports to be submitted every two years for a group of instruments known as "priority" Conventions, and the reporting cycle of "simplified" reports was extended to five years. At the same time, the Governing Body decided that governments should submit detailed reports in the event of major changes affecting the application of Conventions and that the supervisory bodies could request additional reports where necessary.

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[12] *Ibid*., Note 11.[13] ILC, 1987, Report III (Part 4A), *op. cit*., p. 12, para. 21.

[13] ILC, 1987, Report III (Part 4A), *op. cit*., p. 12, para. 21.

Following the Report of the Director-General in 1994, entitled *Defending values, promoting change*, the Organization decided to give priority to strengthening the system for the supervision of standards. This issue has subsequently been examined on several occasions by the Governing Body.[14] With a view to ensuring that the ILO's supervisory machinery remains among the most advanced and effective in the United Nations system, certain procedures, including the reporting system, have recently been the subject of substantial modifications.

Since 1993, the workload relating to the reporting system has been constantly increasing in view of the rise in the number of ratifications of Conventions and the admission of new member States. In 2001, after re-examining the reporting system, the Governing Body therefore suggested new changes with a view to strengthening the effectiveness of the supervisory machinery. While retaining the two-year and five-year reporting cycles, the Governing Body adopted a system of the grouping of reports according to subject and the type of Convention, as well as certain additional procedures.[15] The objective of grouping reports in this manner is to facilitate the collection of information by the Ministries responsible for labour matters, contribute to improving coherence in the analysis of reports and allow a more complete overview of the application of Conventions in a particular field.

More precisely, the Governing Body decided to:

- group the fundamental and priority Conventions, with countries divided alphabetically in even and uneven years for the submission of reports according to the two-year reporting cycle;
- arrange all the other Conventions by subject groups for the purposes of reporting according to the five-year cycle;
- discontinue detailed reports on fundamental and priority Conventions, except in certain particular cases;
- discontinue the automatic requirement to send a detailed report if a government fails in its obligation to send a simplified report; and

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[14] See in particular the following Governing Body documents: GB.268/LILS/6; GB.277/LILS/2; GB.279/4; GB.280/LILS/3; GB.280/LILS/12/1; GB.282/LILS/5; GB.282/8/2; GB.283/LILS/6; and GB.283/LILS/6/1.

[15] See Governing Body documents GB.283/LILS/6 and GB.283/LILS/6/1.

- discontinue the automatic requirement to submit a second detailed report.

For reporting purposes, the non-fundamental Conventions have been subdivided into 20 groups of instruments covering specific subjects. These changes began to be implemented in 2003 for an initial period of five years, following which the Governing Body will re-examine the issue.

2.4 Working methods

The methods of work of the Committee of Experts have evolved over the years and in the context of its general terms of reference. The Committee determines its own methods of work independently. The Committee meets once a year in Geneva for nearly three weeks in November-December and its report is examined at the following session of the International Labour Conference.

Its meetings are held in private and its documents and deliberations are confidential. The United Nations is invited to be represented at appropriate sittings of the Committee. When the Committee deals with instruments or matters related to the competence of other specialized agencies of the United Nations system, representatives of those agencies may be invited to attend the sitting.

The Committee assigns to each of its members initial responsibility for a group of Conventions or a subject. The reports and information received early enough by the Office are forwarded to the member concerned before the session. The expert responsible for each group of Conventions or subject may take the initiative of consulting other members. Furthermore, any other expert may ask to be consulted before the preliminary findings are submitted to the Committee in plenary sitting in the form of draft observations and direct requests. At this stage, the wording is left at the sole discretion of the expert responsible. All the preliminary findings are then submitted for the consideration of the Committee in plenary sitting for its approval.

The documentation available to the Committee includes: the information supplied by governments in their reports or to the

Conference Committee on the Application of Standards; the relevant legislation, collective agreements and court decisions; information supplied by States on the results of inspections; comments of employers' and workers' organizations; reports of other ILO bodies (such as commissions of inquiry, or the Governing Body Committee on Freedom of Association); and reports of technical cooperation activities.

The Committee of Experts draws up two types of comments: observations and direct requests. Observations are written comments relating to the application of a ratified ILO Convention. In general, observations are made in cases of serious and persistent failure to comply with obligations under a Convention. They are published each year in the report of the Committee of Experts, which is transmitted to the International Labour Conference. The observations provide the starting point for the examination of specific cases by the Conference Committee on the Application of Standards.

In 1957, to avoid overburdening its report, the Committee decided to address a number of comments directly to governments instead of including them in its report. Direct requests are written comments by the Committee of Experts which may deal with matters of secondary importance or technical issues. They provide a means of requesting clarifications so that the Committee can make a better assessment of the effect given to the obligations deriving from a Convention. As in the case of observations, they may request a detailed report before the date envisaged for its submission. Copies of the request are also addressed to the representative organizations of employers and workers in the country concerned. The main difference between these two forms of written comments concerns their dissemination: only observations are published in the annual report of the Committee and are therefore publicized to a certain extent.

Where appropriate, the Committee requests the Office to prepare a comparative analysis of the law and practice of the ratifying State for examination by the expert responsible. It also requests the Office to prepare notes for the expert on legal questions necessary for the examination of the information provided.

Although the Committee's conclusions traditionally represent unanimous agreement among its members, decisions can nevertheless be taken by a majority. Where this happens, it is the established practice of the Committee to include in its report the opinions of dissenting members if they so wish, together with any response by the Committee as a whole. The Committee's report is in the first place submitted to the Governing Body and its final findings take the form of:

a) *Part One:* a general report in which the Committee reviews general questions concerning international labour standards and related international instruments and their implementation;

b) *Part Two:* observations concerning particular countries on the application of ratified Conventions, on the application of Conventions in non-metropolitan territories and on the obligation to submit instruments to the competent authorities;

c) *Part Three:* a general survey of instruments on which governments have been requested to supply reports under article 19 of the ILO Constitution, which is published in a separate volume.

Over the years, even though the Committee's workload, working methods and responsibilities have evolved, the principles of objectivity, impartiality and independence which animate its work have not changed. It continues to examine the application of Conventions and Recommendations, and of related constitutional obligations, in a uniform manner for all States. The rights and obligations under the instruments adopted by the International Labour Conference are the same for all, and should be applied in a uniform way in all member States.

2.5 Subcommittee on working methods

The Committee may appoint working parties to deal with general or especially complex questions, such as general surveys of reports submitted under articles 19 and 22 of the Constitution. Working parties include members with knowledge of different legal, economic and social systems. Their preliminary findings are submitted to the Committee as a whole.

The Committee also has the power to examine and revise its own methods of work. Since 1999, the Committee has been undertaking a thorough examination of its working methods. In 2001, the Committee paid particular attention to drafting its report in such a manner as to make it more accessible and to draw the attention of a larger readership to the importance of the provisions of Conventions and their application in practice. The following year, in order guide its reflections on this matter in an efficient and a thorough manner, the Committee decided to create a subcommittee.[16] The Subcommittee on working methods, composed of a core group and open to any member wishing to participate in it, has as a mandate to examine not only the working methods of the Committee as strictly defined, but also any related subjects, and to make appropriate recommendations to the Committee.

The Committee of Experts considered the first recommendations of the Subcommittee at its session in November 2002[17]. These recommendations were prepared after a wide-ranging review of the Committee's methods of work during which all of its members had an opportunity to contribute throughout the year.

The principal conclusions of the Subcommittee on working methods concerned the need for the Committee of Experts to maintain its independence, impartiality and objectivity in carrying out its work. Secondly, with a view to promoting the visibility and influence of the Committee and its work, its members expressed an interest, where appropriate, in participating in field missions and in contributing to international conferences or to training seminars in areas related to their work. Thirdly, the Committee decided to introduce a number of significant changes in its working methods. These changes are intended to: further the Committee's diversity; increase the synergy between experts, and particularly between those working on the same groups of Conventions; ensure the most effective working methods during particularly high-pressure periods of work; continue to improve the presentation of its annual report to make it more accessible to readers; and continue to foster and improve cooperation and

[16] International Labour Conference, 90th Session, 2002, Report III (Part 1A), p. 14, para. 24.

[17] International Labour Conference, 91st session, 2003, Report III (Part 1A), paras. 7 and 8.

good relations between the Committee of Experts and the Conference Committee on the Application of Standards.

It was therefore agreed that the Subcommittee would meet each year and as often as necessary to monitor these reforms, to report to the Committee on their implementation and to recommend any further changes which may be necessary in future.

3. Direct contacts missions

The work of the Committee is essentially a written process. Nevertheless, the Committee may be called upon to exercise, request or supervise other functions. In 1967, on the occasion of its 40th anniversary, the Committee put forward a suggestion which led to the introduction in 1968 of the procedure of direct contacts, which consists of on-the-spot missions with a view to developing dialogue with governments and employers' and workers' organizations in order to overcome difficulties encountered in the application of Conventions. This procedure has become commonly used since then and has produced positive results.

4. Synergy between the various supervisory bodies of the ILO

The supervisory mechanisms, whether they form part of the regular system or consist of so-called special procedures, are closely linked. Indeed, the work of the Committee of Experts frequently serves as a basis for that of other supervisory mechanisms. As the Committee recalled in its report on the occasion of its 60th anniversary in 1987,[18] a spirit of mutual respect, cooper-

[18] ILC, 1987, Report III (Part 4A), op. cit., p. 8, para. 12.

ation and responsibility has always existed in its relations with other ILO bodies.

The Committee of Experts was created at the same time as the Conference Committee on the Application of Standards. Although there have at times been differences in approach between the two Committees, they have developed a close collaborative relationship, especially in recent years, and each relies on the work of the other. The Committee of Experts has also found that its relations are intensifying with the committees set up to examine complaints and representations under articles 24 and 26 of the Constitution, as was the case for the complaint concerning the application by Myanmar of the Forced Labour Convention, 1930 (No. 29), and with the committees examining a constantly increasing number of representations.

Furthermore, special note should be taken of the links existing between the Committee of Experts and the Committee on Freedom of Association. Where a legislative problem arises and the country concerned has ratified the Conventions in relation to which a complaint has been brought to the Committee on Freedom of Association,[19] the latter may draw the attention of the Committee of Experts to the legislative aspects of the case. The Committee of Experts can then follow developments in the situation in the course of its regular examination of the Government's reports on the Convention in question. When examining the law and practice of a country in the context of its regular supervision of the application of Conventions, the Committee of Experts may also take into account the recommendations adopted unanimously by the Committee on Freedom of Association. Although the two Committees differ in their composition, the nature of their functions and their methods of work, they take as a basis the same principles, which are universal in scope and cannot be applied selectively.[20]

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[19] It should be noted that a complaint can be made to the Committee on Freedom of Association against a State which has not ratified the Conventions on freedom of association.

[20] For a study of the impact of the Committee on Freedom of Association, see E. Gravel, I. Duplessis and B. Gernigon: *The Committee on Freedom of Association: Its impact over 50 years*, ILO, 2nd Edition, 2002.

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International Labour Organization

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MONITORING COMPLIANCE WITH INTERNATIONAL LABOUR STANDARDS

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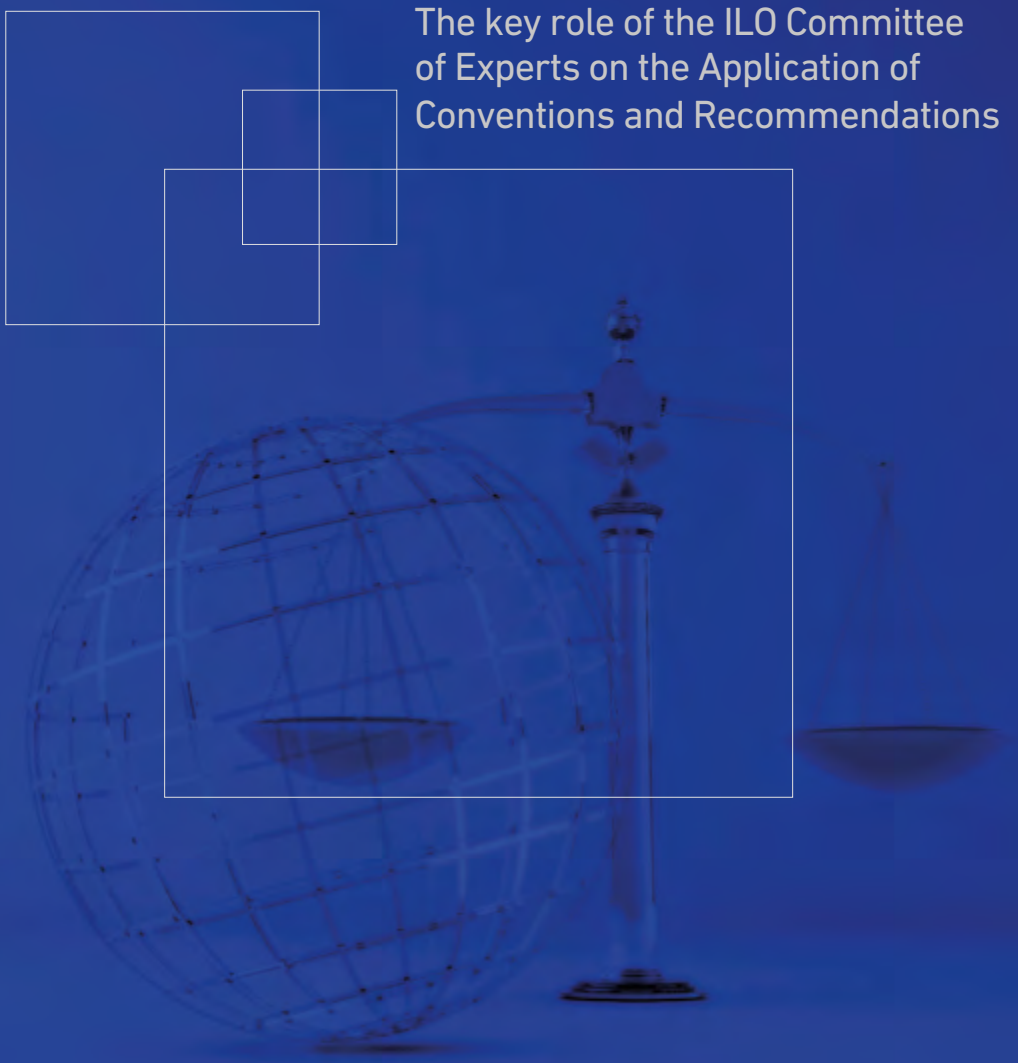

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The key role of the ILO Committee of Experts on the Application of Conventions and Recommendations

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FOREWORD

The ILO's Centenary has been the occasion of a series of celebrations and events throughout 2019. This study was prepared in this context and is part of a list of Centenary publications which have been aiming at underlying this special year for the Organization and its constituents, as well as shedding light on the ILO's broader activities. This particular publication attempts to look back at some of the achievements of one of the ILO's main bodies within its comprehensive supervisory system of standards, namely the Committee of Experts on the Application of Conventions and Recommendations.

The first part of the study provides a historical perspective and outlines the origins and composition of the Committee of Experts. It pays special attention to the close relationship between the Conference Committee on the Application of Standards and the Committee of Experts and the way the respective functions of the two bodies have evolved over the years. It also provides useful insights on the general methodology used by the Committee of Experts as well as on recent discussions regarding the Committee's mandate.

The second part of the study proposes a selection of 18 cases, for which significant progress has been noticed in the implementation of ratified ILO Conventions, following comments formulated by the Committee of Experts, often in conjunction with other ILO or UN bodies.

It is to be hoped that this publication will contribute to better disseminate the important work and contribution of a key body of the ILO supervisory system and will bear witness to the considerable impact that it has had in recent years.

Corinne Vargha
Director
International Labour Standards Department
ILO, Geneva

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ACKNOWLEDGEMENTS

This publication follows a request made by the members of the Committee of Experts on the Application of Conventions and Recommendations in 2018 to contribute to the ILO Centenary year through a study highlighting the achievements and successes in the implementation of ratified Conventions by ILO member States recorded by the Committee in the past few decades.

Gratitude and special appreciation must be extended to Eric Gravel, Senior Legal Officer in the International Labour Standards Department of the ILO, for having had the vision to convert this request and subsequently for preparing and coordinating the timely release of this publication. Special thanks must also go to Paul Peters for his key contribution to this publication, in particular with regard to the cases of progress listed in Part II of this study.

Appreciation must also be extended to the colleagues of some Departments of the ILO, namely Fundamental Principles and Rights at Work (FUNDAMENTALS), the Bureau for Employers' Activities (ACT/EMP) and the Bureau for Workers' Activities (ACTRAV), as they provided useful comments and feedback on this study.

Finally, Judge Graciela Dixon Caton, current Chairperson of the Committee of Experts on the Application of Conventions and Recommendations, should be warmly thanked for her continuous support of this project.

PRELIMINARY CONSIDERATIONS

For any institution, to be able to commemorate 100 years of existence has to be considered an important milestone. This is probably even more the case for an international organization such as the ILO that was established in a very particular context, on the ashes of the First World War, therefore in a world in which certain realities or conditions no longer exist or differ profoundly from the ones we are facing today. The ILO's Centenary has been the occasion for celebration and commemoration, as well as forward-looking as the Organization is embarking on its second century. The speed at which the combined forces of technology, demographic and climate change, globalization and migration are transforming the world of work are presenting additional challenges to the national and global institutions embodying today's social contract. Some of these challenges have been laid down and analysed by the Global Commission on the Future of Work in its 2019 Report *Work for a brighter future*.[1] But celebrating the ILO's Centenary also provides an opportunity to take stock of what has been achieved in certain key areas, in particular with regard to the standards-related work of the Organization.

It should be recalled that since its establishment in 1919, the ILO has constantly availed itself of international law, and more precisely international labour standards, as an instrument for the promotion of social justice. But from the very beginning, it has been clear that without effective implementation of such standards, this objective would not be achieved. The Organization therefore took this as its central concern and progressively developed various supervisory bodies to help ensure effective implementation of the instruments adopted. As the promotion of the ratification and application of labour standards as well as their accountable supervision have been fundamental means of achieving the Organization's objectives and principles of advancing decent work and social justice, it is no surprise that these principles can be found, inter alia, in the 1919 Constitution, the 1944 Declaration of Philadelphia, the 1998 Declaration on Fundamental Principles and Rights at Work, the 2008 ILO Declaration on Social Justice for a Fair Globalization and the newly adopted ILO Centenary Declaration.[2] The supervisory mechanisms of the ILO are multifaceted and anchored in the Organization's standards and principles. While various monitoring mechanisms exist in the context of international and regional organizations, the ILO's integrated system of promoting compliance with labour standards is regarded as unique and particularly comprehensive at the international level.

Within the ILO supervisory system, the Committee of Experts on the Application of Conventions and Recommendations (CEACR or Committee of Experts) is an independant body responsible for conducting the technical examination of the compliance of member States with provisions of ratified Conventions (and Protocols). The CEACR was set up in 1926 and is presently composed of 20 legal experts from different geographical regions, representing different legal systems and cultures. The Committee of Experts undertakes an impartial and technical analysis of how international labour standards 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 and content of the provisions of the Conventions. The CEACR's technical competence and moral authority is well recognized 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.

Seizing the opportunity of the ILO's Centenary reflections on its past, the present study attempts to map out some of the major achievements in terms of the impact of the CEACR's work through its comments in guiding ILO member States to fill gaps in compliance with international labour standards. It is intended to analyse both the institutional development and practical impact of the work of the Committee of Experts over the years, make an assessment of it and, in so far as possible, draw certain lessons for the future. The study therefore proposes to illustrate, based on a selection of examples listed over the past 20 years, the dynamic nature of the Committee's supervisory work.[3] To do so, Part I of the study provides an overview of the composition, mandate and functioning of the Committee of Experts by outlining the major parameters of its action.

Part II, which is more empirical, attempts to take stock of what has been achieved in recent decades by drawing up a non-exhaustive list of cases of progress enumerated in relation to the application of several Conventions in 18 countries. It is divided by subregions and countries and tries to respect an equitable geographical representation and diversity in the subjects covered by the Conventions. It should be stressed that this second part, as it is limited to an analysis of cases of progress relating to certain themes and countries, should not in any way serve to obscure the importance of, nor the fact that, numerous cases of significant progress have occurred over the years with regard to the application of other Conventions and countries.

Graciela Dixon Caton
on behalf of
the 2019 members of the Committee of Experts
on the Application of Conventions and Recommendations[4]

PART I

The Committee of Experts on the Application of Conventions and Recommendations: Composition and functioning

1. Origins and composition[5]

The ILO constitutional provisions relating to supervision of the application of ratified Conventions – the obligation to make annual reports on measures taken to give effect to ratified Conventions and the procedures for the presentation of representations and complaints – have been in place since they were first set out in the 1919 Constitution, which formed Part XIII of the Treaty of Versailles,[6] establishing the League of Nations, the predecessor of the United Nations. The Constitution set out the obligation for member States to submit regular reports on implementation in national law and practice for each of the Conventions that they had ratified.

Article 408 of the Treaty of Versailles (the current article 22 of the Constitution), which introduced the concept of "mutual supervision", followed a proposal made by what was then described as the British Empire to the Commission on International Labour Legislation, and read as follows:

> Each of the Members agrees to make an annual report to the International Labour Office of the measures 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. The Director shall lay a summary of these reports before the next meeting of the Conference.[7]

The concept of "mutual supervision" among ILO Members emerged from the work leading to the development of the ILO, based on the precept that ILO Members would all be bound by the same ratified Conventions, thereby preventing unfair competition between countries. [8] Each Member would therefore have an interest in ensuring that the others applied the Conventions that they had each ratified. Although it had originally been proposed that ratification of Conventions would be almost automatic by member States, when the Constitution was adopted the decision as to ratification was left to the discretion of Members, which were nevertheless under the obligation to bring Conventions and Recommendations before the competent authorities within one year of their adoption. However, the provisions concerning the supervisory procedures were still based on the assumption that ratification would be the general rule and objective. The report of the Commission on International Labour Legislation, which drafted the Labour Chapter, emphasized that the supervisory procedures had "been 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". It added that: "... while taking the view that it will in the long run be preferable as well as more effective to rely on the pressure of public international opinion rather than economic measures, [it] nevertheless considers it necessary to retain the latter in the background".[9]

However, the Constitution did not set up a supervisory body with the specific task of examining the reports submitted under Article 408, and it therefore fell to the International Labour Conference (ILC) to supervise the application of standards during the first years. It rapidly became apparent that the Conference could not continue to carry out this task in view of the constantly increasing number of ratifications and reports, quite apart from the adoption of new standards every year.

Indeed, until 1924, the reports submitted by governments were communicated to the ILC, first in full and later in a summarized form, in the Report which the Director-General of the Office submitted to the Conference. The ILC examined them in the course of the general discussion on the Director-General's Report. But as mentioned above, it was soon found that it was not possible by this method to make the maximum use of the means of mutual supervision of the application of Conventions afforded by the then Article 408. Recognition of this gave rise to the need for specific machinery to undertake such an examination.

Therefore, in terms of supervision, the first important development was the establishment in 1926 of both the Conference Committee on the Application of Standards (CAS) and the Committee of Experts on the Application of Conventions (CEAC – later CEACR) through the same Conference resolution.[10] The first resolution adopted by the Conference recommended that "a Committee of the Conference should be set up each year to examine the summaries of the reports submitted to the Conference in accordance with Article 408".[11]

The ILC also requested the Governing Body to:

> appoint ... a technical Committee of experts ... for the purpose of making the best and fullest use of this information and of securing such additional data as may be provided for in the forms approved by the Governing Body and found desirable to supplement that already available, and of reporting thereon to the Governing Body, which report the Director, after consultation with the Governing Body, will annex his summary of the annual reports presented to the Conference under Article 408.[12]

The following extracts from the *Record of Proceedings* of the ILC in 1926[13] provide an insight into the rationale behind the creation of these two bodies:

> Further, it may be observed that the Conference and its Committees are essentially deliberative and political bodies, composed of the representatives of various interests, national or occupational, and that in general such bodies are not the best suited for the technical work now under consideration.[14]

> The Committee of experts might therefore be, not a committee set up directly by the Conference, but a committee created by the Director, on the instructions of the Conference and with the approval of the Governing Body, to carry out a particular task in view of the technical preparation of one part of the work of the

> Conference. The Conference itself would conserve its proper political functions, but it would be advised as to the facts by this technical expert Committee, and it would, either directly, or through one of its own Committees, decide upon its attitude and upon what appropriate action it might take or indicate.[15]

It was thus understood very early on that an effective supervisory system should involve the combination, on the one hand, of a technical examination involving certain guarantees of impartiality and independence and, on the other, an examination by a body of the ILO's supreme political organ, which would therefore be of tripartite composition. The International Labour Conference thus had the foresight in 1926 of complementing the original method of monitoring mutual compliance with treaty obligations based on dialogue with member States and social partners alike with a technical preparatory element, therefore providing for coherent supervision and an enhanced rule of law. Interestingly, for practical reasons, between 1921 and 1925 neither the Conference nor individual Members used the Director-General's summary Report as a basis for further action. As a result, following their establishment in 1926, the CEACR and the CAS were the only effective means of supervising ratified Conventions, as the other supervisory procedures envisaged by the Constitution had not been fully implemented during that period, [16] and the reference was to focus on the review of annual reports, so as to render recourse to the other constitutional procedures (representations and complaints) unnecessary.

At its First Session in May 1927, the Committee of Experts was composed of eight members, and met for three days. It had to examine 180 reports on the application of ratified Conventions from 26 of the ILO's 55 member States. The Conference had by then adopted 23 Conventions and 28 Recommendations, and the number of ratifications of Conventions was 229. During that initial session, it should be recalled that the Organization operated on a vision of harmonizing national labour legislation among member States at relatively comparable levels of development and its initial purview was to supervise the application of a relatively small number of Conventions. Of the 180 reports received for the First Session of the CEACR, 70 gave rise to "observations" by the CEACR, which also made a number of remarks and suggestions on the form and content of the report forms. The following year, the CEACR noted in its report that governments had furnished the information based on its earlier comments.[17]

Relationship between the CEACR and the CAS in the early years

With respect to the relationship between the CEACR and the CAS, when the two Committees were established, the CAS was to base its examination on the summary of annual reports produced by the Director-General and the report of the CEACR. The CAS initially appointed "Sub-Reporters" to conduct an additional examination of the annual reports, but stopped in 1932 to avoid unnecessary duplication of the work of the CEACR.[18] Instead, the CAS decided to focus on matters of principle or on any facts that would emerge during its discussions.

The CAS indicated early on that the report of the CEACR was the basis of its deliberations, while the CAS's own independent examination was confined to reports received too late to be examined by the Committee of Experts. During that period, the CAS examined all observations made by the CEACR, together with subsequent information received from governments and the views expressed by delegates. Despite this "double examination" of reports, the working methods of the CEACR and the CAS gradually differed. While the CEACR examined reports and other written information provided by the Office, the procedures of the CAS progressively developed around the opportunity given to member States to submit explanations either orally or in writing. Already in 1928, the CAS recognized that the work of the CEACR had rendered useful results and the Governing Body decided to renew the appointment of the CEACR for one year on the understanding that its mandate would be tacitly renewed annually, unless opposition was raised.[19]

Then, in 1939, the CAS commented on the 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 was generally limited to a scrutiny of the documents provided by governments while the CAS was a tripartite organ, made up of representatives of governments, workers and employers, who were 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.[20] 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".[21]

Post-war period

The CEACR and the CAS could not function between 1940 and 1945. Following the Second World War, the ILO reviewed its role, particularly in relation to standard setting and the supervisory machinery. Thus, the second important development in the supervisory system occurred with amendments to the Constitution which were adopted in 1946. These amendments enlarged the scope of supervision, based on the experience of the work of the CEACR and the CAS in the pre-war years. The reforms recognized the important role of standards in achieving the objectives of the ILO. As the ILC records reflect, the amendments to the ILO Constitution which the Conference adopted at its 29th Session (Montreal, September–October 1946) provided for a considerable extension of the system of reports and information to be supplied by member States in respect of Conventions and Recommendations. During that session, it was discussed that although the pre-war system had offered a rather reliable impression of the extent to which national laws were in conformity with international labour standards, it did not provide a clear picture of the extent to which those laws were effectively

applied. The 1946 amendments thus introduced significant changes to a number of articles of the Constitution including articles 10, 19 and 22, 26–34, 35 and 37. Among them the following changes were of particular interest:

(i) the obligation of each Member to report on measures taken to submit to the competent national authorities Conventions and Recommendations newly adopted by the ILC;

(ii) the obligation to submit information and reports on unratified Conventions and on Recommendations when so requested by the Governing Body;

(iii) the obligation to communicate reports and information under articles 19 and 22 to the representative employers' and workers' organizations of the Member concerned.

After 1947, no further adjustments were made either by the Conference or by the Governing Body to the mandate of the supervisory bodies. However, certain adjustments were made to their working methods by the Governing Body, in particular concerning the number of the members of the CEACR, the classification of Conventions and Recommendations, the report forms and the cycle and schedule of reports. The supervisory bodies themselves have also made continuous adjustments to their working methods over the years (see below, section 3).

Direct contacts and technical assistance

While the work of the CEACR is essentially a written process, on the occasion of its 40th anniversary in 1967, the Committee put forward a suggestion which led to the introduction the following year of the procedure of direct contacts, which consists of on-the-spot missions visiting the country with a view to developing dialogue with governments and employers' and workers' organizations in order to overcome difficulties in the application of Conventions. This procedure initiated by the CEACR was further developed by the CAS and supported by the Governing Body. Originally intended to address problems relating to the application of ratified Conventions, the direct contacts procedure was extended in 1973 to cover difficulties in fulfilling the constitutional obligations of the submission of Conventions and Recommendations to the competent authorities, the submission of reports and information under articles 19 and 22 and possible obstacles to ratification. This procedure has become commonly used since then and has produced positive results.

In the early 1970s, over 150 Conventions had been adopted. Meanwhile, decolonization, in particular, had not only increased the Organization's membership to 121 Members but had started to alter the couching of international labour standards and their supervision. The introduction of flexibility clauses in Conventions and, more generally, of standards less geared towards predominantly legislative compliance and more towards the sound orientation of policies and institutions needed to realize social justice in newly independent States, increasingly inspired the Committee of Experts and the CAS to invite member States to rely on the gradually expanding technical cooperation activities of the Organization.

Appointment and membership of the CEACR: Then and now

Prior to the adoption of the 1926 resolution establishing the CEACR, the Chairperson and Reporter of the Committee on Article 408 explained that the method of appointment of the members of the CEACR should be left to the Governing Body, but that they "should essentially be persons chosen on the ground of expert qualifications and on no other ground whatever".[22] The criteria for appointment to the CEACR experienced continuity, although the number of experts and the geographical balance evolved rapidly in response to the CEACR's increased workload and the diversification of ILO membership. In 1927 and 1928, the membership of the CEACR consisted of eight experts and a substitute member. The experts were initially appointed for the duration of the CEACR's two-year trial period,[23] although as from 1934, they were appointed for a renewable three-year period.[24] The number of experts rose to 11 in 1932, with one member from an "extra-European" country. In 1939, the CEACR had 13 members, nine from European countries and four from non-European ones.

In 1945, the Governing Body appointed nine experts for the 13 vacant seats, which was the authorized number prior to the Second World War. Of those, five had been members of the CEACR prior to 1939. Following a request by the CEACR for the reinforcement of its membership, which had dropped to ten, and for experts qualified to examine the application of Conventions in non-metropolitan territories, the Governing Body appointed three additional experts by March 1948, including the first female expert.

In 1951, the CAS recommended that the Governing Body examine the possibility of lengthening the duration of the sessions and of adding once more to the number of experts.[25] As from the beginning of the 1950s, the sessions of the CEACR were lengthened to an average one-and-a-half weeks and its membership rose from 13 to 17 members.

In November 1962, the Governing Body appointed an additional member to ensure broader geographical distribution, with the CEACR's membership increasing to 18 in 1962 and 19 in 1965. The membership of the CEACR reached its current level of 20 experts in 1979. The issue of the geographical composition of CEACR membership took on greater importance in view of the ILO's increased membership, and constituents debated the emphasis to be given to personal qualifications versus the need to ensure geographical distribution. Some recalled that "geographical distribution, though important, was not the prime consideration" as "the main requirements for membership were competence, integrity and the ability to make comparative study of the provisions of national legislation and ILO instruments".[26]

In 2002, the CEACR itself decided to establish a 15-year membership limit for all its members, representing a maximum of four renewals after the first three-year appointment. The experts also decided that the election of their Chairperson for a three-year term would be renewable once.

Today, the 20 members of the Committee are high-level legal experts (judges of the International Court of Justice, of national Supreme Courts or other courts of law, as well as professors of law specialized in labour issues) appointed by the Governing Body for renewable periods of three years. As indicated above, appointments have always been made in a personal capacity of persons who were recognized as impartial and had the required technical competence and independence. From the very beginning, these characteristics were found to be of vital importance in ensuring that the Committee's work enjoyed the highest authority and credibility. The experts are in no sense representatives of governments and this independence has been guaranteed by the fact that they are appointed by the Governing Body on the recommendation of the Director-General, and not by proposal of the governments of the countries of which they are nationals.

2. Terms of reference and organization of the Committee's work

2.1 Terms of reference

The Conference resolution of 1926 which led to the establishment of the Committee of Experts described its purpose as "making the best and fullest use" of the reports on ratified Conventions. Since the constitutional reforms of 1946, and in pursuance of its terms of reference, as revised by the Governing Body at its 103rd Session (Geneva, 1947), the Committee was called upon to examine:

(i) the annual reports under article 22 of the Constitution on the measures taken by Members to give effect to the provisions of the Conventions to which they are parties, and the information furnished by Members concerning the results of inspections;

(ii) the information and reports concerning Conventions and Recommendations communicated by Members in accordance with article 19 of the Constitution;

(iii) information and reports on the measures taken by Members in accordance with article 35 of the Constitution.

The Committee is also asked to exercise certain functions in relation to instruments adopted under the auspices of other international organizations. In 1956, based on a request by the Secretary-General of the Council of Europe, the Governing Body assigned the CEACR the task of examining country reports on the European Social Security Code to ascertain the conformity of legislation in ratifying countries.[27] The CEACR started this examination following the entry into force of the Code in the 1960s.

On the occasion of its 60th anniversary in 1987, the Committee of Experts recalled the fundamental principles underlying its work and examined its terms of reference and methods of work.[28] The Committee emphasized that its task consisted of pointing out the extent to which the law and practice in each State appeared

to be in conformity with the terms of ratified Conventions and the obligations that the State has undertaken by virtue of the ILO Constitution. It added that:

> ... its function is to determine whether the requirements of a given Convention are being met, whatever the economic and social conditions existing in a given country. Subject only to any derogations which are expressly permitted by the Convention itself, these requirements remain constant and uniform for all countries. In carrying out this work, the Committee is guided by the standards laid down in the Convention alone, mindful, however, of the fact that the modes of their implementation may be different in different States. [29]

The Committee also recalled that year that, as ILO Conventions are international standards, the manner in which their implementation is evaluated must be uniform and must not be affected by concepts derived from any specific social or economic system.

General methodology and the CEACR's annual report

The methods of work of the Committee of Experts have evolved over the years and in the context of its general terms of reference. The Committee determines its own methods of work independently. At present, the Committee meets once a year in Geneva for nearly three weeks in November–December and its report is examined at the following session of the International Labour Conference. [30] Its meetings are held in private and its documents and deliberations are confidential. When the Committee deals with instruments or matters related to the competence of other specialized agencies of the United Nations system, representatives of those agencies may be invited to attend the sitting. The Committee assigns to each of its members initial responsibility for a group of Conventions or a subject. The reports and information received early enough by the Office are forwarded to the member concerned before the session. The expert responsible for each group of Conventions or subject may take the initiative of consulting other members. Furthermore, any other expert may ask to be consulted before the preliminary findings are submitted to the Committee in the plenary sitting in the form of draft comments. At this stage, the wording is left at the sole discretion of the expert responsible. All the preliminary findings are then submitted for the consideration of the Committee in the plenary sitting for its approval.

The documentation available to the Committee includes: the information supplied by governments in their reports or to the Conference Committee on the Application of Standards; the relevant legislation, collective agreements and court decisions; information supplied by States on the results of inspections; comments of employers' and workers' organizations; reports of other ILO bodies (such as commissions of inquiry, or the Governing Body Committee on Freedom of Association); and reports of technical cooperation activities.

Although the Committee's conclusions traditionally represent unanimous agreement among its members, decisions can nevertheless be taken by a majority. Where this happens, it is the established practice of the Committee to include in its report the opinions of dissenting members if they so wish, together

with any response by the Committee as a whole. The Committee's report is in the first place submitted to the Governing Body for information and its final findings take the form of:

(a) *Part I:* A General Report in which the Committee reviews general questions concerning international labour standards and related international instruments and their implementation.

(b) *Part II:* Observations concerning particular countries on the application of ratified Conventions, on the application of Conventions in non-metropolitan territories and on the obligation to submit instruments to the competent authorities.

(c) *Part III:* A General Survey of instruments on which governments have been requested to supply reports under article 19 of the ILO Constitution, which is published in a separate volume.

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, which, as indicated above, is an ILC tripartite standing committee. The CAS discusses the findings in the CEACR report and selects a number of observations for discussion. Governments referred to in these observations 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. In the General Report of the CAS certain situations of particular concern are highlighted in special paragraphs.[31]

Observations and direct requests

In order to conduct its work efficiently, the Committee of Experts has found it necessary in many cases to draw the attention of governments to the need to take action to give effect to certain provisions of Conventions or to supply additional information on given points. Its comments are drawn up in the form of either "observations", which are reproduced in the report of the Committee, or "direct requests", which are not published in the Committee's report, but are communicated directly to the governments concerned and are available online.[32]

Observations are generally used in more serious or long-standing cases of failure to fulfil obligations. They point to important discrepancies between the obligations under a Convention and the related law and/or practice of member States. They may address the absence of measures to give effect to a Convention or to take appropriate action following the Committee's requests. They may also highlight progress, as appropriate.

Direct requests allow the Committee to be engaged in a continuing dialogue with governments often when the questions raised are primarily of a technical nature. They can also be used for the clarification of certain points when the information available does not enable a full appreciation of the extent to which the obligations are fulfilled. Direct requests are also generally used for the examination of

first reports supplied by governments on the application of Conventions in order to initiate a dialogue with a government.

The Committee has always attached great importance to the clarity of the criteria for making a distinction between observations and direct requests, in order to ensure the visibility, transparency and coherence of its work and legal certainty over time. This distinction was the outcome of a long gestation initiated in 1957. That year, the Committee started to address a number of comments directly to governments instead of including them in its report. This distinction between observations and direct requests permitted the Committee to simplify the procedure in case of requests for supplementary information of comments on minor points and reduce the size of its report, but in the process enabled the Committee to gradually clarify issues of secondary importance with governments at earlier stages of their institutional development. The criteria involved careful consideration of both timing and substance. Even though these criteria might appear clear at first sight, their application sometimes called for a delicate balancing. The Committee has needed some room for reasoned discretion in this area, with a view to maintaining dialogue with governments and facilitating effective progress in the application of ratified Conventions.

Special notes (double footnotes)

In response to requests by the CAS, the Committee of Experts began in 1957 to identify serious and urgent cases requiring governments to provide information to the CAS. These special notes of the CEACR have become familiarly known as *"double footnotes"*. The Committee indicates with such footnotes at the end of its comments the cases in which, because of the nature of the problems encountered in the application of the Conventions concerned, it has deemed appropriate to ask the government to supply a report earlier than would otherwise have been the case and, in some instances, to supply full particulars to the Conference at its next session.

In order to identify cases for which it inserts these footnotes, the Committee uses the following basic criteria:

- the seriousness of the problem; in this respect, the Committee emphasizes that an important consideration is the necessity to view the problem in the context of a particular Convention and to take into account matters involving fundamental rights, workers' health, safety and well-being, as well as any adverse impact, including at the international level, on workers and other categories of protected persons;
- the persistence of the problem;
- the urgency of the situation; the evaluation of such urgency is necessarily case specific, according to standard human rights criteria, such as life-threatening situations or problems where irreversible harm is foreseeable; and
- the quality and scope of the government's response in its reports or the absence of response to the issues raised by the Committee, including cases of clear and repeated refusal on the part of a State to comply with its obligations.[33]

A new dynamic in improving working methods in recent decades

Consideration of its working methods by the Committee of Experts has been an ongoing process since its establishment. In this process, the Committee has always given due consideration to the views expressed by the tripartite constituents. Regarding its examination of governments' reports and comments of social partners, the Committee has often recalled that it was relying exclusively on written evidence and that there were no oral hearings or scope for oral arguments.

Over the years, the Committee of Experts has sought to deliver a rigorous, consistent and impartial assessment of compliance with ratified Conventions, constantly introducing gradual improvements to produce more user-friendly, precise and concise comments. This has been necessary not only in order to give clear guidance to governments but also to facilitate follow-up action and technical assistance by the Office.

Subcommittee on working methods

Since the CEACR, within the mandate given to it by the ILC and the Governing Body, has the power to examine and revise its own methods of work, it decided, in 2001, to pay particular attention to drafting its report in such a manner as to make it more accessible and to draw the attention of a larger readership to the importance of the provisions of Conventions and their application in practice. The CEACR's review of its methods was prompted by the discussions in the Governing Body of ILO standards-related activities, as well as the desire to effectively address its growing workload. The following year, in order to guide its reflections on this matter in an efficient and a thorough manner, the Committee decided to create a subcommittee. [34] The subcommittee on working methods, initially composed of a core group and open to any member wishing to participate in it, has as a mandate to examine not only the working methods of the Committee as strictly defined, but also any related subjects, and to make appropriate recommendations to the Committee. The subcommittee therefore 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.

The subcommittee met on three occasions between 2002 and 2004. During its sessions in 2005 and 2006, issues relating to its working methods were discussed by the CEACR in the plenary sitting. From 2007 to 2018, the subcommittee met at each of the Committee's sessions.

Recent developments

In 2013, the Committee of Experts held for the first time an informal information meeting with representatives of governments. During that meeting, the members of the Committee of Experts emphasized once again that the Committee's mandate was defined by the International Labour Conference

and the Governing Body. The members of the Committee of Experts also provided information on a number of aspects related to their work. These included: a succinct history of the Committee and the evolution of its composition and mandate; its role in the context of the ILO supervisory system, with particular emphasis on its relationship with the Conference Committee on the Application of Standards; the sources of information used in carrying out its work and the preparatory work and examination of comments during its plenary sittings. The Committee of Experts added that its efforts to streamline its comments were solely aimed at improving the coherence, quality and visibility of its work, without losing substance. [35]

Another interesting development relating to working methods took place in 2017. Based on the discussion of the subcommittee on working methods that year, the Committee of Experts decided to institute a practice of launching "urgent appeals" in cases corresponding to the following criteria:

- failure to send first reports after ratification for the third consecutive year;
- failure to reply to serious and urgent observations from employers' and workers' organizations for more than two years;
- failure to reply to CEACR repetitions relating to draft legislation when developments have intervened. [36]

In addition, the following year, based on the guidance of the Governing Body, the CEACR continued its recent practice of adopting a single comment to address in a consolidated manner the issues of application arising under various related Conventions for one country. These types of consolidated comments have been adopted in the fields of social security, maritime issues, wages, working time, occupational safety and health, labour inspection and child labour. This has allowed the CEACR to avoid repetitive comments under thematically related Conventions and has helped to ensure greater coherence in the treatment of the related information by country. For the countries concerned, one advantage is that comments are more easily readable and provide a more coherent and holistic analysis by subject of the issues to be addressed.

Finally, it should be recalled that throughout all these years, as the Committee's workload, working methods and responsibilities have evolved, the principles of objectivity, impartiality and independence which animate its work have not changed. It continues to examine the application of Conventions, Protocols and Recommendations, and of related constitutional obligations, in a uniform manner for all States. And as efforts are directed towards improving the visibility of the Committee's work, this 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.

2.2 Recent discussions on, and clarifications regarding, the Committee's mandate

Despite the fact that the Committee of Experts carries out an exercise involving a certain degree of interpretation of international standards and that over the years its observations have acquired considerable moral force, it should be stressed that by virtue of article 37 of the ILO Constitution, only the International Court of Justice is competent to make "definitive interpretations" of Conventions. It is therefore more precise to emphasize that the Committee of Experts' observations constitute assessments of the conformity of the national laws of a member State with the Conventions that it has ratified, and not definitive interpretations. To make such assessments, the CEACR has recalled over the years that under Articles 31 and 32 of the Vienna Convention on the Law of Treaties, resort to preparatory works of an instrument can occur to confirm a good faith interpretation in accordance with the ordinary meaning to be given to the terms of the treaty in their context and in the light of its object and purpose or to determine the meaning when the interpretation: (a) leaves the meaning ambiguous or obscure; or (b) leads to a result which is manifestly absurd or unreasonable. In the ILO, reference is made simultaneously to the text of the international labour standard and to its preparatory work. This is respectful of the input made by tripartite constituents during the framing of an instrument and of the unique tripartite structure of the ILO that gives an equal voice to workers, employers and governments to ensure that the views of the social partners are closely reflected in labour standards and in shaping policies and programmes.

Tripartite consensus on the ILO supervisory system is therefore an important parameter for the work of the Committee of Experts which, although an independent body, has never functioned in an autonomous manner. Divergences of views between constituents therefore may have an impact on the Committee's work and requires it to pay particular attention to abiding strictly by its mandate and its core principles of independence, objectivity and impartiality.

Recent clarifications

Following tensions in the tripartite consensus related to certain aspects of the supervisory system that culminated in the early 2010s, the Committee recalled during its session of November 2012 that, since 1947, and during the past 50-plus years, it had regularly expressed its views on its mandate and methods of work. Since 2001, it had done so even more thoroughly through the efforts of its subcommittee on working methods (see section 2.1 above). In its 2013 report, the CEACR made several detailed observations regarding its mandate in the spirit of assisting ILO constituents in their understanding of the CEACR's work. [37] On that occasion, the Committee recalled three elements of particular relevance: (i) it had repeatedly stressed its status as an impartial, objective, and independent body, with members appointed by the tripartite Governing Body in their personal capacity precisely because of that impartial and independent status; (ii) it had regularly clarified that, while its terms of reference did not authorize it to give

definitive interpretations of Conventions, in order to carry out its mandate of evaluating and assessing the application and implementation of Conventions, it had to consider and express its views on the legal scope and meaning of the provisions of these Conventions; and (iii) as from at least the 1950s, it had expressed its views on the meaning of specific ILO instruments in terms that inevitably reflected an interpretive vocabulary.

The Committee further stressed that its mandate derived from three main principles. First, assessment and evaluation of textual meaning was logically integral to the application of ratified Conventions. In this regard, the Committee noted that it needed to bring to the attention of the CAS: (i) any national laws or practices not in conformity with the Conventions, which inevitably required the evaluation and, thus, a certain degree of interpretation, of the national legislation and the text of the Convention; and (ii) in conformity with its working methods, the cases of progress in the application of standards, which also required a degree of interpretation.

Second, the equal treatment and uniformity of the application of Conventions assured predictability. The Committee highlighted in this regard that its approach to examining the meaning of Conventions also prioritized achieving equal treatment for States and uniformity in practical application. This emphasis was essential to maintaining principles of legality, which encouraged governments to accept its views on the application of a Convention and, in this manner, promoted a level of certainty needed for the proper functioning of the ILO system.

Third, the Committee stressed that its composition, that is, independent persons with distinguished backgrounds in the law and direct experience of the different national legal systems to which Conventions were applied, helped to ensure a broad acceptance within the ILO community of its views on the meaning of Conventions. The Committee's independence was importantly a function of its members' occupations, principally as judges from national and international courts and as professors of labour law and human rights law. This independence was also attributable to the means by which members were selected. They were not selected by governments, employers or workers, but rather by the Governing Body upon recommendation of the Director-General. The Committee's combination of independence, experience and expertise continued to be a significant further source of legitimacy within the ILO community.

In its 2013 report, the Committee further recalled that it directed its non-binding opinions and conclusions to governments, social partners and the CAS pursuant to its well-established role in the ILO supervisory structure. While aware that its guidance was taken seriously in certain specific settings, both by domestic courts and international tribunals, the Committee considered that this reflected respect for its independent and impartial nature and for the persuasive value of its non-binding analyses and conclusions. The Committee recalled that those analyses or conclusions could only become authoritative in any "binding" sense if the international tribunal, or instrument, or the domestic court independently established them as such.

The Committee also underscored the substantial individual and collective work it carried out in reviewing the application of Conventions which further benefited from an intensive exchange of views from a diversity of legal, social and cultural backgrounds. Finally, the Committee recalled that its mandate had to, by necessity, be understood within the framework of the ILO Constitution, which firmly anchored the aims and objectives of the Organization as being the elimination of injustice, hardship and privation and the fostering of social justice as the means for ensuring universal and lasting peace.

The Committee finally recalled that its guidance was part of the so-called international law landscape. Like the work of independent supervisory bodies created within other UN organizations addressing human rights and labour rights, the Committee's non-binding opinions or conclusions were intended to guide the actions of ILO member States by virtue of their rationality and persuasiveness, their source of legitimacy and their responsiveness to a set of national realities including the informational input of the social partners. At the same time, the Committee observed that it was only before the ILO supervisory machinery that the social partners could bring forward their concerns relating to the application of Conventions.

Following these detailed observations, the Committee of Experts decided to include in 2014 the following statement regarding 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-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.[38]

In 2015, the Committee noted that the statement of its mandate (which has been since reiterated in all its yearly reports) was welcomed by the Governing Body and had the support of the tripartite constituents.[39]

2.3 Information treated by the Committee (reports submitted by governments and comments of the social partners)

Reporting cycle

As indicated above, article 22 of the ILO Constitution calls on governments of ILO member States to provide reports detailing the steps they have taken in law and practice to apply the ILO Conventions they have ratified. The article also allows the Governing Body to decide in which form and at which time intervals reports on each Convention are requested. While reports on each Convention had to be sent on an annual basis during the early years following the ILO's establishment, the reporting cycle has been gradually extended over time, to decrease the workload of both governments and the CEACR. Since 2012, reports on the eight fundamental and four governance Conventions are due every three years. The reporting cycle for all other Conventions had been five years since 1993, but was extended to six years following a decision of the Governing Body in November 2018. Reports can however also be requested at shorter intervals. For example, the CEACR can request a government to send a report in reply to comments it has made on the government's previous report within a shorter period. All reports due in one year have to reach the Office between 1 June and 1 September, to be reviewed during the CEACR's meeting in November.

Furthermore, the Governing Body in its November 2018 decision expressed its understanding that the Committee of Experts would further review, clarify and, where appropriate, broaden the criteria for "breaking the reporting cycle" with respect to technical Conventions. [40] The Committee thus proceeded with the review of the criteria mentioned above. The Committee indicated that it would review the application of a technical Convention outside of a reporting year following observations submitted by employers' and workers' organizations having due regard to the following elements:

- the seriousness of the problem and its adverse impact on the application of the Convention;
- the persistence of the problem; and
- the relevance and scope of the government's response in its reports or the absence of response to the issues raised by the Committee, including cases of clear and repeated refusal on the part of a State to comply with its obligations.

Finally, it is important to stress that, as the functioning of the supervisory system is based primarily on the information provided by governments in their reports, both the Committee of Experts and the CAS have, for a number of years, considered that failure by member States to fulfil their obligations in this respect should be given the same level of attention as non-compliance relating to the application of ratified Conventions.

Participation of employers' and workers' organizations

In the early years of the supervisory system, both the CEACR and the CAS repeatedly expressed concern at the lack of comments from employers' and workers' organizations based on the question added to the report forms in 1932. It was only in 1953 that the CEACR could note comments received from workers' organizations in two countries. In 1959, it indicated that comments had been received from nine countries.[41]

In the early 1970s, the CEACR began giving special attention to the obligation for Members, under article 23 of the Constitution, to communicate reports to the representative employers' and workers' organizations, by which greater participation of workers and employers was to be promoted. During that period, the convergence of views between the Employers' and Workers' groups on promoting compliance with standards led to further developments in the work of the CEACR. This, combined with the growth of the international trade union movement, contributed to the increased participation of employers' and workers' organizations in the process of the supervision of standards. By the mid-1970s, a series of measures had been taken to strengthen tripartism in ILO activities, including supervision, resulting in important changes in the workload and methods of work of the CEACR. The adoption of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), established the requirement for ratifying States to consult the representatives of employers and workers on certain standards-related matters, including their reports on ratified Conventions.

Until the early 1980s, most comments were submitted together with the governments' reports, while only a few were sent directly to the Organization. By 1986, the CEACR was able to note that there had been a considerable increase in the comments received, from 9 in 1972 to 149 in 1985. The following period witnessed an even greater increase in the number of comments received from employers' and workers' organizations, which rose from 183 in 1990 to 1,004 in 2012 and 1,325 in 2017. A small decrease (due to a smaller number of submissions made on the General Survey) was noted in 2018 with 745 observations received.

In recent years, the CEACR has recalled consistently that the contribution by employers' and workers' organizations was essential for the Committee's evaluation of the application of Conventions in national law and in practice. Member States have an obligation under article 23, paragraph 2, of the Constitution to communicate to the representative employers' and workers' organizations copies of the reports supplied under articles 19 and 22 of the Constitution. Compliance with this constitutional obligation is intended to enable organizations of employers and workers to participate fully in the supervision of the application of international labour standards. In some cases, governments transmit the observations made by employers' and workers' organizations with their reports, sometimes adding their own comments. However, in recent years, in the majority of cases, observations from employers' and workers' organizations are sent directly to the Office which, in accordance with the established practice, transmits them to the governments concerned for comment, so as to ensure respect for due process. Where the

Committee finds that the observations are not within the scope of the Convention or do not contain information that would add value to its examination of the application of the Convention, it will not refer to them in its comments. Otherwise, the observations received from employers' and workers' organizations may be considered in an observation or in a direct request, as appropriate.

At its 86th Session (2015), the Committee made the following clarifications on the general approach developed over the years for the treatment of observations from employers' and workers' organizations. The Committee recalled that, in a reporting year, when observations from employers' and workers' organizations are not provided with the government's report, they should be received by the Office by 1 September at the latest, so as to allow the government concerned to have a reasonable time to respond, thereby enabling the Committee to examine, as appropriate, the issues raised at its session the same year. When observations are received after 1 September, they would not be examined in substance in the absence of a reply from the government, apart from exceptional cases. Over the years, the Committee has defined exceptional cases as those where the allegations are sufficiently substantiated and there is an urgent need to address the situation, whether because they refer to matters of life and death or to violations of fundamental human rights or because any delay may cause irreparable harm. In addition, observations referring to legislative proposals or draft laws may also be examined by the Committee in the absence of a reply from the government, where this may be of assistance for the country at the drafting stage. [42]

Reports on unratified Conventions: From technical examination to General Surveys

Following the 1946 constitutional amendment and a 1948 decision of the Governing Body, the CEACR examined for the first time government reports on unratified Conventions in 1950. The CEACR's analysis and findings, which were submitted to the CAS, took the form of a survey intended to portray a comprehensive picture of the state of the law and practice in all countries on certain important matters falling within the competence of the ILO, with a focus on the reasons preventing or delaying the ratification of Conventions.

The following years, the examination of reports on unratified Conventions and on Recommendations was strengthened and in November 1955, with a view to reinforcing the work of the CAS, the Governing Body approved a proposal by its Committee on Standing Orders and the Application of Conventions and Recommendations, which was supported by the CAS, that the CEACR should undertake, in addition to a technical examination on the application of Conventions, a study of general matters, such as positions on the application of certain Conventions and Recommendations by all governments. Such studies, now known as "General Surveys", were intended to cover the Conventions and Recommendations selected for the submission of reports under article 19 of the Constitution. As the reports requested under article 19 were grouped around one or two central themes each year, it was proposed that the reports provided under

article 22 of the Constitution might also be taken into consideration. This practice was endorsed by both the CAS and the Governing Body so as to allow for a "fuller examination of the situation existing in the various countries in the field covered by these Conventions".[43] The CEACR carried out its first such examination in 1956 and, as from that year, the CAS has consistently discussed the General Surveys of the CEACR.

Today, these General Surveys allow the Committee of Experts to examine the progress and difficulties reported by governments in applying labour standards, clarify the scope of these standards and occasionally indicate means of overcoming obstacles to their application. In doing so, the General Surveys also provide importance guidance to national legislators as well as to the ILO, on possible action to be taken with regard to the standards. More recently, General Surveys have played a role in informing the recurrent discussions of the International Labour Conference, which periodically review the effectiveness of the Organization's various means of action, including standards-related action in responding to the diverse realities and needs of member States with respect to each of the strategic objectives of the Decent Work Agenda. Increasingly, they may be expected to inform the work of the Standards Review Mechanism Tripartite Working Group, a recently established body, which is mandated to ensure that the ILO has a clear, robust and up-to-date body of international labour standards that respond to the changing patterns of the world of work, for the purpose of the protection of workers and taking into account the needs of sustainable enterprises.

Reports concerning the submission of instruments to the competent authorities

Under article 19(5)(b), (6)(b) and (7)(b) of the ILO Constitution, member States are required to submit, as a general rule, every instrument within 12 months of its adoption to the authority or authorities, within whose competence the matter lies, to consider the adoption of legislation or other action to implement it. These member States then have to submit a report to the Office, detailing the action they have taken in this regard.

In 1954, the Governing Body approved for the first time a draft memorandum containing details on the extent of the obligation to submit Conventions and Recommendations to the competent authorities. The most recent revision of this memorandum was adopted in 2005. It describes the extent of the obligation and the aims and objectives of the submission, stating that the main aim of submission is to promote measures at the domestic level for the ratification and implementation of the instruments and to bring them to the knowledge of the public. It furthermore clarifies the form of submission, the time limits and other technical aspects.

In its annual report, the CEACR reviews the information related to the submission of instruments and formulates comments on cases of non-compliance with this obligation.

3. Synergies between the various supervisory bodies of the ILO

The supervisory system of the ILO has had to develop over time to meet changing societal realities and challenges. As mentioned above, these various mechanisms have long been cited as among the most advanced and best functioning in the international system, probably because they are the result of a combination of actions by different ILO bodies – the supervisory bodies, the ILC and the Governing Body. While the regular system of supervision focuses on the examination of periodic reports submitted by member States on the measures they have taken to implement the provisions of ratified Conventions and to give effect to unratified Conventions and Recommendations (articles 19, 22, 23 and 35), the special procedures (a representation procedure and a complaint procedure of general application – articles 24 and 26 to 34 – together with a special procedure for freedom of association) are driven by complaint-based mechanisms.

But 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, although obligations in respect of unratified instruments are also an important area of attention for the supervisory bodies.

The CEACR and the CAS: Complementary and mutually reinforcing

As noted above, the Committee of Experts was created at the same time as the Conference Committee on the Application of Standards. While there have at times been differences in approach between the two committees, they have developed a solidly collaborative relationship and each relies on the work of the other. In fact, a spirit of mutual respect, cooperation and responsibility has consistently prevailed in the Committee's relations with the International Labour Conference and its Committee on the Application of Standards. The Committee of Experts takes the proceedings of the CAS into full consideration, not only in respect of general matters concerning standard-setting activities and supervisory procedures, but also in respect of specific matters concerning the way in which States fulfil their standards-related obligations.

Over the years, both the CAS and the CEACR have regularly examined their working methods with their continual concern to coordinate the operation of the various supervisory procedures so that they would be complementary and mutually reinforcing. Until 1955, the CAS discussed all the cases contained in the CEACR reports. In the mid-1950s, the first decisions were taken to allow the CEACR and the CAS to deal with their increasing workload. A certain division of labour was progressively established between the CAS and the CEACR. At the

beginning, both Committees examined successively all the issues arising out of the annual reports. However, in 1955, the CAS adopted the "principle of selectivity" so that it could concentrate only on cases in which the CEACR had drawn attention to definite discrepancies between the terms of ratified Conventions and national law and practice. [44]

As from the 1990s, two practices enhanced the mutual understanding between the Committee of Experts and the CAS. Since 1993, the Vice-Chairpersons of the CAS [45] have been invited to a special session of the Committee each year, providing them with a platform to express their views, proposals and concerns. Conversely, carrying out a Governing Body decision, the Director-General invites the Chairperson of the Committee of Experts to attend sessions of the Conference Committee on the Application of Standards. This provides the CEACR with insights into how the tripartite CAS addresses its General Report, the cases it has selected for discussion from the Committee of Experts' report and its General Survey. This practice has been considered useful with the potential to further reinforce the respective roles of both bodies.

In 1994, on the occasion of the ILO's 75th anniversary, the CEACR recalled developments in the practice of the two Committees, and concluded that the division of functions was "one of the keys to the success of the ILO's supervisory system in that the complementary nature of the independent examination carried out by the Committee of Experts and the tripartite examination of the Conference Committee on Standards makes it possible to maintain a desirable balance in the treatment of cases". [46]

More recently, 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 could be regarded as distinct but inextricably linked as their activities are mutually dependent. Then, in its 2019 report, the CEACR recognized that its independent nature helped the fruitful dialogue in which the two bodies had been engaging and that any evolution of the supervisory system should be based on the system's strengths. International labour standards constituted not only the main source of international labour law but also the foundation of national labour law in many countries throughout the world. International labour standards had managed to exert this influence and maintain their relevance over the years largely thanks to the supervisory body comments linking ratified Conventions to constantly changing national circumstances, and through the integration of these recommendations and comments in numerous decisions reached by national judicial bodies. The Committee of Experts' comments would not have produced the same results if they were not enhanced by the political impact of discussion at the Conference Committee in a tripartite context. An important condition for maintaining the impact of the experts' comments was the coherence between the two bodies, based on their complementary mandates and the cooperation they had built over time. In addition, conscious of the synergies between the two bodies, the Committee

of Experts had been referring to the conclusions reached by the CAS in many of its comments.[47] Finally, in its most recent reports, the Committee of Experts has recalled that it placed special emphasis on the conclusions of the CAS, carefully and systematically reviewing their follow-up in its own comments.

The CEACR and the complaint-based mechanisms

As illustrated above, the supervisory mechanisms, whether they form part of the regular system or consist of so-called special procedures, are closely linked. Indeed, the work of the Committee of Experts frequently serves as a basis for that of other supervisory mechanisms.

It is a well-established practice in the supervisory system that the CEACR follows up on the effect given by governments to the recommendations made by tripartite committees (article 24) and Commissions of Inquiry (article 26). The governments concerned are therefore requested to indicate in their reports under article 22 the measures taken on the basis of these recommendations. The related information is then examined by the regular supervisory machinery. As such, it becomes part of the ongoing dialogue between the government, the CEACR and the CAS. 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.[48] 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.

With regard more specifically to the Committee on Freedom of Association (CFA), its procedure provides for the examination of the action taken by governments on its recommendations. Under the CFA rules of procedure, where member States have ratified one or more Conventions on freedom of association, examination of the legislative aspects of the recommendations adopted by the Governing Body is often referred to the CEACR by the Governing Body. The attention of the CEACR is specifically drawn in the concluding paragraph of the CFA's reports to possible discrepancies between national law and practice and the terms of the Convention. However, it is made clear in the procedure that such referral does not prevent the CFA from examining the effect given to its recommendations, particularly in view of the nature and urgency of the issues involved. Since its 236th Report (November 1984), the CFA has highlighted in the introduction to its Report the cases to which the attention of the CEACR has been drawn.[49]

Synergies between the CEACR and other UN and non-UN monitoring bodies

Apart from other ILO supervisory bodies and mechanisms, the CEACR has also established links with other international monitoring bodies. This mainly concerns the UN treaty bodies, which supervise the application of UN human rights treaties.

Many of the subjects treated by ILO instruments are also relevant to UN human rights treaties. A number of the guarantees contained in these treaties overlap with the obligations under ILO Conventions. This concerns for example the International Covenant on Economic, Social and Cultural Rights, which, inter alia, contains guarantees concerning freedom of association and the right to organize, occupational safety and health or fair wages. Other such overlapping provisions are also contained in the International Covenant on Civil and Political Rights, the Convention on the Rights of the Child, the Convention on the Elimination of Discrimination against Women, the Convention on the Rights of Persons with Disabilities or the International Convention on the Elimination of Racial Discrimination.

Many of the countries which have ratified ILO Conventions have also ratified UN human rights treaties with corresponding provisions. If there is a case of non-compliance with these provisions, the case will often be treated both by the CEACR and one or several UN supervisory bodies. Over the years, this has led to the development of synergies between these bodies, with the UN bodies in many cases quoting comments of the CEACR and urging the respective governments to respond to them. Similarly, the CEACR has also, in many cases, quoted comments made by these supervisory bodies in its reports in order to reinforce its own statements. [50]

There are also a number of regional multilateral treaties which treat issues relevant to ILO standards, such as the European Social Charter or the Social Charter of the Americas. In the case of the European Committee on Social Rights, it has established links with the CEACR for countries that have ratified both treaties. [51]

Sources of international law applied at the national level

The CEACR, through its comments on compliance with international labour standards, has also exerted some influence on the decisions of domestic or international courts. [52] In numerous countries, ratified international treaties apply automatically at the national level. Their courts are thus able to use international labour standards to decide cases on which national law is inadequate or silent, or to draw on definitions set out in the standards, such as of “forced labour” or “discrimination”. The use of these standards by the highest courts of certain countries, as observed by the CEACR for many years, bears witness to their acceptance and use at the national level. In this way, national and international systems for the regulation of labour are a mutual source of inspiration.

PART II

Impact of the Committee of Experts' work and analysis of cases of progress

1. The rationale behind identifying a case of progress

In 1964, the CEACR started to record cases of progress in its report, noting that a considerable number of governments had taken account of its past observations and had amended their legislation and/or practice accordingly.[53] Within cases of progress, a distinction between cases of satisfaction and cases of interest was formalized in 1979.[54] In general, cases of ***interest*** cover measures that are sufficiently advanced to justify the expectation that further progress would be achieved in the future and regarding which the Committee would want to continue its dialogue with the government and the social partners. The Committee's practice has developed to such an extent that cases in which it expresses interest may encompass a variety of measures. The paramount consideration is that the measures contribute to the overall achievement of the objectives of a particular Convention. This may include:

- draft legislation that is before parliament, or other proposed legislative changes forwarded or available to the Committee;
- consultations within the government and with the social partners;
- new policies;
- the development and implementation of activities within the framework of a technical cooperation project, or following technical assistance or advice from the Office;
- judicial decisions, according to the level of the court, the subject matter and the force of such decisions in a particular legal system, would normally be considered as cases of interest unless there is a compelling reason to note a particular judicial decision as a case of satisfaction.

The Committee expresses ***satisfaction*** in cases in which, following comments it has made on a specific issue, governments have taken measures through either the adoption of new legislation, an amendment to the existing legislation or a significant change in the national policy or practice, thus achieving fuller compliance with their obligations under the respective Conventions. In expressing its satisfaction, the Committee indicates to governments and the social partners that it considers the specific matter resolved. The reason for identifying cases of satisfaction is twofold:

- to place on record the Committee's appreciation of the positive action taken by governments in response to its comments; and
- to provide an example to other governments and social partners which have to address similar issues.

At its 80th and 82nd Sessions (2009 and 2011), the Committee made the following clarifications on the general approach developed over the years for the identification of cases of progress:

(1) The expression by the Committee of interest or satisfaction does not necessarily mean that it considers that the country in question is in general conformity with the Convention, and in the same comment the Committee may express its satisfaction or interest at a specific issue while also expressing regret concerning other important matters which, in its view, have not been addressed in a satisfactory manner.

(2) The Committee wishes to emphasize that an indication of progress is limited to a specific issue related to the application of the Convention and the nature of the measure adopted by the government concerned.

(3) The Committee exercises its discretion in noting progress, taking into account the particular nature of the Convention and the specific circumstances of the country.

(4) The expression of progress can refer to different kinds of measures relating to national legislation, policy or practice.

(5) If the satisfaction or interest relates to the adoption of legislation or to a draft legislation, the Committee may also consider appropriate follow-up measures for its practical application.

(6) In identifying cases of progress, the Committee takes into account both the information provided by governments in their reports and the comments of employers' and workers' organizations.[55]

While recording cases of progress has become an essential part of the Committee of Experts' work, the extent to which people, workers and employers alike, have benefited, often in a lasting manner, from the legal and social changes which occur when the national legislation/situation are brought into conformity with international labour standards can be sometimes challenging to measure. Indeed, in practice, not everything can be measured accurately. As experience shows, law and its effective implementation is a complex issue. For the purpose of this publication, as will be illustrated below, it was necessary to make certain choices, steering clear of analysing everything, but emphasizing the diversity, profundity, permanence and progression of the impact of the work carried out by the CEACR.

2. Preventive supervision and the issue of causality

The difficulties encountered by the ILO supervisory bodies and in particular the CEACR in helping eliminate divergences between national law and international labour instruments have various origins. Firstly, there may exist difficulties of an economic or social nature preventing the implementation of and compliance with the Conventions ratified by a specific State. These sometimes consist of premature ratifications, with the State marking its adhesion to the principle through its ratification, but not yet having the means to ensure effective compliance with the Convention. Similar problems have also been noted in the past in the case of newly independent States. In other instances, political difficulties may delay the adoption of measures to remove the divergences noted by the Committee. Political issues may range from serious internal problems to the difficulties experienced by the government in obtaining the adoption of the necessary amendments by parliament. These may be combined with difficulties of a legal nature, such as those encountered on occasion by federal States when the measures to be taken lie within the competence of the constituent units of the federation. [56]

But as mentioned above, the impact of the Committee of Experts' work as part of the overall supervisory system cannot be measured solely in the light of the cases of progress enumerated. In this respect, the indirect or a priori impact of the Committee's work should not be overlooked. In practice, the Committee of Experts can exercise considerable preventive supervision. This impact is by its nature difficult to quantify. It consists, for example, of the comparative analysis of draft legislation bringing to light the incompatibility of certain provisions of the draft text with the Convention concerned. Such an examination, even before the entry into force of the law, offers the legislative authorities of a member State the possibility to make the necessary amendments. As a result, the law will probably not be the subject of comments by the Committee of Experts subsequently, unless real problems of application arise.

With regard to preventive supervision, reference should also be made to the direct requests that the CEACR sends out each year to certain governments. These direct requests, in which the Committee generally seeks clarifications from governments and enters into dialogue with them, do not appear in the Committee's report. As a result, the measures taken pursuant to direct requests and their effectiveness will never appear in the figures of cases of progress. Furthermore, the Committee notes each year a number of cases in which it appears, from the first report on the application of a Convention, that new measures of a legislative or other nature have been adopted shortly before or after ratification.

The question may also sometimes arise as to how to establish a causal link between the observations of the Committee of Experts and the measures taken by the governments concerned. The process of supervising application, to be effective, necessarily requires a certain degree of collaboration by member States. The outcome of the Committee's work can be measured on the basis of a whole range of sources of information, including the indications provided by

the governments concerned, those transmitted by employers' and workers' organizations, draft legislation submitted to the Office and requests for technical assistance. In this respect, the information that can be provided by workers' and employers' organizations takes on a certain importance by making it possible for the Committee to keep itself informed of cases in which, for example, the government concerned did not provide the requested information.[57]

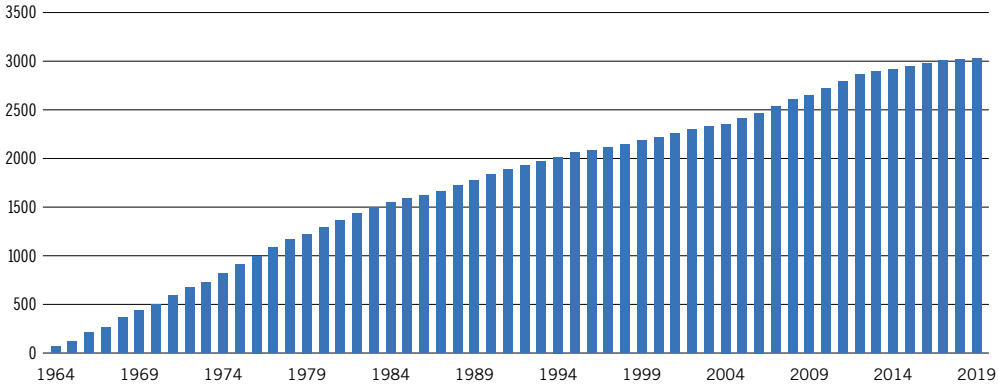
The causal link between an observation by the Committee of Experts and a case of progress can be more difficult to establish where the Committee's comments have not given rise to immediate action and several years have passed before the government concerned took the necessary measures to give effect to those comments. In such cases, it should be recalled that throughout whatever period necessary, the Committee of Experts – sometimes alongside other bodies of the supervisory system – would continue to follow a case, pursuing its examination of the problems of application which had arisen and reiterating its previous comments until it would be able to note a change in line with its observations.

Admittedly, the rise in the number of cases of progress over the years has been linked to the increase in ratifications and the amount of reports submitted. But the cases of progress noted by the CEACR cannot be assessed solely on the basis of figures, which cannot by themselves claim to give a real and detailed picture of the developments in the situation. The analysis must therefore be both quantitative and qualitative.

The following figures provide a statistical overview regarding the cases of progress recorded by the CEACR.

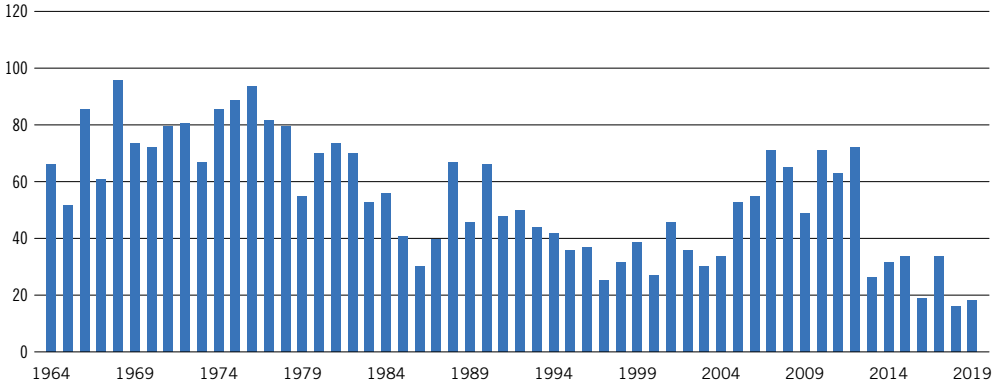
Since 1964, the CEACR has been recording the number of cases in which it was able to express its ***satisfaction*** following positive measures taken by governments in line with its comments. As of 2019, the total number of these cases had risen to 3,077. This number has been increasing steadily over the years (fig. 1).

Figure 1



Since 1964, there have been an average of 54 new cases of ***satisfaction*** per year (fig. 2).

Figure 2



As of 2001, the CEACR also began to record the cases in which it expressed its ***interest***. As of 2019, their total number had risen to 4,168, with 219 new cases on average every year.

Regarding the distribution of the cases of ***satisfaction*** among the different types of Conventions, a fairly even distribution between "fundamental" and "technical" Conventions can be noted. Both types make up about 88 per cent of all cases, leaving the remaining 12 per cent to the "governance" Conventions (fig. 3).

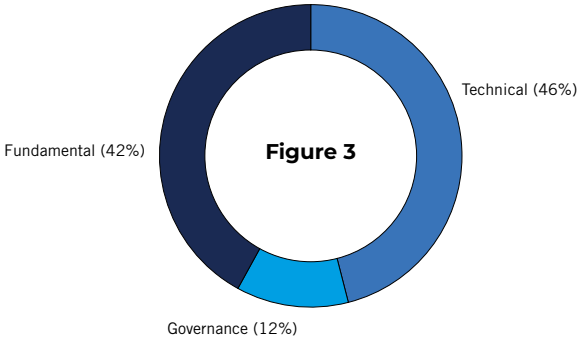
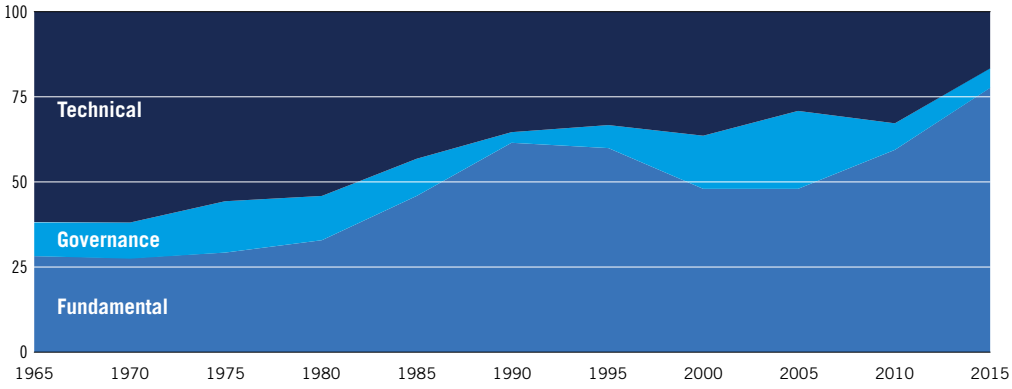


Figure 3

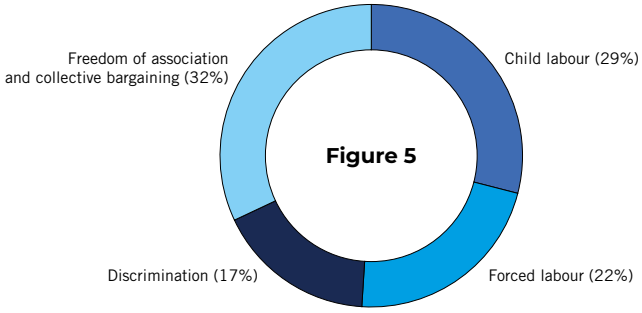
This distribution has however changed over time, as the share of cases on "fundamental" Conventions has steadily risen since the 1980s, only interrupted by a slight decrease at the end of the 1990s (fig. 4).

Figure 4 (%)



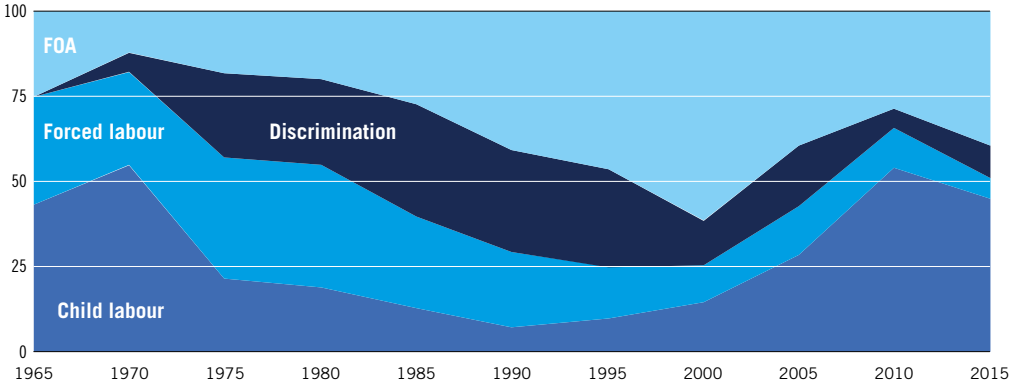
This trend is also reflected in the distribution of cases of ***interest***, whose number has only been recorded since 2001, and of which almost 50 per cent concern "fundamental" Conventions, with another 23 per cent related to "governance" and the remaining 29 per cent concerning "technical" Conventions.

Among the cases on "fundamental" Conventions, a fairly even distribution between the four subjects of "child labour", "forced labour", "discrimination" and "freedom of association and collective bargaining" can be noted (fig. 5).



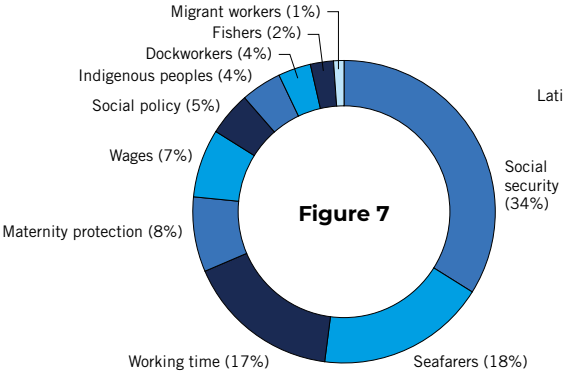
This distribution has however changed several times over the years, that is, while the share of "forced labour" and "discrimination" cases increased in the 1970s, but decreased towards the 2000s, the share of "freedom of association" cases has steadily risen since the end of the 1970s, however with a shorter period of decline between 2000 and 2010. "Child labour" cases, on the other hand, had two peaks, one in the 1970s and one which began in 2000 and still continues today, probably coinciding with the adoption of Conventions Nos 138 and 182 in 1973 and 1999 (fig. 6).

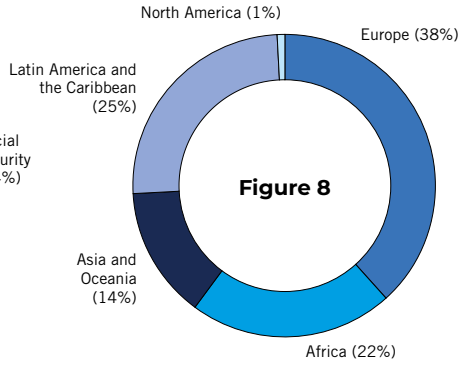
Figure 6 (%)



Among the "technical" Conventions, the largest share of cases of ***satisfaction*** has been related to "social security", "seafarers" as well as "working time" and, to a slightly lesser extent, "maternity protection" and "wages" (fig. 7).

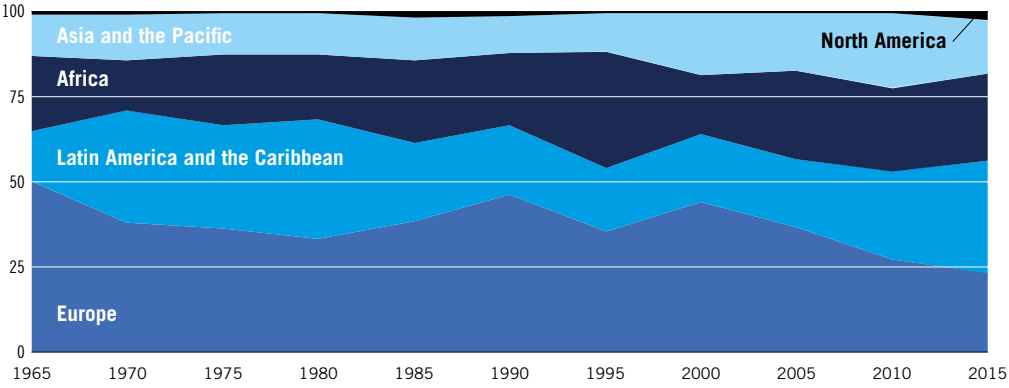
The regional distribution of cases of ***satisfaction*** is fairly balanced, although Europe is the region with the most cases (fig. 8).





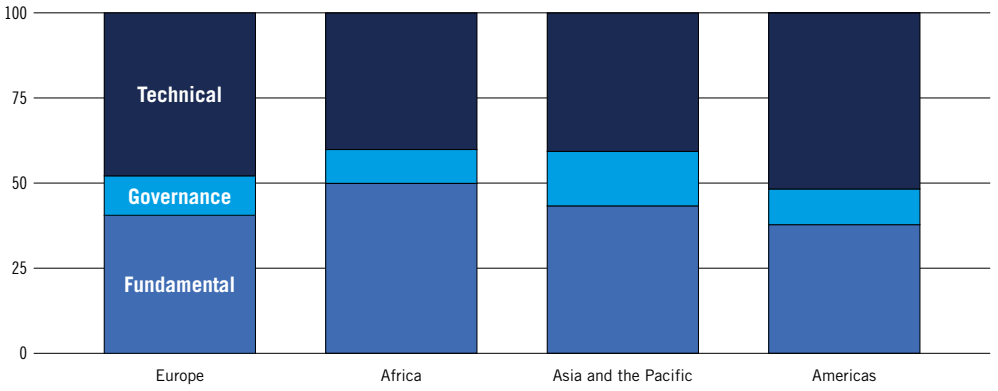
This distribution has however also changed over time. One noticeable trend is, for example, a decline of cases from Europe over the years (fig. 9).

Figure 9 (%)



The distribution of cases of ***satisfaction*** by type among the regions is quite similar (fig. 10).

Figure 10 (%)



Finally, it should be noted that the synergies between the CEACR and the other ILO supervisory bodies, especially the CAS, have also been reflected in the record of cases of progress over the years.

3. Cases identified

The following section provides a selection of cases of progress presented by subregions and countries. As indicated above, the examples which follow have been selected out of a concern to indicate the most notable cases of progress recorded in the various regions of the world, and quite clearly make no claim to being exhaustive. As it is not possible to list, analyse and quantify everything, it has been necessary to make choices with a view to achieving an equitable geographical representation and diversity in the subjects covered by the Conventions. Furthermore, as mentioned in section 1 of Part II, the expression of satisfaction by the CEACR does not entail that the country in question is in general conformity with the Convention concerned as sometimes other important issues may still not have been addressed adequately.

Cases of progress

(a) Africa

Eswatini
Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

The case relates to a number of Eswatinian laws, which considerably limited the ability of trade unions to organize and to freely implement their activities. For many years, the CEACR commented on these laws, pointing out their non-conformity with Articles 2, 3 and 10 of Convention No. 87. Following a long-standing dialogue of the CEACR with the Government, in combination with comments of the CAS and the CFA, as well as technical assistance provided by ILO experts, several amendments to these laws were passed between 2010 and 2017, addressing most of the CEACR's comments.[58]

Case background

Eswatini has been a Member of the ILO since 1975 and has ratified 33 ILO Conventions, including Convention No. 87.

The case deals with a number of sections in Eswatini's Industrial Relations Act (IRA) as well as other laws and regulations, which the CEACR considered not to be in compliance with Articles 2 and 3 of Convention No. 87.

These laws restricted the ability of trade unions to initiate industrial action, such as a State of Emergency Proclamation, the Public Order Act and the Suppression of Terrorism Act, which enabled the authorities to suspend strikes and other trade union activities, such as demonstrations or boycotts, for reasons of public safety. The CEACR also commented on sections of the IRA which allowed for the referral of labour disputes to lengthy compulsory arbitration procedures, as well as on the mandatory supervision of strike ballots by a national arbitration commission.

Furthermore, the Committee of Experts commented on sections of the IRA which appeared to restrict the right to organize and other trade union rights for prison staff, sanitary services staff and domestic workers.

The CEACR also raised concerns over the possibly intimidating effect of a number of sections of the IRA, which prescribed the civil and criminal accountability of union leaders for damages resulting from industrial action.

Finally, the Committee of Experts referred to provisions which restricted the ability of workers to freely organize their administration and activities, such as laws which allowed for the deregistration of trade unions under certain conditions, as well as statutory restrictions on the nomination of candidates and eligibility for union office.

Dialogue with the Government

Due to the longevity of the issues mentioned, with some of them dating back to the 1960s and 1970s, the Committee of Experts had, for several decades, formulated observations on them, establishing a long-standing dialogue with the Government. Furthermore, due to the case's urgency, it was also examined by the CAS, which discussed it 15 times since 1996, sometimes on a yearly basis. The CFA has also dealt with several cases related to these issues, such as the excessive use of emergency laws to restrict trade union activities and the deregistration of unions, and recommended to the Government to proceed with the amendment of the laws. These discussions and comments were paralleled by several ILO direct contacts missions to Eswatini, including several high-level missions, to provide technical assistance to the Government in its efforts to resolve these issues.

Over the years, these combined efforts led to several measures taken by the Government to address the CEACR's comments, namely two substantial amendments to the IRA, which were adopted in 1996 and 2000. While these reforms addressed a number of issues previously highlighted by the CEACR, they however also left other issues unresolved and, in some cases, even introduced provisions which raised new concerns for the Committee of Experts.

In 2005, the CAS urged the Government to accept another high-level mission to Eswatini to establish a meaningful framework for social dialogue, and to discuss the discrepancies between the national law and Convention No. 87. At the mission's proposal, the Government and the social partners of Eswatini signed an agreement undertaking to set up a Special Consultative Tripartite Committee to make recommendations to the competent authorities to eliminate these discrepancies. Meanwhile, the Labour Advisory Board (LAB) of the Department of Labour of the Government also set up a special committee to draft amendments to the IRA to address some of the CEACR's comments. This Committee submitted proposals for such amendments in 2008.

Closing gaps in compliance and way forward

Following further comments of the CEACR and the CAS, which concerned the postponement of the adoption of the LAB's proposed amendments and the apparent inactivity of the Special Consultative Tripartite Committee as well as another high-level mission to the country, a new amendment to the IRA was adopted in 2010. It provided for the right to organize for domestic workers, shortened the compulsory arbitration procedures for labour disputes to 21 days and ensured that a supervision of strike ballots by the national arbitration commission could only occur upon request of a trade union.

Furthermore, the Government reported that it had started discussions to lift certain restrictions on trade union rights for sanitary workers and prison staff and to amend the Public Order Act as well as the sections of the IRA on civil and criminal liability of union leaders. It also stated that the above-mentioned State of Emergency Proclamation had been invalidated by a constitutional amendment adopted in 2006, which was however disputed by the social partners.

The Committee of Experts took note of this amendment with satisfaction but also encouraged the Government to proceed with addressing the other outstanding issues in an observation published in its 2012 report.

In 2014, another amendment to the IRA was adopted, which restricted the prohibition of strikes for sanitary services to the maintenance of a "minimum service" and amended the sections on civil and criminal liability of union leaders with regard to industrial action, in accordance with the comments made by the CEACR. This amendment was noted with satisfaction by the Committee of Experts in its 2015 report. The other proposed amendments were however not adopted as they continued to be discussed in the Special Consultative Tripartite Committee, the LAB as well as the Cabinet.

In 2017, another major legislative reform was adopted, addressing many of the remaining comments of the CEACR. It included new laws, which amended the Public Order Act and the Suppression of Terrorism Act, deleting provisions which risked enabling the unreasonable suppression of industrial action by the authorities. Furthermore, the Legislative Assembly passed a new Correctional Services Act, which fully recognized the right to organize for the members of the Correctional Services and thus to prison staff.

In its 2019 report, the Committee of Experts noted these further changes with satisfaction and commended the Government and the other stakeholders involved for their efforts in pursuing these reforms and for the substantial progress they had achieved, solving many issues, which had been outstanding for a long time. The CEACR also encouraged the Government to pursue its efforts towards ensuring that this new legislation would be fully implemented with a view to guaranteeing conformity with the Convention.

Mali
Equal Remuneration Convention, 1951 (No. 100)

The case relates to a long-standing issue with the 1992 Labour Code of Mali, in particular its provision on equal remuneration, which only referred to equal remuneration for "equal working conditions" and not the broader concept of "equal remuneration for work of equal value" as set out in Article 2(1) of Convention No. 100. Noting this discrepancy, the CEACR, over several years and in many comments published in its reports, engaged in a dialogue with the Government, asking it to amend the relevant provision to fully reflect the requirements of Article 2(1). Following these comments, a reform process was eventually initiated in the country, which led to the amendment of the Labour Code, incorporating the "equal value" principle. [59]

Case background

Mali has been a Member of the ILO since 1960 and has ratified 34 ILO Conventions, including Convention No. 100.

In 1992, a new Labour Code was enacted in the country. Section L.95 of this Code guaranteed equal remuneration of workers, regardless of sex, for "equal conditions of work, qualifications and output". Noting this information, the CEACR however recalled that the principle of equal remuneration for work of equal value required by Article 2(1) of Convention No. 100 was broader than the mere equal pay for "equal conditions of work" set forth by the Code, as it not only compared the remuneration between similar types of work but also between types of work, whose conditions might be different, but whose value is equal.

Noting this discrepancy, the Committee of Experts, in a direct request of 1993, asked the Government to re-examine its legislation in view of this principle.

Dialogue with the Government

In its reply to the comments of the CEACR, the Government indicated in 1994 that it did not consider section L.95 to infringe Article 2(1) of the Convention as this provision ensured that there was no gap between the wage rates of men and women workers unless the output of men was superior to that of women workers. In another direct request of 1995, the Committee of Experts however reiterated that, in view of how section L.95 was phrased, referring only to "equal conditions of work", it did not ensure that workers performing work of equal value would be remunerated equally, and that the principle of the Convention was not fully implemented. The Committee reiterated these comments in its following reports in 1997, 1999 and 2000.

In its 2001 report, the Government acknowledged the "equal value" principle, and reported that the application of the latter was indeed guaranteed in Mali, as it was contained in several collective agreements and also reflected in the law. Upon the CEACR's request in its 2002 report to supply examples of such collective

agreements or legal provisions, the Government, in its following reports, was however not able to provide any concrete examples. The Committee of Experts, in its reports of 2002, 2003, 2005, 2006, 2007 and 2008 was thus again bound to repeat its previous comments and asked the Government to report on concrete measures taken to ensure the implementation of the principle of equal pay for work of equal value.

Following these ongoing comments of the CEACR, the Government, in its 2008 report, announced that a review of the existing Labour Code had taken place and that new legislative proposals, to bring the Code into conformity with the Convention, had been put forward. It did not however elaborate on the exact content of these proposals. The Committee of Experts, in its 2009 report, expressed its hope that this reform process would encompass an amendment of section L.95 to incorporate the "equal value" principle, and asked the Government to provide more detailed information on the legislative proposals.

In its 2010 and 2014 reports, the Government confirmed that the legislative reform was indeed aimed at an amendment of section L.95 but did not report any concrete progress on the adoption of a new law which would ensure the incorporation of the "equal value" principle. The CEACR again repeated its previous comments in two more direct requests of 2011 and 2015, urging the Government to continue the reform and align section L.95 of the Labour Code with Article 2(1) of Convention No. 100.

The dialogue with the Government was further expanded in 2016, when the UN Committee on the Elimination of Discrimination against Women, in its concluding observations, joined the Committee of Experts and asked the Government to amend its law to ensure the implementation of the "equal value" principle.

Closing gaps in compliance and way forward

In 2017, an amendment to the Labour Code, which modified section L.95, was finally adopted. In an observation published in its 2018 report, the CEACR noted with satisfaction that the new section L.95 contained a definition of the term "remuneration", which corresponded to that of the Convention, and fully reflected the principle of equal remuneration for men and women for work of equal value since it provided that "any employer is required to ensure, for the same work or work of equal value, equal remuneration for employees, whatever their origin, sex, age, status or disability". It also provided that "occupational categories and classifications and criteria for occupational promotion must be common to workers of both sexes" and that "job classification methods must be based on objective considerations". The Committee of Experts therefore asked the Government to keep it informed of the application in practice of this new law and encouraged it to take all necessary measures to ensure the full implementation of the principle of equal pay for work of equal value for all workers in Mali.

Namibia

Worst Forms of Child Labour Convention, 1999 (No. 182)

The case relates to gaps in the Namibian law regarding the implementation of Article 3(b) and(c) of Convention No. 182, concerning the prohibition of the use, procuring or offering of children for prostitution, pornography or any kind of illicit activities. After a number of comments of the CEACR, in which it urged the Government to address these issues and achieve compliance with the Convention, as well as similar comments of the UN Committee on the Rights of the Child, a new Child Care and Protection Act was adopted in 2015, which fully addressed the identified gaps.[60]

Case background

Namibia has been a Member of the ILO since 1978 and has ratified 15 ILO Conventions, including, in 2000, Convention No. 182.

After having received the first report of the Government on the Convention's implementation, the Committee of Experts asked for more information on the implementation of Article 3(b), concerning the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances, as well as Article 3(c), regarding the use, procuring or offering of a child for illicit activities, in two direct requests addressed to the Government in 2004 and 2006.

After having received the Government's reply, the CEACR, in another direct request of 2008, noted that the Namibian Immoral Practices Act of 1980 contained a section which prohibited the use or offering of children for prostitution by their parents or guardians, and another section which punished the procurement of any female for prostitution. It noted that Article 3(b) of the Convention had not been fully implemented as the law did not punish the use, offering or procuring of children other than girls for prostitution by persons who are not the children's guardians or parents.

Concerning child pornography, the Committee of Experts noted that the Immoral Practices Act only punished those committing "indecent or immoral acts" with children under 16 years by persons who are more than three years older than the child and who are not married to him or her. In this regard, the CEACR recalled that the Convention prohibits the use, procuring or offering of all children under 18 years for pornography, irrespective of the offender's age and his or her relation with the child. The Committee of Experts also requested a definition of the term "indecent or immoral act", to ensure that it encompassed pornography.

Concerning Article 3(c) of the Convention, the CEACR noted that it had not been fully implemented, as the relevant legislation did not appear to prohibit the use, procuring or offering of a child for all illicit activities, in particular for the production and trafficking of drugs, one of the main criminal activities in which children were involved in the country.

The CEACR thus asked the Government to take measures to fully prohibit the use, procuring or offering of boys and girls for prostitution, pornography and illicit acts like drug trafficking and to provide information on the measures taken in this regard.

Dialogue with the Government

Following these comments, the Government initiated legislative reforms and informed the CEACR of a number of measures taken in this regard. In a direct request of 2010, the Committee of Experts took note of the Government's statement that a new Combating of the Abuse of Drugs Bill had been introduced to the National Assembly, which prohibited the trafficking, sale and possession of drugs. The CEACR noted, however, that the Government's report did not indicate if the Bill contained provisions on the prohibition of the use, procuring or offering of children for these activities.

The CEACR further took note of the Government's statement that a draft Child Care and Protection Bill, prohibiting the use, procuring or offering of children for prostitution, pornography or any kind of illicit activity, had been prepared and submitted for adoption to the National Assembly. The Committee thus urged the Government to complete the adoption of this Bill in the near future.

In its following report on Convention No. 182, the Government was however not able to report substantial progress on the adoption of the above-mentioned laws, especially the Child Care and Protection Bill. The Committee of Experts furthermore took note of the Government's 2011 report to the UN Committee on the Rights of the Child, in which the Government had stated that criminal and sexual exploitation of children had occurred in the country both through children being prostituted, and through adults taking advantage of needy children by providing basic necessities in return for sex.

The CEACR formulated an observation in its 2012 report, in which it urged the Government to proceed with the adoption of the Child Care and Protection Bill and to take all necessary measures to fully implement the Convention. The CEACR was furthermore joined by the Committee on the Rights of the Child, which, in its 2012 report, acknowledged the pertaining issue of sexual and other exploitation and abuse of children in Namibia and urged the Government to address these problems and follow the recommendations of the ILO Committee of Experts.

Closing gaps in compliance and way forward

After the Government in its 2012 report was not in a position to report any progress on the reforms, in 2014, it indicated that the new Child Care and Protection Act (CCP Act) had been adopted by the Namibian National Assembly.

This Act contained provisions prohibiting the use, procuring or offering of a child for the purpose of commercial sexual exploitation and for the purpose of production or trafficking of drugs and imposed a fine or imprisonment on any person contravening this prohibition.

In its 2016 report, the Committee of Experts took note with satisfaction of the adoption of the CCP Act and commended the Government for addressing its previous comments. It encouraged the Government to ensure the effective implementation of the new Act and to provide information on its application in practice in its following reports, as well as to continue addressing remaining issues concerning the worst forms of child labour in the country.

(b) Arab States

Qatar
Forced Labour Convention, 1930 (No. 29)

The case relates to widespread incidents of forced labour of migrant workers in Qatar. These practices were largely due to a sponsorship system which prohibited migrant workers from leaving the country or changing their employment without their employer's permission, as well as other abusive practices, such as the confiscation of workers' passports by employers or the withholding of wages. They also concerned a lack of enforcement of legislation against forced labour, due to an insufficient access of migrants to complaint mechanisms and lawsuits as well as an insufficient labour inspection system and a lack of imposition of dissuasive penalties on abusive employers. After noting reports of international workers' organizations alleging these problems, the CEACR and the CAS urged the Government to address them. Furthermore, complaint-based procedures, first through a representation under article 24 and then a formal complaint under article 26 of the ILO Constitution, were lodged against Qatar, following which the ILO Governing Body decided to send a high-level tripartite mission to the country to assess the problem. The mission confirmed the allegations made in the complaints, which prompted the Governing Body and the CEACR to renew their previous comments, urging the Government to address the issue. As a follow-up to these calls, a number of legislative reforms and other measures were adopted by the Government, which abolished the sponsorship system and introduced various protections for migrant workers against abusive practices. Noting these developments, the Governing Body decided to close the article 26 complaint and agreed to the conclusion of a comprehensive technical cooperation programme between the ILO and Qatar to support the ongoing reform measures. With the support of ILO technical advisory services, a number of milestones have been reached since then. The programme has adopted a twin-track approach firstly on strengthening the legal framework, and secondly on its application and enforcement, including effectively raising awareness about those transformations among workers, employers and the general public.[61]

Case background

Qatar has been a Member of the ILO since 1972 and has ratified six ILO Conventions, including Convention No. 29.

Qatar is a high-income economy, backed by one of the world's largest reserves of natural gas and oil. Like other countries in the Gulf, Qatar has turned to migrant labour to help support its rapid development. The country therefore has a large population of migrant workers, many of whom are employed in construction.

In a communication to the ILO Governing Body dated 16 January 2013, the International Trade Union Confederation (ITUC) and the International Federation of Building and Wood Workers (BWI), made a representation under article 24 of the ILO Constitution, alleging non-observance by Qatar of the rights of migrant workers in the country under Convention No. 29.

They referred to the fact that the recruitment of migrant workers and their employment were governed by Law No. 4 of 2009 regulating a sponsorship or *kafala* system. Under this system, migrant workers who had obtained a visa needed a sponsor, who had to do all the necessary paperwork to obtain the residence permit. The law then forbade workers to change their sponsoring employer without his or her consent. Workers also could not leave the country temporarily or permanently unless they had an exit permit issued by the sponsor. Workers who left their job without permission could be reported to the authorities as having absconded and could be detained and face fines, deportation or criminal charges. Furthermore, while workers could issue a complaint to the Labour Ministry against an employer's refusal to grant an exit permit, the Ministry almost never overturned the employer's decision, rendering this mechanism ineffective.

In addition, the complainants alleged that there existed widespread practices of employers confiscating the passports of workers upon their arrival, which also prevented them from freely leaving the country. They alleged that although this practice was illegal under Qatari law, these laws were not properly enforced and therefore not respected by employers. Furthermore, they stated that high recruitment fees prior to departure and travel fees left many workers in debt and in need of keeping their jobs in Qatar regardless of the conditions of employment.

The complainants also reported the existence of other abusive labour practices towards migrants such as the non-payment of wages for several months, the provision of accommodation with poor sanitation and no electricity, and hazardous working conditions which often resulted in injury or even death. In addition, they alleged that employers often failed to provide residence visas for their workers, despite being required to do so by law. This practice of leaving workers "undocumented" restricted their freedom of movement as they were at risk of being detained, and prevented them from obtaining basic medical or banking services. The complainants also indicated that migrant workers were often offered a substantially different contract from what was promised in the country of origin or that the contract they had concluded was altered.

The complainants indicated that, by restricting the possibility for migrant workers to leave the country or change employer, they were effectively prevented from freeing themselves from abusive labour practices, which in many cases resulted in them becoming victims of forced labour.

In addition, the complainant organizations alleged that in most cases no or insufficiently dissuasive penalties were imposed on employers violating forced labour laws. Due to a lack of labour inspections, the burden to make complaints was placed on the workers, who often lacked the necessary information on such mechanisms. The workers also faced language barriers and often did not have any income or legal accommodation throughout the complaint procedure or court process, which made the pursuit of a remedy more difficult. As a result, only very few successful complaints and court cases had been filed against abusive employers.

In March 2013, the representation submitted by the ITUC and the BWI was declared admissible by the ILO Governing Body and an ad hoc tripartite committee was set up to examine it.

These developments were noted by the CEACR, which, pending this examination, decided to defer its consideration of the issue of forced labour of migrant workers in Qatar until the publication of the recommendations made by the ad hoc committee.

Dialogue with the Government

In its reply to these allegations, the Government did not agree that there was widespread existence of forced labour in the country, recalling that the national law guaranteed all workers the freedom to conclude or end employment contracts and to leave work at any time.

With reference to the *kafala* system, the Government stated that this system did not lead to objectionable practices, and that it safeguarded the balance between employers' rights and the rights of migrant workers.

It also stated that it paid special attention to meeting its obligations towards migrant workers and endeavoured to combat all forms of forced or compulsory labour by coordinating with the embassies of the labour-exporting countries to follow up on the situation of migrant workers and to resolve any individual infringements by enterprises. The Government further indicated that it had concluded many bilateral agreements with sending countries, which prescribed the terms to be included in the consolidated labour contracts and prescribed better conditions than the ones specified in the legislation.

With regard to the confiscation of passports, the Government indicated that this practice had occurred in the past, but no longer took place as employers committing such acts would be held legally accountable and would be subject to administrative penalties.

Regarding the delaying or non-payment of wages, it did not deny that such cases occurred but claimed that they had diminished due to the measures taken by the Government.

Regarding the lack of complaint mechanisms, the Government stated that it allowed migrant workers to make complaints and that although the number of

complaints received had declined, the Ministry was undertaking measures to facilitate the process.

Noting these comments, the ad hoc committee, in its recommendations published in 2014, nevertheless concluded that many of the allegations of the ITUC and the BWI were credible and that forced labour of migrant workers was still an issue in the country. It therefore asked the Government to review the functioning of the *kafala* system to ensure that it did not place migrant workers in a situation of increased vulnerability. It also recommended that the Government ensure reasonable access to justice for migrant workers and that adequate penalties were applied for violations relating to legislation against forced labour.

These recommendations were approved by the ILO Governing Body in March 2014. Shortly after, at the ILC in June 2014, several delegates at the Conference lodged a formal complaint on the same issue against Qatar under article 26 of the ILO Constitution. This complaint was declared receivable by the Governing Body in November 2014.

In 2015, the CEACR noted the indication of the Government that a bill had been drafted to repeal the *kafala* system. It also indicated stepped-up efforts to ensure that workers' passports would not be withheld, as well as the facilitation of the access of workers to complaint procedures and the strengthening of the labour inspection service. Taking note of this information, the Committee of Experts nevertheless considered that most of the legislation and practices allowing for the exploitation of migrants workers were still in place in the country and urged the Government to take concrete and timely measures to address them.

In June 2015, the case was discussed by the CAS. In its conclusions, the CAS equally urged the Government to abolish the *kafala* system and replace it with a work permit that would allow the worker to change employer and leave the country. It also asked the Government to work with sending countries to ensure that recruitment fees were not charged to workers and to ensure that contracts signed in the sending countries were not altered in Qatar. Furthermore, it urged the Government to vigorously enforce the legal provisions on passport confiscation, to facilitate access to the justice system for migrant workers and to hire additional labour inspectors.

At the Governing Body in November 2015, the Government submitted a report in reply to the article 26 complaint. In this report, it indicated the adoption of a new law to alter the *kafala* system, which allowed workers to change their employer without their employer's consent after five years or upon the expiration of their contract. It also removed the requirement for workers to obtain their employer's consent to leave Qatar but still required them to obtain an exit permit from the authorities. Noting this information, the Governing Body requested the Government to receive a high-level tripartite visit to assess the impact of all of these measures, including the impact of the newly adopted law.

This mission was carried out shortly after, in March 2016. The mission report, while acknowledging the above-mentioned measures taken by the Government,

confirmed most of the allegations made in the complaint, such as an abusive use of the *kafala* system, the widespread confiscation of passports, the alteration of contracts after arrival, expensive recruitment fees, the withholding of wages, and widespread hazardous and exploitative working conditions, as well as a lack of enforcement of anti-forced labour laws and an inadequate access of migrant workers to justice. At its session in March 2016, the Governing Body acknowledged this report and urged the Government to follow up on the issues identified by the mission.

In its 2016 report, the CEACR noted the outcome of the high-level mission, as well as further reports submitted to it by the ITUC and other social partners. It also noted the Government's reply to these reports. From this information, it concluded that the legislative changes adopted in 2015 did not fully abolish the abusive *kafala* system, as the law still tied workers to employers for up to five years and workers continued to be prevented from freely leaving the country, as the law still allowed employers to object to the approval of exit visas, following which workers had to go through lengthy appeal procedures.

Regarding the issues of recruitment fees, contract substitution, withholding of wages, exploitative labour conditions and passport confiscation, the CEACR noted the Government's indication that it had adopted various measures to tackle these problems. These included the signing of additional agreements with labour-sending countries, the improvement of the access of workers to their contracts and visa information and information on their rights, the implementation of a "wage protection system" and the intensification of labour inspections. It however also noted indications of the high-level mission report and the ITUC that, in spite of these measures, the abusive practices were still widespread and that many of them were only implemented for large companies, not the many small ones through which migrant workers were subcontracted and which employed most of the migrant workforce.

Regarding the issue of the access of migrants to the courts and to other complaint mechanisms, the CEACR noted the Government's indication that a number of awareness-raising measures for migrants had been undertaken and support services, helping workers to submit their complaints, had been set up. It however also noted the indication in the report of the high-level mission that, despite these measures, most of the migrants, especially those in small enterprises, were not aware of the mechanisms and did not have access to them.

In view of these outstanding issues, the CEACR reiterated its previous comments, urging the Government to adopt timely and effective measures to address all of the issues highlighted by the mission report and the ITUC.

Closing gaps in compliance and way forward

Following these new comments, the Government, in October 2017, sent a communication to the ILO Governing Body in which it indicated a range of additional measures that had been taken.

It, inter alia, indicated the adoption of a new law in 2017, which made it compulsory for both workers and employers to submit a dispute over the employment relationships to the Labour Ministry for settlement. If the settlement was not successful, it was referred to a specialized dispute resolution committee created for this purpose, which issued a binding decision within a period not exceeding three weeks. Against this decision, an appeal to the court was possible. The Government also indicated the adoption of a second law, providing specific protections for migrant domestic workers, who had been especially vulnerable to forced labour practices.

Regarding the change of employer, the Government announced that it had removed the constraints previously imposed on migrant workers in switching employer and confirmed that a change was now possible for a worker upon submitting a simple online notification to the Government. Furthermore, regarding the difficulties for migrants to leave the country, the Government indicated the adoption of another law. This new law explicitly provided for the right of workers to return to their home countries upon notifying their employers. The only reasons for a rejection of the departure were the existence of claims against the worker, an open court proceeding against him or her, or a criminal sentence imposed on the worker. The new law furthermore introduced a grievance committee, to which migrant workers could appeal in case their departure was denied and which had to be decided within three days. Against the grievance committee's decision another appeal to the Ministry was possible, which had to be decided within 48 hours. The Government furthermore indicated additional awareness-raising campaigns about these mechanisms.

In addition, the Government also indicated a range of other measures aimed at protecting migrant workers against abusive practices, such as the extension of its wage protection system to small companies, an improvement of systems to detect and prevent occupational health and safety issues or a better protection against abusive recruitment fees and contract alteration.

Noting this information as well as reports from social partners and other international actors, according to which, due to the Government's measures, the forced labour situation had considerably improved in the country, the Governing Body decided in October 2017 to close the complaint procedure under article 26 and agree to a comprehensive three-year technical cooperation programme to support the ongoing labour reform measures. This programme would report annually to the Governing Body until 2020. Through this initiative, the Government of Qatar expressed a commitment to align its laws and practices with international labour standards and fundamental principles and rights at work, including by implementing related comments of the ILO supervisory bodies, in particular those of the CEACR, which had initiated this whole process. An ILO Project Office was subsequently established in Qatar's capital, Doha, in April 2018, which is supporting the Government's labour reform agenda. Since the start of the technical cooperation programme, the ILO has been collaborating with the Ministry of Administrative Development, Labour and Social Affairs (ADLSA),

as well as other ministries in the Government, including the Ministry of Interior, the Ministry of Public Health and the Ministry of Justice. A number of labour reforms were introduced, three of which marking the end of the sponsorship system in 2020:

- Law No. 13 of 2018 suppressed the exit visa for workers covered by the Labour Law, with a possible exception to be granted by the Ministry of Administrative Development, Labour and Social Affairs upon the request of an employer with respect to no more than 5 per cent of their workforce and based on a justification based on the nature of their work;
- Extending the coverage of Law No. 13 of 2018, a Ministerial Decision suppressing exit permits for workers under the jurisdiction of the Ministry of Interior including domestic workers was adopted in October 2019 and should enter into force in January 2020;
- A draft Law granting labour mobility to migrant workers was endorsed by the Council of Ministers in October 2019 and should enter into force in January 2020.

The CEACR will continue its examination of these developments and its dialogue with the Qatari authorities in order to ensure continued progress and full compliance with the Convention.

(c) Central and South Asia

Nepal
Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)

The case relates to a declaration of a state of emergency issued by the Nepalese King in 2005, following which many rights of workers' and employers' organizations were suspended, trade union activities were interrupted and trade unionists were arbitrarily arrested. These events impeded the proper functioning of tripartite consultations between the Government and the social partners, conflicting with Convention No. 144, which requires such consultations. Following comments of the CEACR, the CAS and the CFA, urging the Government to reinstate a proper system of tripartite consultations in Nepal, as well as several ILO technical assistance missions to the country, a new interim Constitution was adopted, which enshrined the principle of tripartite consultations in one of its articles. Furthermore, in the following years, the Government was able to report the reinstatement of proper institutions for tripartite dialogue and the holding of regular tripartite consultations on a range of subjects. In 2015, the interim Constitution was replaced by a new Constitution, which upholds the previously suspended rights of workers and employers and their organizations.[62]

Case background

Nepal has been a Member of the ILO since 1966 and has ratified 11 ILO Conventions, including Convention No. 144.

In 2005, the Committee of Experts noted the Government's report on the implementation of Convention No. 144 in which it confirmed that, by ratifying the Convention, it had accepted tripartite cooperation as a basis for the formulation of laws and policies and decision-making regarding the application of international labour standards. The Government affirmed the Convention's full implementation and referred to various measures taken to apply it, like the creation of an institutional mechanism for tripartite consultations, as well as the undertaking of tripartite cooperation on various issues such as occupational safety and health, child and forced labour or HIV/AIDS.

In June of the same year, the application of Convention No. 144 by Nepal was however the subject of a discussion in the CAS. During the discussion, representatives of Nepalese workers' and employers' organizations provided information according to which the King of Nepal had assumed direct executive powers in February 2005 and had declared a state of emergency. In the aftermath of this decision, a number of constitutional rights, including freedom of association and the right to organize as well as the right to freedom of expression and assembly, were suspended and hundreds of citizens were arbitrarily detained, including nearly two dozen trade union activists. Furthermore, trade union offices were monitored, searched and at times closed down, union meetings were forbidden and rallies were banned, while the registration of several union organizations was refused.

Noting this information, the CAS expressed its deepest concern at the situation in the country and invited the Government to take all appropriate measures to promote tripartite dialogue on international labour standards in the country. It also suggested to the Government to avail itself of ILO technical assistance to facilitate and promote social dialogue in Nepal.

Dialogue with the Government

Following this discussion, the Committee of Experts, in its 2006 report, associated itself with the conclusions of the CAS and expressed its deep concern at the lack of respect for fundamental rights in the country and its impact on the exercise of tripartite consultations. It also urged the Government to ensure that the principle of tripartite consultations under Convention No. 144 was respected in law and in practice and recalled that the ILO was available to provide technical assistance to the Government in this respect.

Following a complaint lodged in 2005, the case was also examined by the CFA, which, in its conclusions published in March 2006, equally urged the Government to refrain from any undue interference in trade union affairs and to issue appropriate instructions to the relevant authorities to ensure that acts of interference in trade union internal affairs did not occur.

Following these comments, the Committee of Experts, in an observation published in its 2007 report, noted an improvement of the situation due to a number of measures taken by the Government to address the comments. It, inter alia, noted the Government's indication that many acts and regulations were in the process of being amended to address the changed political context. It also

noted that an interim constitutional statute had been adopted which re-enacted some of the constitutional guarantees which had been suspended. Finally, the Government also indicated that it had requested both workers' and employers' organizations to come together and make recommendations on reforms to improve the situation. However, while welcoming these measures, the Committee of Experts also noted reports of Nepalese social partners, which indicated that the situation in the country was still giving rise to concern as to the full respect of the rights of workers and employers and the principle of tripartite consultations.

Following these comments, the Government accepted to receive a technical assistance mission of the ILO, which was carried out in April 2007. The mission, which focused on social dialogue, brought together the Government and the social partners and provided an opportunity for identifying the practical obstacles to the effective implementation of Convention No. 144 in Nepal.

Closing gaps in compliance and way forward

In an observation published in its 2009 report, the CEACR noted with interest that a new interim Constitution had come into force in Nepal. Its article 154 established a National Labour Commission as a new institutional mechanism for tripartite consultations. It also noted that a corresponding Labour Commission Act had been drafted to implement article 154. Furthermore, it noted the Government's indication that it was consulting with representatives of the social partners at various levels while preparing reports to the ILO and that 79 such consultations had been conducted during the reporting period.

In another observation published in its 2013 report, the Committee of Experts noted the Government's further indication that it had been promoting social dialogue on a bipartite and tripartite basis wherever and whenever possible and that tripartism had been firmly institutionalized in the country, with all the major policy decisions and legislative initiatives being the result of tripartite consultations and consensus. The Government further indicated that all committees established under the Ministry of Labour and Employment which were related to labour, industrial relations, occupational safety and health and child labour, were tripartite in their composition. The CEACR further noted that a National Labour and Employment Conference was held in July 2012 and was organized with technical and financial support from the ILO Nepal Office. The conference concluded with the endorsement of a declaration, referring to the development and promotion of good labour relations and the creation of a trusted tripartite environment.

Welcoming this information, the Committee of Experts commended the Government for the progress it had achieved in the implementation of Convention No. 144 and asked it to keep it informed of any additional measures taken with regard to promoting tripartite consultations in the country.

In 2015, a new Constitution was adopted in Nepal, which replaced the previous interim one and which upholds all of the fundamental guarantees relevant to the proper functioning of tripartite consultations, including freedom of association and the right to organize, freedom of expression or freedom of assembly.

Pakistan
Minimum Age Convention, 1973 (No. 138)

The case relates to gaps in the Pakistani legislation, which did not provide for the prescription of a minimum working age of 14 years as well as a minimum age of 18 years for hazardous working activities, in combination with a list determining these hazardous activities. Noting that the lack of the prescription of such minimum ages conflicted with Articles 2 and 3 of Convention No. 138, the CEACR urged the Government to bring its laws into conformity with the Convention. Following these comments and comments from other international bodies as well as ongoing consultations between the Pakistani Government and ILO experts, new laws prescribing a minimum working age and a list of hazardous working activities were adopted in two of the five provinces of Pakistan, while similar draft laws are being debated in the remaining provinces.[63]

Case background

Pakistan has been a Member of the ILO since 1947 and has ratified 36 ILO Conventions, including Convention No. 138.

According to article 11(3) of the Constitution of Pakistan, no child below the age of 14 years shall be engaged in any hazardous employment.

This Constitutional guarantee was implemented by sections 2 and 3 of the Pakistani Employment of Children Act of 1991, which prohibited the employment of children under 14 years of age in night work and a number of hazardous occupations listed in the law's Schedule. Other types of hazardous work not to be performed by children under 14 years were also listed in the Employment of Children Rules of 1995.

In 2010, in a request addressed directly to the Government, the CEACR noted that, at the time of the ratification of Convention No. 138, Pakistan had specified 14 years as the applicable minimum working age. The Committee of Experts therefore reminded the Government that according to Article 2 of the Convention, any employment of children under 14 years had to be prohibited in the country, not just certain types of hazardous work as prescribed by the Employment of Children Act.

It furthermore recalled that according to Article 3 of the Convention, the minimum age for admission to any type of hazardous work must be 18 years. The Committee thus referred to the fact that the national law did not prohibit the performance of hazardous working activities for children aged between 14 and 17 years. While pointing to this gap in the implementation of Convention No. 138, the Committee of Experts however also noted the Government's indication that it had elaborated a draft Employment and Service Conditions Act, which would prohibit the employment of any child below 14 years and ban a number of hazardous working processes for children under 18 years. The Committee thus urged the Government to take the necessary measures to ensure the adoption of this Act and in general to ensure the full implementation of Articles 2 and 3 of the Convention.

Dialogue with the Government

After having received the Government's 2010 report on Convention No. 138, the CEACR noted that it contained no information on further progress made regarding the adoption of the draft Employment and Service Conditions Act or any other laws on minimum working ages. In an observation published in its 2011 report and repeated in its 2012 report, the Committee of Experts urged the Government to address its previous comments and to proceed with the adoption of the draft Act. The CEACR was furthermore joined by the UN Committee on the Rights of the Child which, in its 2009 report, also indicated concerns regarding the low and variable minimum ages in the national law.

In reply to these comments, the Government, in its 2013 report to the CEACR, indicated that, following a constitutional amendment, the power to legislate on labour matters had been transferred to the provincial level. The CEACR further noted that, following this amendment, Pakistan had participated in an ILO technical assistance programme. This programme resulted in the development of action plans, by each of the provincial governments, to address the comments of the Committee of Experts, including the adoption of legislation establishing a minimum working age and prohibiting the employment of children under 18 in hazardous work. The Government indicated that the provinces, in coordination with the federal Government, had drafted a Prohibition of Employment of Children Act, to prohibit the employment of children below the age of 14 and the employment of persons under 18 years in hazardous types of work. The Government further indicated that these drafts would soon be introduced to the provincial legislative assemblies. The Committee furthermore noted information from the ILO's International Programme on the Elimination of Child Labour (ILO–IPEC) that, as of October 2012, the drafting of lists of prohibited hazardous child labour activities had been initiated in all of the provinces.

Noting this information, the CEACR, in an observation published in its 2014 report, again urged the Government to take the necessary measures to ensure that the draft Act prohibiting the employment of persons under 14 and under 18 for hazardous types of work, as well as the legislation determining the prohibited types of hazardous work, would soon be adopted in each province.

Closing gaps in compliance and way forward

In 2015 and 2016, in two of the five provinces of Pakistan – Khyber Pakhtunkhwa and Punjab – laws were adopted, which contained lists of types of hazardous work prohibited to young persons under 18 years of age in accordance with the comments of the CEACR. These lists were determined in consultation with the representative workers' and employers' organizations and discussed at the level of Provincial Tripartite Consultative Committee, as required by the Convention. Furthermore, the new laws specified a minimum age for admission to work of 14 years in Khyber Pakhtunkhwa and 15 years in Punjab.

In its 2018 report, the Committee of Experts noted these legislative changes with satisfaction. It also noted the Government's indication that in the remaining three provinces of Pakistan – Islamabad Capital Territory, Balochistan and Sindh – draft laws providing for a minimum working age of at least 14 years and a list of hazardous working activities had been proposed. It therefore asked the Government to take the necessary measures to ensure the adoption of these draft laws in all remaining provinces. The CEACR also asked the Government to ensure the effective implementation of these laws and in general to take all appropriate measures to eradicate child labour, in particular its worst forms, in all of Pakistan.

Uzbekistan
Worst Forms of Child Labour Convention, 1999 (No. 182)

The case relates to the widespread use of forced labour of schoolchildren by local Uzbek authorities for the national cotton harvest, conflicting with ILO Convention No. 182 on the worst forms of child labour. After having raised this issue with the Uzbek Government, the CEACR, joined by the CAS and several other UN supervisory bodies, engaged in a dialogue with the Government, urging it to address the problem and eradicate this practice. While initially downplaying the issue, the Government eventually accepted the implementation of several national and international monitoring missions to assess the number of affected children and established a Decent Work Country Programme with the ILO, through which it undertook a number of measures to tackle the issue, which drastically reduced the number of children forced to work in the cotton harvest in the country.[64]

Case background

Uzbekistan has been a Member of the ILO since 1992 and has ratified 14 ILO Conventions, including Convention No. 182.

Forced labour as well as the employment of persons under 18 years in hazardous working conditions is prohibited by the Uzbek Constitution and the Penal Code. Furthermore, according to a Decree signed by the Uzbek Prime Minister in 2008, any kind of child labour specifically in the harvesting of cotton is forbidden.

However, despite these laws, as of 2008, the CEACR began receiving reports from the International Organization of Employers (IOE) as well as the International Trade Union Confederation (ITUC) and other trade union federations about the widespread use of forced child labour in the national cotton harvest in at least 12 of Uzbekistan's 13 regions. According to these reports, up to 1.5 million schoolchildren were forced by the local authorities to leave their schools and harvest cotton for up to three months per year. The reports further indicated that this involvement was not the result of family poverty, but state-sponsored mobilization to benefit the Government, that forced labour involved children as young as 9 years of age and that these children were required to work every day, including weekends, with the work being hazardous, involving carrying heavy loads, the application of

pesticides and took place in harsh weather conditions, with accidents reportedly resulting in injuries and deaths.

Together with the reports of the IOE and the ITUC, the Committee of Experts also noted observations made by the UN Committee on Economic, Social and Cultural Rights, the UN Committee on the Rights of the Child, the UN Committee on the Elimination of Discrimination against Women and the UN Human Rights Committee, which confirmed these allegations and urged the Government to take all necessary measures to ensure that the involvement of school-aged children in cotton harvesting was in full compliance with the international labour standards on children. The CEACR also noted a 2010 publication of the United Nations Children's Fund (UNICEF) equally mentioning growing concerns over the seasonal mobilization of children for the cotton harvest in Uzbekistan as well as the 2009 UN Universal Periodic Review on Uzbekistan, which also discussed this issue.

In an observation published in its 2010 report, the CEACR reminded the Government that by virtue of Article 3(a) and (d) of Convention No. 182, forced labour and hazardous work were considered as the worst forms of child labour and that, by virtue of Article 1, member States were required to take immediate and effective measures to secure the prohibition and elimination of such acts, as a matter of urgency. The Committee of Experts also recalled that by virtue of Article 7(1) of the Convention, ratifying countries were required to ensure the effective implementation and enforcement of the provisions giving effect to the Convention. Concluding that the widespread use of forced and hazardous labour of minors in the cotton harvest constituted a clear violation of the Convention, the CEACR urged the Government to take effective and time-bound measures to eradicate it.

Dialogue with the Government

The case was selected by the CAS for discussion in 2010. In the discussion, the Government of Uzbekistan referred to a number of measures taken to ensure the enforcement of the national laws against forced and child labour, including the implementation of a national action plan for the application of ILO Conventions Nos 138 and 182. The Government however downplayed the statements made by the social partners and the UN supervisory bodies, stating that the coercion of large numbers of children to participate in the cotton harvest did not exist. The CAS, noting the numerous reports detailing the problem as well as the broad consensus among UN bodies over the issue, concluded that forced child labour in the cotton harvest remained a problem of grave concern in practice and urged the Government to take the necessary measures against it. It also encouraged the Government to accept a high-level ILO tripartite observer mission with full timely access to all situations and relevant parties, including in the cotton fields, in order to assess the implementation of Convention No. 182.

In its 2010 report to the CEACR, the Government however repeated its previous statement and indicated that almost all of the cotton produced in the country

was done on private cotton farms, and that the well-developed education system prevents the exaction of forced labour from children. It also referred to a number of measures taken against child labour under the national action plan but did not indicate any concrete results regarding these measures. The Government was also not prepared to accept the request for a high-level observation mission. Taking note of these statements, the Committee of Experts, in its 2011 report, reaffirmed its previous comments that forced child labour in cotton harvesting remained a problem and urged the Government to take concrete and timely measures to tackle the issue as well as to accept the high-level observer mission to enable an independent assessment of the problem.

During the 2011 Conference, the case was again discussed by the CAS, which expressed regret over the lack of cooperation from the Government. It also repeated its request for a high-level monitoring mission. These comments were repeated by the CEACR in an observation published in its 2012 report, in which the Committee of Experts also took note of new reports by the ITUC according to which cotton fields in the country had been strictly patrolled by police and security personnel in an attempt to prevent independent monitoring of the situation.

The renewed request for a monitoring mission was again not accepted by the Government. However, in its 2012 report to the CEACR, the Government indicated the adoption of a new Decree, which approved additional measures for the implementation of Convention No. 182, including measures to maintain effective monitoring of child labour in agriculture and measures to strengthen the monitoring of the attendance of pupils as well as steps to establish personal responsibility of heads of educational institutions concerning their full attendance.

In its 2013 report, the CEACR noted that, according to various sources, in 2012, as a result of these new measures there had been a decline in the number of children working in the cotton harvest. The Committee of Experts nevertheless concluded that the problem was still widespread and therefore repeated its previous observations and urged the Government to accept an ILO monitoring mission.

Closing gaps in compliance and way forward

In 2013, another discussion of the case took place in the CAS. This time, however, the existence of the problem was fully recognized by the Government. The Government also indicated its willingness to engage in broad technical cooperation with the ILO to tackle the issue and to accept the monitoring of the 2013 cotton harvest with ILO technical assistance. As a follow-up, a round-table discussion organized by the Government with the ILO, the United Nations Development Programme (UNDP), UNICEF, the European Commission and the representatives of national and international workers' and employers' organizations took place, during which the implementation of a monitoring mission, composed of both ILO and national monitors, was agreed.

The mission's participants monitored the 2013 cotton harvest, undertaking inspection visits all across the country. In its 2014 report, the CEACR noted with interest

that the mission was met with good and productive collaboration and cooperation on the part of the authorities and that, although several cases of forced child labour were detected, the mission report concluded that it appeared that forced child labour was no longer used on a systematic basis in the 2013 cotton harvest. The Committee of Experts also took note of the Government's statement that relevant follow-up measures to reintegrate children into educational institutions had been taken in child labour cases detected by the mission. The Government further indicated its willingness to cooperate with the ILO on a wider basis within the framework of a Decent Work Country Programme. The CEACR welcomed this significant progress made towards the full application of the Convention and urged the Government to pursue and strengthen its efforts in this regard.

In its 2015 report, the CEACR noted further monitoring efforts from the Government that took place during the 2014 cotton harvest, as well as measures undertaken jointly with the national social partners to implement ILO Conventions, including systematic education and awareness-raising seminars on the worst forms of child labour. It also noted with interest the development and adoption of a Decent Work Country Programme, which was concluded between the Government, the social partners and the ILO in 2014 and which, as one of its priorities, aimed at ensuring that conditions of work and employment in agriculture, including in the cotton-growing industry, were in conformity with ILO Conventions Nos 138 and 182. The Committee of Experts further took note of international monitoring missions during the 2014 cotton harvest according to which while a few cases of children picking cotton had still been detected, 91 per cent of students were present in the visited educational institutions and several directors of professional colleges and heads of farms were held administratively responsible for forcing children to work.

In its following reports in 2016 and 2017, the CEACR took further note of reports of the IOE and the ITUC that a rapid development in the country towards a complete eradication of child labour was taking place. It also noted the reports of subsequent national and international monitoring missions to the country which indicated that the Uzbek authorities had taken a range of measures to reduce the incidence of child labour and make it socially unacceptable. The Committee of Experts therefore commended the Government for its efforts and urged it to maintain these measures and keep them under review so as to ensure the complete eradication of child labour in the country.

(d) East Asia

Republic of Korea
Labour Inspection Convention, 1947 (No. 81)

The case relates to comments from the Korean social partners which alleged a number of shortcomings of the labour inspection service of the Republic of Korea, with regard to the Government's obligations under Convention No. 81. These issues related to a lack of training of inspectors, insufficient collaboration between the inspection service and the social partners, an under-representation of women among the inspection staff and an insufficient number of inspections due to an insufficient overall number of inspectors. Following several comments of the CEACR and the CAS asking the Government to address these issues and to ensure a proper functioning of its labour inspection service in line with the Convention, the Government adopted a number of measures, responding to the issues which had been highlighted.[65]

Case background

The Republic of Korea has been a Member of the ILO since 1991 and has ratified 29 ILO Conventions, including Convention No. 81.

In an observation published in its 2000 report, the CEACR noted comments from the Korea Employers' Federation (KEF) according to which the function of the labour inspection services to provide technical information and advice, prescribed by Article 3 of Convention No. 81, needed to be reinforced in the country as there was a lack of specific training or educational programmes for inspectors. The KEF furthermore alleged that the requirement to ensure collaboration between the labour inspectorate and employers' and workers' organizations under Article 5 of the Convention was not properly met.

Along with the KEF, the Committee of Experts also noted comments from the Federation of Korean Trade Unions (FKTU), pointing to the low proportion of women in the labour inspection staff, which only accounted for 12 per cent of all inspectors. In view of Article 8 of the Convention which prescribes that women and men shall be eligible for appointment to the inspection staff and considering that women accounted for 41 per cent of Korean employees, the FKTU thus stressed the need for the Government to make further efforts to increase the number of female inspectors.

Noting these reports, the CEACR asked the Government to express its views on the comments of the KEF and the FKTU.

Dialogue with the Government

In its reply to the KEF's comments, the Government indicated that inspectors received training courses on the provision of technical advice and information to workers and employers on an annual basis. The Committee of Experts however also noted that the provision of such technical advice was included in the

regulation on duties of labour inspectors. In an observation published in its 2004 report, it thus asked the Government to provide more information on the way inspectors were trained and how this training helped them to give such advice.

Regarding the KEF's comments on tripartite coordination between the labour inspection services and the social partners, the Government indicated that an Industrial Safety and Health Policy Deliberation Committee (ISHPDC) had been set up, which was a tripartite body and which had deliberated and coordinated major policy issues in the area of industrial safety and health. The CEACR asked the Government to provide more information on the work of the ISHPDC.

Regarding the FKTU's comments, the Government explained that the number of women inspectors had been on the rise and had increased by 8.3 per cent between 1999 and 2001. It also stated that the Ministry of Labour had already requested an increase in the number of female inspection staff at regional labour offices. The Committee of Experts thus expressed its hope that the Government would, in the following years, provide more information on progress made in this respect.

Dialogue with the Government was further enhanced when the case was included on the list of individual cases discussed by the CAS in June 2004. During the discussion, the Government reaffirmed that, since the ratification of Convention No. 81, it had made the utmost efforts to ensure that the Korean labour inspection service operated in line with the principles and provisions of the Convention. The Employer members of the CAS however urged the Government to provide detailed information on the increase in the number of women inspectors in the inspection services, as well as on the promotion of collaboration between the inspection services and the social partners. The Worker members also placed emphasis on the question of gender representation in the inspectorate but, more generally, referred to a general shortage of labour inspectors in the country, which prevented the service from conducting a sufficient number of inspections. They furthermore indicated that the huge workload imposed on inspectors prevented them from receiving sufficient training. In its conclusions, the CAS urged the Government to ensure compliance with all Articles of Convention No. 81, recalling the importance of proper training of inspectors, the collaboration of inspectors with social partners and the need to increase the number of female inspectors.

Closing gaps in compliance and way forward

In 2005 the Government did not send a new report on Convention No. 81 and the CEACR was bound to repeat its previous comments; however, in its 2006 report, the Government indicated a number of measures taken in response to the comments formulated by the CAS and the CEACR.

In its 2007 report, the Committee of Experts thus noted with satisfaction that new training programmes for labour inspectors had been conducted in 2005, covering the law on individual labour relations, collective industrial relations, methods of investigation and the prevention of labour disputes.

It also noted with interest that a bill to revise the Industrial Safety and Health Act, which regulated the ISHPDC, had been drafted, which ensured a more efficient operation and more professional deliberation of this committee as well as a better involvement of external health and safety experts in its work.

Finally, the CEACR also noted the Government's indication that it had planned steps to increase the recruitment of women labour inspectors and that the share of female inspectors had already risen to 17.6 per cent.

In its following report published in 2008, the Committee of Experts further noted with satisfaction a steady progress made by the Government in increasing the share of female inspectors, which had further risen to 22 per cent. It also noted with interest that 375 new inspectors had been appointed, which prompted a significant increase in the number of inspections.

In its 2011, 2012 and 2015 reports, the CEACR noted a further increase in the number of inspections. While also noting that some compliance issues with regard to the Republic of Korea's obligations under Convention No. 81 remained, it commended the Government for its progress made so far and encouraged it to address all remaining issues in view of achieving full compliance with the Convention.

Malaysia
Equality of Treatment (Accident Compensation) Convention, 1925 (No. 19)

The case relates to long-standing issues with a Malaysian law on employment injury benefits for workers, which grouped foreign workers, working for up to five years in the country, into a different scheme than national workers, providing for far lower benefits than the scheme for national workers. Recalling that this different treatment of foreign and national workers constituted a violation of the equal treatment principle under Article 1(1) of Convention No. 19, the CEACR as well as the CAS for many years urged the Government to amend its legislation to bring it into line with the Convention. While the Government initially showed reluctance to make changes to the schemes, these comments eventually led to the initiation of a reform process in the country and finally, with the help of ILO technical experts, to the drafting and adoption of new laws extending the employment injury scheme of national workers to foreigners.[66]

Case background

Malaysia has been an ILO Member since 1957 and has ratified five ILO Conventions, including Convention No. 19.

Since 1993, the national legislation applicable to Peninsula Malaysia and the state of Sarawak transferred foreign workers, employed in Malaysia for up to five years, from the Employees' Social Security Scheme (ESS), which provided for periodical payments to victims of industrial accidents, to the Workmen's Compensation Scheme (WCS), which only provided for a one-time lump-sum

payment. Furthermore, the WCS did not grant invalidity pensions in case of permanent total invalidity and the WCS benefit in case of permanent partial disability represented only 6.5 per cent of the ESS benefit.

After noting this discrepancy, the CEACR, in its 1996 report, recalled that the unequal treatment of foreigners with regard to payments for industrial accidents conflicted with the principle of equality of treatment between nationals and non-nationals with regard to compensation for industrial accidents under Article 1(1) of Convention No. 19. It therefore asked the Government to amend the law in order to guarantee the same treatment for foreign and national workers.

Dialogue with the Government

After the publishing of the CEACR's comments, the case was picked up by the CAS, which discussed it in 1997 and 1998. In its conclusions, the CAS also concluded that the level of benefits granted under the ESS was significantly higher than the one guaranteed by the WCS. It therefore insisted that foreign workers be granted the same protection as Malaysian nationals and asked the Government to amend its law accordingly. Furthermore, as a follow-up, an ILO high-level technical advisory mission visited the country in May 1998 to examine ways of giving effect to the conclusions of the CAS.

In its 1998 report to the CEACR, the Government stated that it was planning to review the coverage of foreign workers under the ESS and to propose amendments to the Social Security Act of 1969. In the following years, the Government was however not able to report any progress made in adopting such amendments and only repeated its intention to review schemes. The CEACR was thus bound to repeat its previous comments.

In its 2003 report, the Government indicated that it had undertaken studies to review the two schemes and that these studies had found that in general terms there was equity in the protection, as the WCS had features that were superior and not available under the ESS, such as the payment of transport costs of injured workers to their home country. The Government furthermore referred to the great practical difficulty of extending the ESS to foreigners due to the difficulty of obtaining accurate, vital information about beneficiaries residing abroad. Noting this information, the CEACR nevertheless recalled that the payments granted to national workers under the ESS were far higher than those under the WCS and that this situation constituted unequal treatment of foreign workers under Article 1(1) of the Convention. In its 2004 report, the Committee of Experts therefore repeated its previous comments and asked the Government to change the law accordingly.

In its 2009 and 2011 reports, the CEACR was bound to repeat its previous comments, as the Government did not change its position and reiterated that it considered both schemes to be equal.

In 2011, the case was again discussed by the CAS. It urged the Government to take immediate steps to bring national law and practice into conformity with

Article 1(1) to respect the system of automatic reciprocity instituted by the Convention between the ratifying countries and to avail itself of the technical assistance of the ILO to resolve administrative difficulties by concluding special arrangements with the labour-supplying countries under Article 1(2) and (4) of the Convention.

As a response, the Government indicated in its 2011 report that a technical committee within the Ministry of Human Resources would, with the participation of all stakeholders, pursue the formulation of the right mechanism and system to administer the issue. In doing so, it would consider the three options of extending ESS coverage to foreign workers, the creation of a special scheme for foreign workers under the ESS, and raising the level of the benefit provided by the WCS. Furthermore, an ILO mission visited the country in October 2011 to support the Government with these efforts. Noting this information, the CEACR in its 2012 report expressed the hope that the new technical committee would soon be able to make concrete proposals on amendments to the law and urged the Government to continue with the planned legislative reforms.

While the Government, in its 2012, 2013 and 2014 reports, was not able to indicate any progress, in its 2015 report, it informed the Committee of Experts that it had decided to extend the ESS to foreign workers, subject to certain modifications to ensure the administrative practicability of the scheme. The CEACR, in its 2016 report, noted this information with interest and urged the Government to proceed with the reform.

In its 2016 and 2017 reports, the Government was however again not able to report any substantial progress on the adoption of the planned changes to the ESS. The case was therefore again discussed by the CAS in 2017 and 2018. The CAS repeated its earlier comments from 2011, urging the Government to finally proceed with the adoption of the announced extension of the ESS and to align its law and practice with Convention No. 19. It also asked the Government to continue to avail itself of ILO technical assistance to proceed with the reform.

The CEACR, in its 2017 and 2018 reports, endorsed the conclusions of the CAS and once again called upon the Government to take immediate, pragmatic and effective steps to ensure compliance with Convention No. 19.

Work in progress and way forward

In reply to these comments, the Government, in its 2018 report, indicated that, while it was taking serious efforts to shift the protection of foreign workers from the WCS to the ESS, it had taken concrete actions and developed a timetable to achieve the extension of the ESS to foreigners. To ensure a smooth extension, it indicated that a transition period had been envisaged in order to establish implementation mechanisms, databases, road maps and engagement sessions with stakeholders and social partners. It also indicated that the transition period was planned to last a maximum of three years. Finally, the Government also accepted an ILO direct contacts mission to help implement these changes.

The CEACR, in its 2019 report, welcomed these statements and expressed the hope that the Government would take advantage of the direct contacts mission to implement its comments and the conclusions of the CAS and to finally achieve full compliance with Convention No. 19.

Following these further comments, several laws where adopted in Malaysia in early 2019, which repealed previous legislation on employment injury schemes and allowed for the transfer of foreign workers to the employment injury schemes of national workers. Although the Government has taken some positive measures, especially in recent months, the CEACR will undoubtedly continue its examination of the case and its dialogue with the Malaysian authorities until all issues have been resolved in order to ensure full compliance with Convention No. 19.

Myanmar
Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

The case relates to a number of Myanmar laws which inhibited the free establishment and organization of workers' and employers' organizations and imposed a trade union monopoly, in violation of freedom of association and the right to organize under ILO Convention No. 87. For several decades, the CEACR as well as the CAS had commented on these issues and urged the Government to bring the national law into conformity with the Convention. In 2011 and 2012, the Government of Myanmar, in consultation with ILO technical experts, drafted and adopted a number of laws repealing the trade union monopoly and the restrictions on the registration of employers' and workers' organizations. Following these legislative changes, the establishment and registration of numerous independent trade unions and employers' organizations in Myanmar have been reported.[67]

Case background

Myanmar has been a Member of the ILO since 1948 and has ratified 24 ILO Conventions, including Convention No. 87.

For many decades, a number of laws were in force in Myanmar which were considered by the CEACR to seriously impair the exercise of freedom of association and other rights under Articles 2, 3, 5 and 6 of Convention No. 87, by imposing a trade union monopoly and prohibiting the establishment of any independent trade unions and employers' organizations.

Among the laws highlighted by the CEACR was a 1964 law, which established a compulsory system for the organization and representation of workers and imposed a single trade union, and the 1926 Trade Union Act, which prescribed a minimum membership requirement of 50 per cent of workers for trade unions to be legally recognized. Other problematic laws were a 1988 Order, which outlawed any organizations the establishment of which had not been authorized

by the Ministry of Home Affairs, and a 1908 law, which criminalized membership or participation in any "illegal organization". Finally, the CEACR also highlighted a 1988 Order, which prohibited any gathering of five or more people with the intention of "creating a disturbance or committing a crime" and the 1929 Trade Disputes Act, which empowered the President to refer trade disputes to courts of inquiry or to industrial courts.

Dialogue with the Government

In view of the persistent gaps in compliance with Convention No. 87, the CEACR, for over 50 years, published observations in its reports in which it urged the Government to align the national legislation with the Convention by guaranteeing workers' and employers' organizations the right to freely establish and organize their administration and activities. Due to the urgency of the issue, the case was also picked up by the CAS, which, since 1987, discussed it 19 times and, in its conclusions, equally urged the Government to amend the above-mentioned laws. As a follow-up to these discussions and comments, the Government was offered technical assistance by ILO experts to tackle the issue, which it accepted on several occasions.

Nevertheless, despite these efforts, the Government, in its replies to the comments of the CEACR and the CAS, for a long time downplayed the issue and indicated that it did not consider the legislation to prevent workers and employers from establishing independent associations. It was however not able to provide any evidence of any such association operating legally in the country and only referred to a number of welfare organizations for workers, which the CEACR did not consider to be acting as trade unions. On the other hand, the Committee of Experts noted that independent trade unions, which were established in Myanmar, such as the Federation of Trade Unions of Burma (FTUB), were forced to operate clandestinely and their members were often imprisoned for exercising their union activities.

Following further comments of the CEACR and the CAS highlighting these issues, the Government announced in 1989 that it had started drafting a new Constitution which would make express provision for freedom of association and the right to organize. It furthermore announced various amendments to some of the laws highlighted by the Committee of Experts. However, despite these announcements, the Government, in the following years, was not able to report any progress on these legislative reforms. The CEACR and the CAS thus had to repeat their previous comments and urged the Government to follow up on the announced amendments.

In 2003, the dialogue with the Government took another turn when a complaint was lodged against Myanmar before the CFA, concerning both the lack of a legislative framework guaranteeing freedom of association, as well as the continued persecution and imprisonment of leaders of independent trade unions. In its recommendations, published in 2008, the CFA joined the CEACR and the CAS and asked the Government to amend the above-mentioned laws and protect the rights of workers and employers.

In the meantime, the Government had announced in 2005 the first reconvening of the National Convention to draft the new Constitution, which had started sessions on 20 May 2004 and had conducted clarifications and deliberations, dealing with basic principles, such as the forming of workers' and employers' organizations, which would provide a framework for drafting detailed legal provisions. The Committee of Experts, in its 2006 report, thus urged the Government to continue this process and communicate any further steps taken towards the adoption of the Constitution.

At the beginning of 2008, the drafting of the Constitution was finally completed and its text was approved by referendum. The Constitution guaranteed all workers and employers the right to organise and worker and employer organisations the right to freely organise their administration and activities. As a consequence, a legislative framework on trade union rights was established and the initial steps for the establishment of trade unions at the basic level were taken. In the following period, basic workers' organizations were formed in 11 industrial zones. Furthermore, the legislative assembly began to review and revise the provisions of the 1964 Law on the trade union monopoly, the 1929 Trade Disputes Act, the 1926 Trade Union Act and the other laws limiting trade unions and employer rights, to bring them into conformity with the new Constitution.

While noting these reforms, the Committee of Experts, in its 2009 report, nevertheless observed that, apart from the establishment of unions at the most basic levels, the national law still did not provide a legal basis for the exercise of freedom of association in Myanmar. Regarding the new Constitution, it furthermore referred to a broad exclusionary clause in its section 354 which subjected the exercise of freedom of association and the right to organize to "the laws enacted for State security" and the maintenance of public order, which the CEACR considered as continuing to enable violations of freedom of association in law and practice. It also regretted the exclusion of the social partners and civil society from any meaningful consultation in the reform process. The Committee of Experts thus urged the Government to finally adopt the necessary measures to ensure the full guarantee of the rights of workers and employers under Convention No. 87 by the Constitution as well as the national law and practice. A request along the same lines was made by the CAS, which again discussed the case in 2009, 2010 and 2011.

Work in progress and way forward

In its 2013 report, the CEACR noted with satisfaction that, following another technical assistance mission of the ILO to the country, a new Labour Organizations Law (LOL) was adopted in 2011 and came into force in 2012. The Law contained provisions on the establishment of workers' and employers' organizations as well as their functions, duties, rights and responsibilities and provided for the repeal of the 1926 Trade Union Act and the 1964 Law, which imposed the trade union monopoly. It also noted the Government's indication that 2,761 basic labour organizations, 146 township labour organizations, 22 region or state labour organizations,

eight labour federations and one labour confederation as well as 26 basic employers' organizations had been registered under the new law.

The CEACR furthermore noted with satisfaction that other laws had been adopted, which repealed the two 1988 Orders on unlawful assembly and on the forming of organizations, as well as the 1929 Trade Disputes Act.

While the CEACR commended the Government for the progress it had made, it however also noted a few remaining gaps in the LOL and the other new laws as well as a number of problems with their implementation in practice, which impeded the achievement of full compliance with Convention No. 87. It thus continued to encourage the Government to work on the full implementation of the Convention in new observations published in its 2015, 2016, 2017 and 2019 reports.

In 2018, the CAS discussed the case another time, commending the Government for the progress made so far but also urging it to close remaining gaps in compliance.

(e) Europe and European overseas territories

French Polynesia
Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

The case relates to gaps in the labour law applicable to French Polynesia with regard to the implementation of Article 1 of Convention No. 111. It mainly concerned a too narrow scope of the provisions on the prohibition of discrimination, which did not cover all aspects of employment and also did not adequately address sexual harassment. It also concerned the list of prohibited grounds of discrimination in the law, which did not include all of the grounds required by the Convention. After noting these gaps, the CEACR, in several direct requests, urged the Government to adopt legislative reforms to respond to these shortcomings. Following these comments, the Legislative Assembly of French Polynesia adopted an amendment to the labour law, which addressed most of the gaps identified by the Committee of Experts.[68]

Case background

French Polynesia is an overseas collectivity of France, which itself has been a Member of the ILO since 1919. France has ratified 127 ILO Conventions, the second largest ratification rate among ILO member States, including Convention No. 111, which it has declared applicable to French Polynesia.

In a 2008 request addressed directly to the Government, the CEACR noted that, while under the penal law applicable to French Polynesia, certain forms of sexual harassment were prohibited, the applicable labour law did not contain any protection against sexual harassment at the workplace, specifically its most important forms, quid pro quo and hostile working environment harassment. Noting this

information, the Committee of Experts underlined that, in order to ensure an effective protection of workers against sexual harassment at the workplace, it must not only be addressed in the penal law, but provisions on the protection against sexual harassment should also be included in the labour legislation.

Recalling its general observation of 2002 on this issue, the CEACR reiterated that sexual harassment is a form of discrimination based on sex prohibited under Article 1(1)(a) of Convention No. 111. The Committee of Experts thus asked the Government to indicate the measures taken in law and practice to prohibit, prevent and punish sexual harassment in employment and to indicate whether it planned to include provisions on this matter in the labour legislation.

Dialogue with the Government

In another direct request of 2013, the Committee of Experts noted the Government's information that, although the applicable Penal Code had been amended, adding new offences related to sexual harassment, another 2011 amendment to the applicable labour law had not addressed harassment at work. The CEACR concluded that the labour law, unlike the Penal Code, still did not contain any provisions concerning sexual harassment. In this respect, the Committee of Experts noted however that, according to the Government's report, draft legislation concerning sexual harassment was being drawn up and was due to be adopted by the Assembly of French Polynesia. The CEACR requested the Government to keep it informed on the adoption of this law and to take the necessary steps to prevent and prohibit sexual harassment at work.

The Committee of Experts further noted that according to the newly amended labour law, discrimination at the workplace was only prohibited regarding "an offer of employment, recruitment or an employment relationship". In this regard, the CEACR highlighted that the protection against discrimination in accordance with Article 1 of Convention No. 111 must cover all aspects of employment and occupation, including access to vocational training, access to employment and to various occupations, and also terms and conditions of employment. Furthermore, the Committee of Experts noted that the list of prohibited grounds of discrimination in the law did not cover all of the grounds listed in Article 1(1)(a) of the Convention, missing "colour" and "social origin". It also noted that the list, while missing the ground of "race", referred to "membership or non-membership of an ethnic group". In this regard, the CEACR recalled that even though discrimination against an ethnic group constitutes racial discrimination, the notion of racial discrimination under the Convention was much broader. In light of these gaps in the implementation of the Convention, the CEACR asked the Government to extend the scope of these provisions to encompass all aspects of employment and all prohibited grounds listed by Article 1(1)(a).

Closing gaps in compliance and way forward

In an observation published in its 2017 report, the CEACR noted with satisfaction the adoption of a new Law in French Polynesia in 2013, which amended the applicable labour law. With regard to its previous comments, it noted that this law introduced new provisions to the Labour Code, which, both for the private and the public sector, expanded the list of prohibited grounds of discrimination at the workplace, adding the new grounds of "membership or non-membership of a nation or race" and "physical appearance". The Committee of Experts concluded that these new grounds covered the concepts of "race" and "colour" required by Convention No. 111. It noted however that despite these legislative changes, the ground of "social origin" in the Convention was still missing from the list of prohibited grounds.

In addition, with regard to the scope of the anti-discrimination provisions, the Committee of Experts noted with satisfaction that the law now contained a non-exhaustive list of aspects of employment covered by the protection, namely dismissal, remuneration, incentives or distribution of shares, training, classification, reclassification, assignment, qualifications, promotion, transfer and contract renewal, and access to internship or a training course in an enterprise. It also noted that the section now referred explicitly to direct and indirect discriminatory measures.

With regard to sexual harassment, the CEACR noted with satisfaction that the new law introduced provisions on sexual harassment both to the labour law covering the private sector as well as the one for the public sector. It further noted that these provisions defined and prohibited both quid pro quo and hostile working environments and provided for the protection of victims and witnesses against any form of reprisal (sanctions, dismissal, direct or indirect discriminatory measures) and also for disciplinary sanctions against persons who commit harassment. Finally, it noted that the provisions also required the employer to take measures to prevent and address sexual or psychological harassment, including the establishment of a procedure for reporting harassment and awareness-raising actions.

In view of all of these changes, the Committee of Experts concluded that, with the exception of the inclusion of "social origin" as a prohibited ground of discrimination, all of the gaps in the law concerning the implementation of Convention No. 111, which it had previously identified, had now been addressed and asked the Government to keep it informed of the application in practice of these new laws. It also encouraged it to proceed with its reforms in order to achieve full compliance with the Convention.

Georgia
Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

The case relates to a number of provisions in Georgia's 2006 Labour Code, which the CEACR considered not to be in conformity with Articles 3 and 10 of Convention No. 87. Following comments from the CEACR and other international bodies as well as ongoing consultations between the Georgian Government and ILO experts, an amendment to the Labour Code was adopted in 2013, which addressed the comments of the Committee of Experts.[69]

Case background

Georgia has been a Member of the ILO since 1993 and has ratified 17 Conventions, including Convention No. 87.

In 2006, the Georgian legislature adopted a new Labour Code, which, inter alia, repealed the previous laws on collective agreements and on collective labour disputes. This reform addressed some issues previously highlighted by the CEACR, such as requirements on pre-announcements of strike lengths and excessive strike balloting requirements. The new Code however also contained a number of provisions, which raised concerns of the CEACR with regard to their compatibility with Articles 3 and 10 of Convention No. 87.

These issues were at first addressed by the Committee of Experts in 2007, in a direct request to the Georgian Government.

One provision highlighted by the CEACR was section 49(5) of the Code, which stated that, after a warning strike, social partners shall participate in amicable settlement procedures pursuant to the Labour Code. Furthermore, section 48(5) of the Code stated that if an agreement had not been reached within 14 days or if a party had avoided participating in the amicable settlement the other party was entitled to submit the dispute to the court or arbitration, creating the risk of a dispute being resolved by an arbitrator, against the will of one of the social partners.

In this regard, the Committee of Experts highlighted that a provision which permits either party to unilaterally submit a dispute for compulsory arbitration effectively undermines the right of workers to have recourse to industrial action. It thus stated that recourse to arbitration should be limited to situations for which a strike prohibition can be allowed, that is, only for "essential services", for public servants exercising state authority and for acute emergencies.

Furthermore, the CEACR commented on section 51(4) and (5) of the Code, which stated that a strike by employees informed about the termination of their contract before the labour dispute arises was illegal and that, if the right to strike arose before the termination of the time-based contract, the strike was considered illegal after the expiration of the term of the contract. The Committee of Experts considered these provisions to infringe the right to industrial action of

the workers concerned, especially because they limited the workers' ability to go on sympathy and protest strikes, which, as indicated by the Government, were considered legal under the national legislation. Finally, the CEACR also referred to section 49(8) of the Code, which was violating trade union rights.

Dialogue with the Government

In its first reply to the direct request, the Government acknowledged some of the concerns of the Committee of Experts and announced the drafting of new amendments to the Labour Code, though without mentioning concrete proposals. On other issues, it however indicated that it did not see any need for an amendment of the above-mentioned sections.

In particular, regarding the provisions on arbitration, the Government highlighted that, despite section 48(5), a strike could be declared regardless of whether an appeal to court or arbitration had been filed and that recourse to the arbitration was not compulsory. While it confirmed the CEACR's notion that a referral of a case to arbitration against one party's will became possible after the 14-day period had expired, it still did not consider the amendment of the provision necessary. The Government also dismissed the necessity to amend section 51(4) and (5) of the Code.

Furthermore, while acknowledging that the maximum duration requirement in section 49(8) limited the right to strike, it referred to the possibility of workers to initiate a new strike after the 90-day period. This was however not considered sufficient by the Committee of Experts, which referred to the organizational burden of unions to initiate new strikes every 90 days.

After analysing the Government's replies, the Committee of Experts formulated another direct request on these issues in 2008 and then an observation in 2010 and 2012, urging the Government to amend the laws it had highlighted.

These ongoing comments of the CEACR, in conjunction with efforts of other ILO bodies, prompted the initiation of a reform process in the country.

After a discussion before the CAS during the 2009 Conference on a parallel case concerning Convention No. 98, the Government agreed to initiate national tripartite consultations to examine possible amendments to the labour law. Shortly after, a memorandum was signed between the Georgian Ministry of Health, Labour and Social Affairs as well as the national workers' and employers' federations, GTUC and GEA, to institutionalize social dialogue in the country. As a follow-up, the social partners started to regularly hold sessions to discuss issues concerning the labour legislation with an emphasis on the issues of compliance with Convention No. 87. Then, in November 2009, a Decree was issued by the Prime Minister of Georgia, which formalized and institutionalized the National Social Dialogue Commission, and declared the creation of a tripartite working group to review and analyse the conformity of the national legislation with the findings and observations of the CEACR and to propose the necessary amendments.

Meanwhile, over the course of 2009, the ILO started to provide technical assistance to the Georgian tripartite constituents to advance the process of review of the labour legislation. Furthermore, in October 2009, an ILO tripartite round table was held in Tbilisi, which discussed the current status of national labour legislation, the application of Conventions Nos 87 and 98 and the promotion of tripartism in Georgia.

In 2010, the dialogue with the Government was further enhanced, when the CEACR was joined by the European Committee on Social Rights, which, in its 2010 conclusions on Article 6-3 and 6-4 of the European Social Charter, expressed concerns similar to the ones of the CEACR regarding infringements of the right to strike.

Closing gaps in compliance and way forward

All of these efforts led to the discussion of concrete legislative proposals and the drafting of amendments to the Georgian Labour Code, backed by the ongoing technical assistance of ILO experts. As a result, the Labour Code was amended in June 2013.

In its 2015 report, the CEACR took note with satisfaction of the substantial changes made to the Labour Code, which had addressed the issues it had highlighted.

The Committee of Experts, inter alia, noted that the new section 48(8) now stated that disputes of social partners could only be referred to arbitration upon mutual consent of both parties. Furthermore the amendment also lifted all limits on strike duration and led to the deletion of section 51(4) and (5).

Despite the substantial progress noted by the CEACR, it however also noted a few other issues it had highlighted which had not been fully addressed by the 2013 reform. This mainly concerned sections 50(1) and 51(2) of the Labour Code as well as Order No. 01-43/N of 2013, which allow for the prohibition of industrial action or if the activity “cannot be suspended due to the type of technological process”, and which determines the list of services connected with the life, safety and health to include those that do not constitute essential services in the strict sense of the term.

In its 2017 report on Convention No. 87, the Georgian Government did however state that amendments to these provisions were being discussed with the relevant state institutions and social partners, and that the results of the discussions would be submitted to the Tripartite Social Partnership Commission for decision. The CEACR thus asked the Government to keep it informed of the outcome of these discussions and of any further legislative amendments adopted as a result.

Republic of Moldova
Discrimination (Employment and Occupation) Convention, 1958 (No. 111)

The case relates to a Moldovan law against discrimination at work, which did not include all of the prohibited grounds of discrimination required by ILO Convention No. 111. Following a number of direct requests and observations, in which the CEACR urged the Government to ensure that all prohibited grounds listed in the Convention were explicitly mentioned in the law, the Government amended its Labour Code, adding the prohibited grounds of "race", "political opinion" and "social origin" and, in another amendment a few years later, the ground of "colour". [70]

Case background

The Republic of Moldova has been a Member of the ILO since 1992 and has ratified 42 ILO Conventions, including Convention No. 111.

The Moldovan Labour Code of 1997 prohibited discrimination in employment, in accordance with Convention No. 111. However, among the prohibited grounds of discrimination listed in the Code, not all of the grounds required by Article 1(1)(a) of the Convention were included, namely the grounds of "race", "colour", "political opinion" and "social origin".

In a direct request of 2000, the CEACR noted this gap and requested the Government to inform it of any measures taken or envisaged to extend the protection against discrimination to the grounds provided for in Convention No. 111.

Dialogue with the Government

While reporting no further progress in its 2002 report, the Government, in its 2005 report, indicated the adoption of a new Labour Code in 2003, which contained several provisions in line with the Convention, including, under section 8(1), the prohibition of any direct or indirect form of discrimination. The list of the prohibited grounds of discrimination attached to these provisions also encompassed "race", "political opinion" and "social origin". The only ground missing from the list in Article 1(1)(a) of Convention No. 111 was thus "colour". In an observation published in its 2006 report, the Committee of Experts, while noting these legislative changes with interest, recommended the Government further amend the law by also adding this ground to the list.

In its 2006 and 2009 reports to the CEACR, the Government did not report any changes to the law and stated that it considered the ground of "colour" to be covered by a provision of the Labour Code which prohibits discrimination based on "other criteria which are not linked to the professional qualifications of the workers". The CEACR, taking note of this information, however recalled the importance of including explicit references to all the grounds enumerated in Article 1(1)(a) of the Convention in the legislation in order to fully protect workers

against such types of discrimination. In observations published in its 2007 and 2010 reports, it once again urged the Government to further amend the law, in line with its previous comments.

In reply to the Committee's comments, the Government indicated in its 2010 report that the submission of a new draft law to Parliament had taken place and that it would amend the Labour Code, by, inter alia, adding "skin colour" to the list of prohibited grounds of discrimination. The CEACR, in its 2011 report, welcomed these developments and urged the Government to proceed with the adoption of the new law.

Closing gaps in compliance and way forward

In its 2015 report, the CEACR noted with satisfaction the adoption of a law amending the Labour Code, which added "skin colour" to the list of prohibited grounds. It further noted with interest the adoption of another law in 2012, which generally aimed at preventing and combating discrimination and ensuring equality of all persons in the country and which also prohibited discrimination based on all the grounds listed in Article 1(1)(a) of the Convention. Assessing that the list in Article 1(1)(a) had now been fully implemented, the Committee of Experts commended the Government for these reforms and asked it to keep it informed of their application in practice.

(f) Latin America and the Caribbean

Argentina
Worst Forms of Child Labour Convention, 1999 (No. 182)

The case relates to shortcomings by Argentina in the implementation of ILO Convention No. 182, which were identified by the CEACR concerning the lack of adoption of a detailed list of hazardous working activities prohibited for minors as well as the lack of an explicit penalization of the use of minors for prostitution in Argentina's Penal Code. After urging the Government to address these shortcomings, the CEACR engaged in a constructive dialogue with the Government, joined by the UN Committee on the Rights of the Child, which ultimately led to the adoption of a number of amendments to the respective laws, establishing the list of hazardous activities and penalizing child prostitution.[71]

Case background

Argentina has been a Member of the ILO since 1919 and has ratified 81 ILO Conventions, including Convention No. 182.

Under the Argentinian laws on work contracts and on the employment of young people, the employment of minors under 18 years of age in activities that are difficult, hazardous or unhealthy is prohibited. However, in a direct request addressed to the Government in 2005, the CEACR noted that these laws and their

implementing regulations did not foresee a detailed and exhaustive list of the types of work that would fall under the category of "hazardous", "difficult" or "unhealthy".

Against this background, the Committee of Expert recalled that, under Article 4(1) of Convention No. 182, the types of hazardous work must be determined by national laws or regulations or by the competent authority, after consultation with the social partners and taking into consideration relevant international standards, including Paragraph 3 of the Worst Forms of Child Labour Recommendation, 1999 (No. 190). The CEACR thus asked the Government to add such a detailed list of hazardous activities to its legislation, taking into consideration Recommendation No. 190.

Furthermore, the CEACR noted that section 125 bis of the Penal Code on sexual exploitation of minors only criminalized people offering minors under 18 years for prostitution but not clients using these minors for prostitution, as required by Article 3(b) of the Convention. The Committee of Experts requested the Government to indicate in which manner the Argentinian legislation enabled the prosecution and punishment of such acts.

Dialogue with the Government

Following the comments of the CEACR, the Government indicated that a draft decree regulating the types of work which are hazardous to children had been prepared and that the activities included in Paragraph 3 of Recommendation No. 190 had been taken into consideration. The Committee of Experts, in a direct request of 2007, noted this information and expressed its hope that the draft decree would be adopted as soon as possible.

It further noted that the Government had not provided information on any measures taken to amend section 125 bis of the Penal Code or otherwise ensure the prohibition of the use of a child for the purpose of prostitution, in accordance with Article 3(b) of the Convention. The CEACR thus repeated its previous comments on this issue.

As it did not receive any information on progress made on these reforms the following year, the CEACR again repeated its comments in an observation published in its 2011 report, urging the Government to align its legislation with the Convention. In doing so, it was also joined by the UN Committee on the Rights of the Child, which, in its 2010 conclusions, followed the same line as the CEACR and asked the Government to ensure the full implementation of Convention No. 182.

Closing gaps in compliance and way forward

In its 2014 report, the Argentinian Government indicated that a draft of the new Decree listing the hazardous activities had been approved by the Cabinet of Ministers and only required the President's approval. In its 2018 report, the CEACR noted with satisfaction that the Decree had finally been adopted and that it covered all of the working activities listed in Paragraph 3 of Recommendation No. 190, in line with the Committee's previous comments.

Furthermore, concerning the issue of child prostitution, the Committee of Experts, in its 2015 report, had noted with interest the adoption of Act No. 26.482, which modified the Penal Code to include a prohibition of the offering, promotion and commercialization of minors for prostitution thus also penalizing clients using minors for prostitution, as had been requested by the Committee of Experts.

While the CEACR noted in its 2018 report that child prostitution and other worst forms of child labour continued to exist in the country, it acknowledged that these legislative changes represented an important step forward and expressed its hope that the Government would continue its constructive dialogue with the ILO supervisory system and ensure the effective implementation of the newly adopted laws.

Costa Rica
Right to Organise and Collective Bargaining Convention, 1949 (No. 98)

The case relates to persistent gaps in the enforcement of the Costa Rican laws against anti-union discrimination. These issues led to many cases of unionists not being sufficiently protected against discriminatory dismissals and other acts of harassment, which the Committee of Experts considered to infringe their rights under Articles 1 and 2 of Convention No. 98. Following comments from the CEACR and other international bodies, as well as ongoing consultations between the Costa Rican Government and ILO experts, a new law was finally adopted in 2016, which introduced various measures to drastically reduce the length of proceedings of anti-union discrimination cases and to improve the enforcement of court rulings issued in this regard.[72]

Case background

Costa Rica rejoined the ILO in 1944, after having been a Member from 1920 to 1927. It has ratified 51 ILO Conventions, including Convention No. 98.

Costa Rican trade unions have, for many years, complained about frequent cases of anti-union harassment, especially in the private sector, where the unionization rate was already low and where the few existing unions often faced discriminatory treatment from employers. Over the years, many such cases have been dealt with by the CFA, which, on many occasions, urged the Government to improve the legal protection of unionists against such acts.

In 1993, following comments of the CEACR, the Costa Rican legislature adopted new laws prohibiting anti-union discrimination and establishing punishable offences for committing such acts. However, shortly thereafter, shortcomings in the implementation of these laws were reported by national and international trade unions.

The unions' reports alleged that the slowness of procedures in cases of anti-union discrimination could translate into a period of four to eight years before obtaining

a final court ruling. The trade unions furthermore complained that, even after a final ruling on a reinstatement order had been obtained, no legal mechanism obliged employers to comply with this order.

The Committee of Experts, taking note of these reports, stated in an observation published in its 1997 report that the insufficient legal protection of unionists against acts of discrimination and harassment in the country was not in compliance with Articles 1 and 2 of Convention No. 98. It thus asked the Government to respond to these allegations and to propose concrete measures to address these issues.

Dialogue with the Government

In its response to the comments of the CEACR, the Government acknowledged the existence of problems with regard to the length of the procedures and showed its willingness to tackle the issue. It also referred to concrete measures taken, especially with regard to lengthy administrative procedures, which slowed down the overall proceedings.

Taking note of these efforts, the Committee of Experts nevertheless formulated a new observation in its 1999 report, noting that the average length of proceedings was still too long and their implementation not sufficiently effective. It repeated this observation for several years in its following reports.

Due to the urgency of the issue, the case was also picked up by the CAS, which discussed it in 1999, 2002, 2004 and 2006. In its conclusions, the CAS acknowledged the Government's willingness to tackle the problem and took note of the measures it had taken, but also urged it to strengthen these efforts in order to progress on all pending issues.

Both the CEACR and the CAS offered the Government to avail itself of ILO technical assistance to address the issue, which the Government accepted. Over the course of the following years, several technical assistance missions, as well as a high-level assistance mission, were carried out by the ILO to support the Costa Rican Government and social partners in their efforts to address the gaps in compliance with Convention No. 98.

In response to these comments, the Government initiated a reform process and, in consultation with the social partners, submitted a bill to the Legislative Assembly in November 1998, which addressed anti-union discrimination in various ways. It, inter alia, foresaw the implementation of a 14-day long expeditious court procedure for the reinstatement or compensation of workers dismissed on unjustified grounds. However, although the bill enjoyed support of the social partners, its adoption was delayed for several years and eventually abandoned.

In 2005, the Government submitted a new bill to the Legislative Assembly which it had drafted in consultation with the judicial authorities and with the support of ILO technical experts. The bill addressed the problem of judicial delays by revising and simplifying previous judicial procedures as well as introducing a special

process for the protection of workers affiliated to trade unions and providing protection against acts of anti-union discrimination. Despite support from the social partners, the Government did not however succeed in adopting the draft law and the bill was held off in consultations in the Legislative Assembly.

Meanwhile, in search of other ways to tackle the issue, the Government encouraged the use of alternative dispute settlement procedures to resolve union harassment cases and to this end put in place an arbitration body, which decreased the number of anti-union discrimination cases reaching the courts. It also initiated training programmes for labour judges, a greater computerization of proceedings and other measures to decrease the average length of labour court proceedings, which reduced the labour courts' case backlogs.

In view of the still unresolved issue, the dialogue with the Government was further enhanced in 2006, when the CFA, which had already been dealing with numerous individual cases of discrimination of Costa Rican unionists, received two general complaints on the slowness of anti-union discrimination proceedings from Costa Rican trade unions and the ITUC. In its recommendations on these cases, published in 2007 and 2010, the CFA equally urged the Government to proceed with the announced legislative reforms to tackle the pending problems.

Furthermore, in 2008, the CEACR was also joined by the UN Committee on Economic, Social and Cultural Rights, which urged the Government to strengthen its efforts to address anti-union harassment, which it repeated in its 2016 report.

Meanwhile the CEACR continued recalling its previous comments and urged the Government to proceed with the adoption of the proposed reform bill in observations published in its 2007, 2009, 2010, 2012 and 2013 reports. These comments were then again picked up by the CAS, which rediscussed the case in 2009 and 2010.

All of these comments prompted the Government to intensify its efforts to pass the announced reform bill and to start consultations with all stakeholders involved to seek consensus for the law. The bill was finally approved by the Legislative Assembly in September 2012. Shortly after, it was however vetoed by the executive authorities on the ground of its unconstitutionality. The Committee of Experts thus again repeated its previous comments in its 2013 and 2014 reports, urging the Government to proceed with the bill's adoption.

Closing gaps in compliance and way forward

Following the veto, further consultations on the bill were held and new amendments to it were agreed. The new law was finally adopted in January 2016 and entered into force in July 2017. It focused on improving the enforcement of anti-union discrimination laws through the introduction of new expeditious court proceedings for all discrimination cases, including the possibility of issuing interim rulings to suspend the effects of the challenged acts and allow for the provisional reinstatement of a worker. The law also foresaw special burdens of proof for the employer when there is no agreement on certain aspects, such as the reasons for

the termination of the contract, as well as the reorganization and specialization of labour courts, the provision of free legal assistance and various types of trade union immunity provisions intended to increase the effectiveness of protection against anti-union discrimination.

The CEACR therefore noted with satisfaction in 2017 the adoption of the new law and asked the Government to provide information on its impact in practice. It also expressed its hope that these legislative changes would pave the way for reducing the length of anti-union discrimination proceedings as well as improving the implementation of rulings issued in these proceedings.

Grenada
Equal Remuneration Convention, 1951 (No. 100)

The case relates to a provision in the 2002 Minimum Wage Order of Grenada, which prescribed a different minimum wage rate for male and female agricultural workers. Recalling that this provision was not in conformity with Article 2(1) of ILO Convention No. 100, which prohibits any distinction in the determination of wages based on gender, the CEACR urged the Government to amend the law. Following these comments, an agreement between the social partners of Grenada was reached, which supported the position of the Committee of Experts. As a response, a reform process was initiated by the Government, which finally led to an amendment of the Order establishing equal minimum wage rates for all agricultural workers regardless of their gender. [73]

Case background

Grenada has been a Member of the ILO since 1979 and has ratified 34 ILO Conventions, including Convention No. 100.

In a request addressed directly to the Government in 2004, the CEACR noted that the previously adopted Minimum Wage Order of Grenada, which set forth minimum wages for male and female workers working in the areas of agriculture, catering, construction, domestic employment, industry, security and shops, set the minimum wage for male agricultural workers at $5.00 per hour while setting the wage for female agricultural workers at $4.75. Recalling that Article 2(1) of Convention No. 100 prohibits any distinction in the determination of wages based on gender, the Committee thus noted that the Order conflicted with the Convention and asked the Government to amend it accordingly.

Dialogue with the Government

While the Government did not send a reply to the CEACR's comments in 2004 and 2005, it indicated in its 2006 report that, although it was true that the Order provided for different rates for men and women, it also, in another section, stated that men and women who perform the same tasks shall receive the same wage. Noting this information, the Committee of Experts however reaffirmed that the

Order expressly established different wage rates based on sex for agricultural workers and that these provisions should be removed from the law in order to achieve full compliance with the Convention. This position was repeated by the Committee in an observation published in its 2007 report.

In its 2008 report, the Committee of Expert furthermore noted that both the Grenada Employers' Federation and the Grenada Trade Union Council had agreed with the CEACR's comments and that the Department of Labour of the Government had therefore proposed an amendment to the law.

Closing gaps in compliance and way forward

While the Government, in 2009 and 2011, did not provide any further information on the adoption of the new law, in its 2012 report it indicated that the Minimum Wage Order had been replaced by a new Order, which came into force in January 2011. It furthermore indicated that this new Order provided for a uniform minimum wage for agricultural workers, regardless of their gender.

In an observation, published in its 2013 report, the Committee of Experts took note of this legislative change with satisfaction, noting that the reform had addressed its previous comments by removing the different minimum wage rates for male and female agricultural workers. It also asked the Government to keep it informed of the application in practice of the new law and any other changes made to it.

Peru
Forced Labour Convention, 1930 (No. 29)

The case relates to the Peruvian Penal Code, which, while containing penal offences on human trafficking and a few other types of compulsory labour, did not contain specific provisions criminalizing forced labour in all its forms, as required by Article 25 of ILO Convention No. 29. After having highlighted this gap, the Committee of Experts urged the Government to adopt new legislation, which would introduce such penal offences. Following these comments, the Government, with the assistance of ILO technical experts, initiated a reform process which led to the drafting and adoption of an amendment to the Peruvian Penal Code. This amendment added various new offences, addressing forced labour in all its different forms.[74]

Case background

Peru has been a Member of the ILO since 1919 and has ratified 76 ILO Conventions, including Convention No. 29.

For many years, Peru has dealt with various forms of forced labour existing in the country. This, inter alia, concerned debt bondage inflicted on indigenous peoples in agriculture, stock raising and forestry, situations of forced labour in the illegal gold-mining sector, trafficking in persons or the exploitation of women in

domestic service. For a number of years, the Committee of Experts examined the steps taken by the Government to address these issues.

After taking note of the Government's replies to various requests it had addressed to it, the CEACR, in 2009, noted that the Peruvian law did not contain any legislation addressing the issue of forced labour in an integral manner and that the State would therefore have to update the criminal, labour and civil legislation on this subject. In an observation published in its 2009 report, the Committee of Experts underlined that, in order to reduce forced labour, it was essential that the perpetrators of such practices were punished by sufficiently dissuasive penalties, and that according to Article 25 of Convention No. 29, the implementation and strict enforcement of such penal offences with dissuasive penalties was required. It thus urged the Government to adopt legislation specifically criminalizing forced labour in all its forms.

Dialogue with the Government

In 2007, the Peruvian Government established a National Committee to Combat Forced Labour (CNLCTF) and approved a National Plan to Combat Forced Labour (PNLCTF), the objective of which was to address structural issues and take coordinated measures to resolve situations of forced labour. One of the objectives of the National Plan was to align the national legislation with international standards in order to create a legal basis for action to combat forced labour. In its 2009 report, the CEACR urged the Government to follow through with this Plan and adopt appropriate penal sanctions.

In its 2010 report, the Government however indicated that although a legislative proposal was being studied, which would be introduced to the Congress, no new penal offences on forced labour had been adopted. The Government also indicated that other provisions of the national legislation were already addressing forced labour, such as section 168 of the Penal Code, which provided for a sentence of imprisonment for any person who forced or threatened another person to work without receiving the corresponding remuneration, and section 153 which criminalized trafficking in persons and defined its constituent elements.

Taking note of this information, the Committee of Experts, in an observation published in its 2011 report, recalled that Convention No. 29 establishes a broader concept of forced labour than trafficking in persons or work without remuneration and that, in view of the principle of the strict interpretation of penal law, the introduction of legislation criminalizing forced labour in all its forms was crucial. It therefore expressed its hope that the Government would, within the implementation of the PNLCTF and with the support of the CNLCTF, continue its efforts to adopt the announced legislative proposal.

In the following years, the Government availed itself of ILO technical assistance and welcomed ILO technical experts to the country, providing it with support for various measures to combat forced labour, including the elaboration of new penal offences.

After reporting no progress on the drafting of a new penal law in its 2012 report, the Government, in its 2013 report, stated that a subcommittee of the CNLCTF had drafted a proposed amendment to the Penal Code, which would introduce new offences concerning forced labour, taking into account the CEACR's comments. It indicated the upcoming submission of this draft to the National Human Rights Council, which would then introduce the bill to Congress. The Committee of Experts, in its 2014 report, took note of this information, and urged the Government to proceed with the adoption process.

Closing gaps in compliance and way forward

After consultations over the proposed draft law had continued for several years, the Peruvian Government finally adopted the amendment to the Penal Code in February 2017 through Legislative Decree No. 1323. This law introduced a new provision to the Code, which criminalizes "forced labour", defining it as "subjecting or obliging a person, by whatever means or against his/her will, to perform work or service, whether paid or not", and provides for penalties of imprisonment of up to 12 years (which could reach 25 years in case a victim dies), as well as another provision criminalizing "slavery and other forms of labour and sexual exploitation". Furthermore, the Consolidating and Disseminating Efforts to Combat Forced Labour in Brazil and Peru project, a trilateral technical cooperation initiative funded by the US Department of Labor (USDOL), and implemented by the ILO in Brazil and Peru (2013–15), contributed to this result through technical assistance on the formulation of the forced labour penal type and the development of technical and regulatory discussions within the framework of the CNLCTF. The CNLCTF involved the participation of different government actors, workers' and employers' organizations and civil society.

In its 2018 report, the CEACR noted with satisfaction the adoption of the new law, confirming that these amendments to the Penal Code met the requirement for penal offences for forced labour under Article 25 of Convention No. 29. It also requested the Government to keep it informed of the law's implementation in practice and encouraged the Government to continue its efforts towards the full eradication of all forms of forced labour in the country.

(g) North America

Canada
Asbestos Convention, 1986 (No. 162)

The case relates to Articles 3 and 10 of Convention No. 162, according to which ratifying States shall ensure the strictest possible protection of workers against asbestos and, as far as practicable, prohibit the use of the substance. On various occasions in its reports, the CEACR noted comments of Canadian trade unions that, while Canada continued to be one of the largest producers of asbestos, up-to-date scientific studies and guidance of both national research institutes, the ILO and the WHO indicated that a complete ban of asbestos in Canada was scientifically recommended and would be feasible without important economic consequences. The Committee of Experts, supported by the CAS, therefore invited the Government to engage in consultations with social partners with a view to updating national laws on asbestos in line with current scientific standards, in accordance with Convention No. 162. Following these comments, the Government engaged in a legislative reform process, which led to the adoption of new laws banning most production and use of asbestos in the country.[75]

Case background

Canada has been a Member of the ILO since 1919 and has ratified 36 ILO Conventions, including Convention No. 162.

In an observation published in its 2011 report, the CEACR noted that Canada was among the main producers of asbestos in the world. It also recalled that according to Article 3 of Convention No. 162, ratifying States shall take measures for the prevention, control of and protection of workers against asbestos and, according to Article 10, they shall, where technically practicable, prohibit asbestos and replace it with less harmful substances.

In this regard, it further noted comments of the Canadian Labour Congress (CLC), the most representative Canadian trade union federation, according to which there existed a compelling body of evidence showing that the most efficient way to eliminate asbestos-related diseases was to stop producing and using it. The CLC further referred to guidance published by the ILO and the WHO which recommended banning asbestos, such as the National Programme for the Elimination of Asbestos-Related Diseases (NPEAD), a programme specifically designed by the ILO and the WHO for countries with a high asbestos production and usage, which envisages the replacement of asbestos by other materials or products or the use of alternative technology. The CLC also indicated that, if planned properly, job losses due to an asbestos prohibition could be effectively offset by developing a positive employment transition process that is linked to the prohibition of asbestos and the promotion of alternative technology.

Noting that, in light of the comments formulated by the CLC, the prohibition and replacement of asbestos in Canada seemed "technically practicable" under Articles 3 and 10 of the Convention, the Committee of Experts requested the Government to provide information on measures taken with a view to revising current regulations on the use of asbestos.

Dialogue with the Government

The comments of the CEACR drew the attention of the CAS, which discussed the case during the 2011 Conference. In its conclusions, the CAS highlighted the importance of adopting the strictest standards for the protection of workers' health as regards exposure to asbestos and noted that the Convention placed an obligation on governments to keep abreast of technical progress and scientific knowledge, which was particularly important for a country like Canada, being one of the main producers of asbestos. It also invited the Government to engage in consultations with the employers' and workers' organizations on the application of Articles 3 and 10 of the Convention, in particular taking into account the evolution of scientific studies and technology since the adoption of the Convention, as well as the findings concerning the dangers of exposure to asbestos of the ILO, the WHO and other recognized organizations.

Following these comments, the CEACR, in its 2012 report, noted information provided by the Government that a number of legislative and other measures had been taken in several Canadian provinces to strengthen the protection of workers against asbestos, taking into account the most up-to-date scientific data and technical knowledge. The Government further stated that, in all Canadian provincial jurisdictions as well as at the federal level, reviews of occupational safety and health laws and regulations regarding asbestos had been undertaken, in consultation with representatives of workers and employers, in accordance with Article 4 of Convention No. 162. It also indicated that due to the already existing federal and provincial laws and regulations, the use of asbestos in the country was very limited and in many cases prohibited. The Government therefore maintained that relevant laws and regulations in the country were in conformity with the Convention.

The Committee of Experts however also noted statements of the CLC and other trade unions which considered that the state of scientific and technical information pointed to a need for a total ban of asbestos and that the Government had not taken due account of this information.

In view of these comments, and recalling that, according to Convention No. 162, Canada was required to adopt the strictest standards for the protection of workers' health against exposure to asbestos, the CEACR recalled its previous comments requesting the Government to continue its consultations with the national social partners to discuss the revision of national standards on asbestos in view of up-to-date scientific studies.

In response to the CEACR's comments, the Government, in its 2012 report, stated that since November 2011, no asbestos production had taken place in the country. It further indicated that consultations with the social partners regarding the possible review of the federal laws on asbestos were taking place. Welcoming this information, the CEACR, in an observation published in its 2013 report, encouraged the Government to continue these consultations and the ongoing reform process and to inform it of any legislative changes resulting from this process.

Closing gaps in compliance and way forward

In its 2018 report, the Committee of Experts noted with interest that, in December 2016, the Government had published a Notice of intent to develop regulations that would prohibit all future activities with respect to asbestos and products containing asbestos. The Notice received comments from three industry associations, eight labour organizations and non-governmental organizations, and six regional stakeholders. It further noted that subsequently, a consultation document describing the proposed regulatory approach had been published in April 2017, and that the responses received to the document would be considered in the development of the proposed regulations, the adoption of which was planned for 2018. The CEACR welcomed this initiative and requested the Government to provide it with a copy of the new regulations, once adopted.

Shortly after the Committee had formulated its comments, a new law banning most of the production and use of asbestos in Canada was adopted by the Canadian legislature, which took effect in October 2018. This new legislation, as well as all other positive measures taken so far by the Canadian Government within the context of its ongoing constructive dialogue with the CEACR and the CAS, will be reassessed by the CEACR in its next regular examination of the application of Convention No. 162 by Canada.

CONCLUSION

The brief historical background laid out in Part I of this study provides ample evidence that international labour standards have been and remain a major instrument for the Organization in its objective of promoting social justice and that standards-related activities are an indispensable tool for giving effect to the concept of decent work. Based on its Constitution, the ILO has deployed a series of means, all of which are intended in one manner or another to increase the effectiveness of its action in the field of standards. The Committee of Experts on the Application of Conventions and Recommendations is, in this respect, the oldest of the ILO's supervisory mechanisms, together with the CAS, for the achievement of compliance and the effective implementation of international labour standards.

The considerable number of cases of progress noted by the CEACR since it started recording them in 1964 provides an impressive illustration of the efforts made by governments to ensure that their national law and practice are in conformity with the ILO Conventions they have ratified. The 18 cases selected in Part II of this study were meant to highlight major achievements in this regard, even if in some of these cases, certain issues remain unresolved and further progress can still be achieved. From these specific examples, it could be argued that the ILO, through the joint action of its various bodies, has been able to counter the criticisms of inertia levelled on some occasions at international or multilateral organizations with the intention of reducing the significance of their action to mere declarations of principles, without any real practical impact. Contrary to the critique that international legal monitoring bodies often receive, the CEACR, within the comprehensive ILO supervisory system, has demonstrated that relentless supervision through constructive dialogue on the application of standards can have real, practical and tangible effects in domestic jurisdictions, and thus on the daily lives of working men and women. In this regard, if the success or failure of the ILO's supervisory system were to be measured in terms of the results obtained and their permanence, the number of cases of progress recorded by the CEACR can serve to demonstrate that the supervisory system has largely fulfilled its functions in recent decades..

But as outlined throughout the study, the success of the Committee of Experts is due in large part to the synergy that exists with the other components of the ILO's supervisory system, such as the CAS, the CFA and the special supervisory bodies set up under Articles 24 and 26. As noted above, the positive results achieved must indeed be placed within the context of the ILO's mechanisms as a whole, in which there is a balance between technical instances, whose members are

selected for their independence and legal expertise, and representative tripartite bodies, which are composed of Government, Workers' and Employers' delegates.

By their very nature, the ILO's supervisory mechanisms cannot be static in their conception or functioning. Their effectiveness is drawn from their capacity to confront the difficulties which arise, adapt and develop new approaches and draw the greatest advantage from the tripartite nature of an Organization that is universal in its vocation. This dynamic of adaptation will continue for as long as the ILO's tripartite constituents show the will to enhance and strengthen the Organization's standards-related work.

In its 2019 report to the Conference, the Committee of Experts highlighted the fact that several targets in the 2030 Agenda for Sustainable Development had the potential to simultaneously benefit from and raise the profile of the standards supervisory work in the ILO's second century. For instance, Sustainable Development Goal (SDG) 8.7 targets the end of forced labour and child labour and so is aligned with some of the most widely – and for Convention No. 182 nearly universally – ratified fundamental Conventions. The same holds true for standards related to the promotion of full and productive employment and decent work for all women and men, including for young people and persons with disabilities, and of equal pay for work of equal value – targeted in SDG 8.5. The relevance of the Committee of Experts' comments in relation to the application of standards on equal opportunity and treatment and employment policy is also evident in relation to SDG 10.

But at the same time, as the CEACR recalled in its latest report, it would appear that such reassurances of the contemporary relevance of international labour law and its supervision do not warrant complacency. In this context, the supervisory bodies will need to remain vigilant of the challenges to the effective supervision and implementation of international labour standards ahead. Some of these relate to the rapid transformations in the world of work itself and the commensurate attention international supervision will have to pay to the timely valuation of new and complex problems. Over and above the diverging scenarios regarding the future of work (that is, whether jobs will be destroyed or created and labour standards lowered or enhanced), one of the main challenges to which technological progress will give rise is to identify how, in this transitional context, assistance can be provided to enterprises and workers to help them adapt to new jobs (both physically and in terms of skills) as this will likely be an ongoing and dynamic process throughout a person's working life.

Against this background, it should be recalled that the ILO was for a long time the only international organization to maintain that the concept of economic development necessarily had to include a social dimension. The first Director-General of the ILO, Albert Thomas, wanted social concerns to prevail over economic interests. The current Director-General, Guy Ryder, has given new impetus to this debate by affirming with force that in today's world, in view of the economic, social, technological and environmental transformations caused by all aspects of globalization, the ILO's mandate to strive for a better future for all in

the world of work requires it, in its quest for social justice, to continue to reach out to all, but in particular to the most vulnerable. This vision has been reflected in *"the human-centred approach for the future of work"* contained in the recently adopted ILO Centenary Declaration.[76] In this context, supervisory functions such as monitoring compliance with international labour standards and helping member States meet their international obligations to improve the working lives of women and men will continue to be a relevant and useful means towards fulfilling that vision.

NOTES

1. ILO: *Work for a brighter future*, Report of the Global Commission on the Future of Work, Geneva, 2019.

2. All these key documents are available through the NORMLEX database at: www.ilo.org/normlex.

3. As similar studies were undertaken in 1977 (see ILO: *L'impact des conventions et recommandations internationales du travail, Geneva, 1977), and 2003 (see ILO: The Committee of Experts on the Application of Conventions and Recommendations: Its dynamic and impact, Geneva, 2003) on the impact of the CEACR's work, the present study will confine itself to the work of the Committee of Experts since the early 2000s.*

4. See Appendix I for the names and a brief CV of the 2019 members of the CEACR.

5. This section is partially based on a paper which had been prepared for the informal tripartite consultations of 19 September 2012 as a follow-up to the discussions which had taken place in the CAS in 2012. The paper provided a synopsis of the background to the establishment and role of the CEACR in the ILO supervisory system and is called *The ILO supervisory system: A factual and historical information note.*

6. ILO: *Official Bulletin*, Vol. 1, Apr. 1919–Aug. 1920, pp. 332–345.

7. ibid.

8. There are numerous references to the concept of "mutual supervision" in the reports of the Governing Body, International Labour Conference, CEACR and CAS. See for example: ILO: *Report of the Director, International Labour Conference, 14th Session, 1930, Appendix to the Second Part, p. 288; ILO: Record of Proceedings, International Labour Conference, 19th Session, 1935, Appendix V, p. 750; Governing Body, 49th Session, June 1930, p. 479; Governing Body, 73rd Session, October 1935, Appendix X, p. 480.*

9. ILO: *Official Bulletin, Vol. 1, Apr. 1919–Aug. 1920, p. 266. The reference to economic sanctions in the 1919 Constitution was deleted when the Constitution was amended in 1946.*

10. ILO: Resolution concerning the methods by which the Conference can make use of the reports submitted under Article 408 of the Treaty of Versailles [current article 22 of the ILO Constitution], *Record of Proceedings, International Labour Conference, Eighth Session, 1926, Vol. I, Appendix VII, p. 429; in accordance with the resolution, the two committees were named, respectively, "Committee of the Conference" and "Committee of Experts".*

11. ibid.

12. ibid.

13. ibid., pp. 239–240.

14. ibid., Appendix V, p. 396.

15. ibid., Appendix V, p. 398.

16. ibid., Appendix VII, p. 429.

17. ILO: *Record of Proceedings, International Labour Conference*, 11th Session, 1928, Vol. II, p. 458.

18. ILO: *Record of Proceedings, International Labour Conference*, 16th Session, 1932, Appendix V, p. 671.

19. ILO: *Minutes*, Governing Body, 42nd Session, October 1928, p. 546.

20. ILO: *Record of Proceedings*, International Labour Conference, 25th Session, 1939, Appendix V, p. 414.

21. ibid.

22. ILO: *Record of Proceedings, International Labour Conference, Eighth Session, 1926, p. 239. The Office indicated that the members of the CEACR should "possess intimate knowledge of labour conditions and of the application of labour legislation. They should be persons of independent standing, and they should be so chosen as to represent as far as possible the varying degrees of industrial development and the variations of industrial method to be found among the States Members of the Organisation."*

23. ILO: *Minutes*, Governing Body, 33rd Session, October 1926, pp. 384–386; and 34th Session, January 1927, pp. 59 and 67–68.

24. ILO: *Minutes*, Governing Body, 68th Session, September 1934, p. 292.

25. ILO: *Record of Proceedings*, International Labour Conference, 34th Session, 1951, Appendix VI, para. 23.

26. ILO: *Minutes*, Governing Body, 159th Session (June–July 1964), Statement by the Employers' group, p. 49.

27. When asked for its views by the Governing Body, the CEACR welcomed the suggestion, considering that its examinations in this respect could "promote uniformity in the interpretation" of identical obligations. The Governing Body approved the procedure in 1956. ILO: *Minutes*, Governing Body, 132nd Session, June 1956, p. 32 and Appendix XI, pp. 79–80.

28. ILO: *CEACR General Report, Report III (Part 4A)*, International Labour Conference, 73rd Session, 1987, pp. 7–19, paras 9–49.

29. ibid., para. 20.

30. In 1996, the dates of the CEACR's sessions were moved from February–March to November–December.

31. 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).

32. ILO: *CEACR General Report, Report III (Part A)*, International Labour Conference, 108th Session, 2019, para. 70.

33. ibid., para. 77.

34. ILO: ibid., 90th Session, 2002, p. 14, para. 24.

35. ILO: ibid., 103rd Session, 2014, para. 30.

36. ILO: ibid., 107th Session, 2018, paras 9–10.

37. ILO: ibid., 102nd Session, 2013, paras 26–35.

38. ILO: ibid., 103rd Session, 2014 and subsequent years.

39. ILO: ibid., 104th Session, 2015, para. 24.

40. Governing Body, 334th Session, October–November 2018, GB.334/INS/5.

41. ILO: *CEACR General Report, Report III (Part I)*, International Labour Conference, 43rd Session, 1959, para. 25. In one case, when an observation from a workers' organization had been sent directly to the Office, the CEACR asked for the observation to be sent to the government concerned for comments and for that practice to be followed in future cases.

42. ILO: *CEACR General Report, Report III (Part A)*, International Labour Conference, 105th Session, 2016, paras 58–63.

43. ILO: *Record of Proceedings*, International Labour Conference, 38th Session, 1955, Appendix V, p. 590.

44. ILO: ibid., Appendix V, p. 583, paras 6–7.

45. The CAS is composed of Government, Employers' and Workers' delegates. It elects a Chairperson, who is always a Government delegate, and two Vice-Chairpersons, a Workers' and an Employers' delegate. The three Chairpersons agree on the conclusions of the Committee. The Committee also elects a "Reporter", who presents the outcome of the discussions in the CAS to the plenary of the International Labour Conference.

46. ILO: *CEACR General Report, Report III (Part 4A)*, International Labour Conference, 81st Session, 1994, para. 39.

47. ILO: *CEACR General Report, Report III (Part A)*, International Labour Conference, 108th Session, 2019, paras 24–26.

48. Governing Body, 301st Session, March 2008, GB.301/LILS/6(Rev.), para. 69.

49. ILO: *Freedom of Association: Compilation of decisions of the Committee on Freedom of Association,* sixth edition (Geneva, 2018).

50. A good example of such collaboration was the recent case on the application of the ILO Worst Forms of Child Labour Convention, 1999 (No. 182), by Uzbekistan, which is treated in more detail in Part II of this publication. In this case, the CEACR was joined by the UN Committee on Economic, Social and Cultural Rights, the UN Committee on the Rights of the Child, the UN Committee on the Elimination of Discrimination against Women and the UN Human Rights Committee in commenting on mass-scale incidents of forced labour of children in the country's cotton harvest.

51. See, for instance, the case of Georgia which is also treated in Part II of this publication.

52. See, for example, ITC–ILO: *International Labour Law and Domestic Law: A training manual for judges, lawyers and legal educators* (edited by X. Beaudonnet), first edition, Part 1, chapter 2 (ITC Publications, 2010).

53. ILO: Report of the Committee of Experts submitted to the 48th Session (1964) of the International Labour Conference, para. 16.

54. ILO: Report of the Committee of Experts submitted to the 48th Session (1964) of the International Labour Conference, para. 122.

55. ILO: *CEACR General Report, Report III (Part A)*, International Labour Conference, 101st Session, 2012, paras 59–60.

56. Such issues were already discussed in N. Valticos: *Droit international du travail*, second edition (Paris, Dalloz), 1983, pp. 575–576.

57. ibid., p. 601.

58. See observations and direct requests of the CEACR on Eswatini (formerly Swaziland), published in 1990–91, 1993, 1995–2000, 2006–07 and 2018.

59. See observations and direct requests of the CEACR on Mali published in 1993–95, 1997, 1999–2003, 2005–11, 2014–15 and 2018.

60. See observations and direct requests of the CEACR on Namibia published in 2004, 2006, 2008, 2010, 2012–13 and 2016.

61. See observations and direct requests of the CEACR on Qatar published in 2012, 2014–15 and 2017.

62. See observations and direct requests of the CEACR on Nepal published in 2005–07, 2009, 2011, 2013–14 and 2016.

63. See observations and direct requests of the CEACR on Pakistan published in 2010–12, 2014 and 2018.

64. See observations and direct requests of the CEACR on Uzbekistan published in 2010–11 and 2013–17.

65. See observations and direct requests of the CEACR on the Republic of Korea published in 2000, 2004, 2006–08, 2011–12 and 2015.

66. See observations and direct requests of the CEACR on Malaysia published in 2001–04, 2007, 2009 and 2011–19.

67. See observations and direct requests of the CEACR on Myanmar published in 1990, 1992–93, 1995–98, 2000, 2002–04, 2006–11, 2013, 2015 and 2017–19.

68. See observations and direct requests of the CEACR on French Polynesia published in 2006, 2008, 2011–13, 2017 and 2019.

69. See observations and direct requests of the CEACR on Georgia published in 2006–08, 2010, 2012, 2015 and 2018.

70. See observations and direct requests of the CEACR on the Republic of Moldova published in 2000, 2003, 2006–07, 2010–11, 2015 and 2017.

71. See observations and direct requests of the CEACR on Argentina published in 2005, 2007, 2009, 2011, 2015 and 2018.

72. See observations and direct requests of the CEACR on Costa Rica published in 1995–96, 1999, 2000, 2002, 2004–07, 2009–10, 2012–14 and 2017.

73. See observations and direct requests of the CEACR on Grenada published in 2004–08, 2010, 2012–13 and 2018.

74. See observations and direct requests of the CEACR on Peru published in 2009, 2011, 2013–14 and 2018.

75. See observations and direct requests of the CEACR on Canada published in 2011–13 and 2018.

76. ILO Centenary Declaration, adopted by the International Labour Conference, 108th Session, Geneva, 2019.

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Most of the documents used for this study have been produced by the ILO. In the study, it was appropriate in the first place to highlight the work of the Committee of Experts on the Application of Conventions and Recommendations. The yearly reports of the CEACR have therefore been used as the principal source for the study. These reports are available on the International Labour Standards Department website: www.ilo.org/normes

- **Report of the Committee of Experts on the Application of Conventions and Recommendations**

  Annual report containing:

  General Report: comments on compliance by member States with reporting obligations, cases of progress and the relationship between international labour standards and the multilateral system (Report III (Part 1A)).

  Observations: comments on the application of Conventions in ratifying States (Report III (Part 1A)).

  General Survey: examination of law and practice in a particular subject area in member States that have or have not ratified the relevant Conventions (Report III (Part 1B)).

Secondly, the study required the use of the work from the various bodies of the ILO standards system:

- **Report of the Conference Committee on the Application of Standards**

  Report containing:

  General Report

  Examination of individual cases

  Published separately as the *Record of Proceedings* of the Conference Committee on the Application of Standards of the International Labour Conference.

- **Report of the Committee on Freedom of Association**

  Published three times a year as a Governing Body document and in the ILO *Official Bulletin*.

- **Reports of committees established to examine representations (article 24)**

  Published in Governing Body documents.

- **Reports of Commissions of Inquiry (article 26)**

  Published in Governing Body documents and in the ILO *Official Bulletin*.

- **Record of Proceedings of the International Labour Conference**

  Published annually from 1919 to 2014 and again in 2019.

  All of the above are available in the NORMLEX database at: www.ilo.org/normlex

Internet resources used for the study

- **NORMLEX** is a trilingual database (English, French and Spanish) which brings together information on international labour standards (such as information on ratifications, reporting requirements, comments of the ILO supervisory bodies, etc.), as well as on national labour and social security legislation. It has been designed to provide full and easily usable information on these subjects.

- **NATLEX** is a trilingual database (English, French and Spanish – as well as numerous texts in the original language) on labour, social security and human rights law. It includes nearly 90,000 legislative texts from 196 countries and over 160 territories, provinces and other entities.

  These databases are accessible through the international labour standards website at: www.ilo.org/normes

Preparation of the study also required reference to the reports of technical assistance or other missions carried out by ILO officials. The information that they contain is regularly reported in the work of the CEACR and of the CAS. However, the mission reports are internal working documents and their dissemination is subject to the Office's discretion.

Finally, a number of publications by the ILO International Labour Standards Department, or by other authors who have written on international labour law, have been used in the study, with particular reference to the following:

- *The ILO supervisory system: A factual and historical information note*, Information paper prepared in the context of the Informal Tripartite Consultations (19–20 February 2013) (Geneva, ILO).
- *Handbook of procedures relating to international labour Conventions and Recommendations*, Centenary edition (Geneva, ILO).
- *Freedom of Association: Compilation of decisions of the Committee on Freedom of Association*, sixth edition (Geneva, ILO, 2018).
- Internal arrangements for the treatment of information received on the application of ratified Conventions and instructions for the preparation of draft comments for submission to the Committee of Experts on the Application of Conventions and Recommendations (NORMES/2019) (Geneva, ILO, 2019).
- *Report of the Global Commission on the Future of Work – Work for a brighter future* (Geneva, ILO, 2019).
- *Rules of the Game: An introduction to the standards-related work of the International Labour Organization*, International Labour Standards Department, Centenary edition (Geneva, ILO, 2019).
- *The Committee of Experts on the Application of Conventions and Recommendations: Its dynamic and impact* (Geneva, ILO, 2003).
- *The Committee on Freedom of Association: Its impact over 50 years* (Geneva, ILO, 2001).
- *The Committee on the Application of Standards of the International Labour Conference: A dynamic and impact built on decades of dialogue and persuasion* (Geneva, ILO, 2011).

- *L'impact des conventions et recommandations internationales du travail* (Geneva, ILO, 1977).
- N. Valticos: ***Droit international du travail***, second edition (Paris, Dalloz, 1983).
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- "The Committee of Experts on the Application of Conventions and Recommendations: Progress achieved in national labour legislation", in *International Labour Review* (2006, Vol. 145, No. 3).
- "International labour standards: Recent developments in complementarity between the international and national supervisory systems", in *International Labour Review* (2008, Vol. 147, No. 4).
- *Protecting labour rights as human rights: Present and future of international supervision*, Proceedings of the International Colloquium on the 80th Anniversary of the ILO CEACR, Geneva, 24–25 November 2006, ILO.
- *Research Handbook on Transnational Labour Law* (Edward Elgar Publishing, 2015).

APPENDIX I

Current members of the Committee of Experts on the Application of Conventions and Recommendations

Mr Shinichi AGO (Japan) – Professor of Law, Ritsumeikan University, Kyoto; former Professor of International Economic Laws and Dean of the Faculty of Law at Kyushu University; member of the Asian Society of International Law, the International Law Association and the International Society for Labour and Social Security Law; Judge, Asian Development Bank Administrative Tribunal.

Ms Lia ATHANASSIOU (Greece) – Full Professor of Maritime and Commercial Law at the National and Kapodistrian University of Athens (Faculty of Law); elected member of the Deanship Council of the Faculty of Law and Director of the Postgraduate Programme on Business and Maritime Law; President of the Organizing Committee of the International Conference on Maritime Law held in Piraeus (Greece) every three years; Ph.D. from the University of Paris I-Sorbonne; authorization by the same university to supervise academic research; LL.M. Aix-Marseille III; LL.M. Paris II Assas; visiting scholar at Harvard Law School and Fulbright Scholar (2007–08); member of legislative committees on various commercial law issues. She has lectured and made academic research in several foreign institutions in France, Italy, Malta, United Kingdom, United States, among others. She has published extensively on maritime, competition, industrial property, company, European and transport law (eight books and more than 60 papers and contributions in collective works in Greek, English and French); practising lawyer and arbitrator specializing in European, commercial and maritime law.

Ms Leila AZOURI (Lebanon) – Doctor of Law; Professor of Labour Law at the Faculty of Law at Sagesse University, Beirut; Director of Research at the Doctoral School of Law of the Lebanese University; former Director of the Faculty of Law of the Lebanese University until 2016; member of the Executive Bureau of the National Commission for Lebanese Women; Chairperson of the national commission responsible for the preparation of the reports submitted by the Government of Lebanon to the UN Committee on the Elimination of Discrimination against Women (CEDAW) until 2017; legal expert for the Arab Women Organization; member of the "ILO Policy Advisory Committee on Fair Migration" in the Middle East.

Mr Lelio BENTES CORRÊA (Brazil) – Judge at the Labour Superior Court (Tribunal Superior do Trabalho) of Brazil; former Labour Public Prosecutor of Brazil; LL.M. of the University of Essex, United Kingdom; former member of the National Council of Justice of Brazil; Professor at the Instituto de Ensino Superior de Brasilia; Professor at the National School for Labour Judges.

Mr James J. BRUDNEY (United States) – Professor of Law, Fordham University School of Law, New York; Co-Chair of the Public Review Board of the United Automobile Workers Union of America (UAW); former Visiting Fellow, Oxford University, United Kingdom; former Visiting Faculty, Harvard Law School; former Professor of Law, The Ohio State University Moritz College of Law; former Chief Counsel and Staff Director of the United States Senate Subcommittee on Labor; former attorney in private practice; and former law clerk to the United States Supreme Court.

Mr Halton CHEADLE (South Africa) – Professor Emeritus at the University of Cape Town; former Special Adviser to the Minister of Justice; former Chief Legal Counsel of the Congress of South African Trade Unions; former Special Adviser to the Labour Minister; former Convener of the Task Team to draft the South African Labour Relations Act.

Ms Graciela DIXON CATON (Panama) – Former President of the Supreme Court of Justice of Panama; former President of the Penal Court of Cassation and of the Chamber of General Business Matters of the Supreme Court of Panama; former President of the International Association of Women Judges; former President of the Latin American Federation of Judges; former National Consultant for the United Nations Children's Fund (UNICEF); currently Judge of the Inter-American Development Bank Administrative Tribunal; Arbitrator at the Court of Arbitration of the Official Chamber of Commerce of Madrid; Arbitrator at the Center for Dispute Resolution (CESCON) of the Panamanian Chamber of Construction, as well as for the Conciliation and Arbitration Center of the Panamanian Chamber of Commerce; and legal adviser and international consultant.

Mr Rachid FILALI MEKNASSI (Morocco) – Doctor of Law; former Professor at the University Mohammed V of Rabat; member of the Higher Council of Education, Training and Scientific Research; consultant with national and international public bodies, including the World Bank, the United Nations Development Programme (UNDP), the Food and Agriculture Organization of the United Nations (FAO) and UNICEF; National Coordinator of the ILO project "Sustainable Development through the Global Compact" (2005–08).

Mr Abdul G. KOROMA (Sierra Leone) – Judge at the International Court of Justice (1994–2012); former President of the Henry Dunant Centre for Humanitarian Dialogue in Geneva; former member and Chairman of the International Law Commission; former Ambassador and Permanent Representative of Sierra Leone to the United Nations (New York) and former Ambassador Plenipotentiary to the European Union, Organisation of African Unity (OAU) and many countries.

Mr Alain LACABARATS (France) – Judge at the Court of Cassation; former President of the Civil Chamber of the Court of Cassation; former President of the Social Chamber of the Court of Cassation; member of the Higher Council of the Judiciary; member of the European Network of Councils for the Judiciary and the Consultative Council of European Judges (Council of Europe); former Vice-President of the Paris Regional Court; former President of the Paris Appellate Court Chamber; former lecturer at several French universities and author of many publications.

Ms Elena E. MACHULSKAYA (Russian Federation) – Professor of Law, Department of Labour Law, Faculty of Law, Moscow State Lomonosov University; Professor of Law, Department of Civil Proceedings and Social Law, Russian State University of Oil and Gas; Secretary, Russian Association for Labour and Social Security Law (2011–16); member of the European Committee of Social Rights; member of the President's Committee of the Russian Federation on the Rights of Persons with Disabilities (non-paid basis).

Ms Karon MONAGHAN (United Kingdom) – Queen's Counsel; Deputy High Court Judge; former Judge of the Employment Tribunal (2000–08); practising lawyer with Matrix Chambers, specializing in discrimination and equality law, human rights law, European Union law, public law and employment law; advisory positions include Special Adviser to the House of Commons Business, Innovation and Skills Committee for the inquiry on women in the workplace (2013–14); Honorary Visiting Professor, Faculty of Laws, University College London.

Mr Vitit MUNTARBHORN (Thailand) – Professor Emeritus of Law, Chulalongkorn University, Thailand; former United Nations University Fellow at the Refugee Studies Programme, Oxford University; former United Nations Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography; former United Nations Special Rapporteur on the Situation of Human Rights in the Democratic People's Republic of Korea; former Chairperson of the United Nations Coordination Committee of Special Procedures; Chairperson of the United Nations Commission of Inquiry on the Ivory Coast (2011); former member, Advisory Board, United Nations Human Security Fund; Commissioner of the United Nations Commission of Inquiry on the Syrian Arab Republic (2012–16); recipient of the 2004 UNESCO Prize for Human Rights Education; former United Nations Independent Expert on Protection against Violence and Discrimination Based on Sexual Orientation and Gender Identity; member of UNESCO Board on Global Education Monitoring Report.

Ms Rosemary OWENS (Australia) – Professor Emerita of Law, Adelaide Law School, University of Adelaide; former Dame Roma Mitchell Professor of Law (2008–15); former Dean of Law (2007–11); Officer of the Order of Australia; Fellow of the Australian Academy of Law (and Director (2014–16)); former editor and currently member of the editorial board of the *Australian Journal of Labour Law*; member of the scientific and editorial board of the *Révue de droit comparé du travail et de la sécurité sociale*; member of the Australian Labour Law Association (and former member of its National Executive); International Reader for the Australian Research Council; Chairperson of the South Australian Government's Ministerial Advisory Committee on Work–Life Balance (2010–13); Chairperson and member of the Board of Management of the Working Women's Centre (SA) (1990–2014).

Ms Mónica PINTO (Argentina) – Professor of International Law and Human Rights Law and former Dean at the University of Buenos Aires Law School; Associate member of the Institut de droit international; President of the World Bank Administrative Tribunal; Judge at the Inter-American Development Bank Administrative Tribunal; member of the ICSID Panel of Conciliators and Arbitrators; Vice-President of the Advisory Committee on Nominations for the International Criminal Court; member of the International Advisory Board of the American Law Institute for the Fourth Restatement on Foreign Relations; appeared before different human rights bodies, arbitral tribunals and the International Court of Justice as a counsel and as an expert, and is currently serving as an arbitrator; served in different capacities as a human rights expert for the UN; Visiting Professor of Law at Columbia Law School, University of Paris I and II, University of Rouen; taught at The Hague Academy of International Law; author of various books and numerous articles.

Mr Paul-Gérard POUGOUÉ (Cameroon) – Professor of Law *(agrégé)*, Professor Emeritus, Yaoundé University; guest or associate professor at several universities and at the Hague Academy of International Law; on several occasions, President of the jury for the *agrégation* competition (private law and criminal sciences section) of the African and Malagasy Council for Higher Education (CAMES); former member of the Scientific Council of the L'Agence universitaire de la Francophonie (AUF) (1993–2001); former member (2002–12) of the Council of the International Order of Academic Palms of CAMES (2002–12); member of the International Society for Labour and Social Security Law, the International Foundation for the Teaching of Business Law, the Association Henri Capitant and the Society of Comparative Law; Founder and Director of the review *Juridis Périodique*; President of the Association for the Promotion of Human Rights in Central Africa (APDHAC); Chairperson of the Scientific Board of the Labour Administration Regional African Centre (CRADAT); Chairperson of the Scientific Board of the Catholic University of Central Africa (UCAC).

Mr Raymond RANJEVA (Madagascar) – President of the Madagascar National Academy of Arts, Letters and Sciences; former member (1991–2009), Vice-President (2003–06) and Senior Judge (2006–09) of the International Court of Justice (ICJ); President of the Chamber formed by the ICJ to deal with the Benin–Niger frontier dispute (2005); Bachelor's Degree in Law, University of Madagascar, Antananarivo (1965); Doctorate of Law, University of Paris II; *agrégé* of the Faculties of Law and Economics, Public Law and Political Science Section, Paris (1972); Doctor honoris causa of the Universities of Limoges, Strasbourg and Bordeaux-Montesquieu; former Professor at the University of Madagascar (1981–91) and other institutions; former First Rector of the University of Antananarivo (1988–90); member of the Malagasy delegation to several international conferences; Head of the Malagasy delegation to the United Nations Conference on Succession of States in respect of Treaties (1976–77); former first Vice-President for Africa of the International Conference of French-speaking Faculties of Law and Political Science (1987–91); member of the Court of Arbitration of the International Chamber of Commerce; member of the Court of Arbitration for Sport; member

of the Institute of International Law; member of numerous national and international professional and academic societies; Curatorium of the Hague Academy of International Law; member of the Pontifical Council for Justice and Peace; President of the African Society of International Law since 2012; former Vice-Chairman of the International Law Institute (2015–17); Chairperson of the ILO Commission of Inquiry on Zimbabwe.

Ms Kamala SANKARAN (India) – Professor, Faculty of Law, University of Delhi and currently Vice Chancellor, Tamil Nadu National Law University, Tiruchirappalli; Former Dean, Legal Affairs, University of Delhi; member, Working Group on Migration, Ministry of Housing and Urban Poverty Alleviation; member, Task Force to Review Labour Laws, National Commission for Enterprises in the Unorganised and Informal Sector, Government of India; member, International Advisory Board, *International Journal of Comparative Labour Law and Industrial Relations*; Fellow, Stellenbosch Institute of Advanced Study, South Africa (2009 and 2011); Visiting South Asian Research Fellow, School of Interdisciplinary Area Studies, Oxford University (2010); Fulbright Postdoctoral Research Scholar, Georgetown University Law Center, Washington, DC (2001).

Ms Deborah THOMAS-FELIX (Trinidad and Tobago) – President of the Industrial Court of Trinidad and Tobago since 2011; Judge of the United Nations Appeals Tribunal since 2014; former President and Second Vice-President of the United Nations Appeals Tribunal; former Chairperson of the Trinidad and Tobago Securities and Exchange Commission; former Chairperson of the Caribbean Group of Securities Regulators; former Deputy Chief Magistrate of the Judiciary of Trinidad and Tobago; former President of the Family Court of Saint Vincent and the Grenadines; Hubert Humphrey Fulbright Fellow; Georgetown University Leadership Seminar Fellow; and Commonwealth Institute of Judicial Education Fellow.

Mr Bernd WAAS (Germany) – Professor of Labour Law and Civil Law at the University of Frankfurt; Coordinator and member of the European Labour Law Network; Coordinator of the European Centre of Expertise in the field of labour law, employment and labour market policies (ECE); President of the German Society for Labour and Social Security Law; member of the Executive Committee of the International Society for Labour and Social Security Law (ISLSSL); member of the Advisory Committee of the Labour Law Research Network (LLRN).

APPENDIX II

Chairpersons of the Committee of Experts on the Application of Conventions and Recommendations

- **Mr Jules GAUTIER** (France): 1933–36
- **Mr Paul TSCHOFFEN** (Belgium): 1927–32; 1937–38; 1940; 1945–61
- **Mr Georges SCELLE** (France): 1939
- **Mr Ramaswami MUDALIAR** (India): 1962–69
- **Mr Enrique GARCÍA SAYÁN** (Peru): 1970–75
- **Sir Adetokunbo ADEMOLA** (Nigeria): 1976–86
- **Mr José Maria RUDA** (Argentina): 1988–94
- **Sir William DOUGLAS** (Barbados): 1987; 1995–2001
- **Ms Robyn A. LAYTON** (Australia): 2002–07
- **Ms Janice BELLACE** (United States): 2008–09
- **Mr Yozo YOKOTA** (Japan): 2010–12
- **Mr Abdul KOROMA** (Sierra Leone): 2013–18
- **Ms Graciela DIXON CATON** (Panama): 2019–

APPENDIX III

Cases regarding ILO member States for which the CEACR has expressed its satisfaction since 2009 on specific Conventions

YEAR	REGION	COUNTRIES	CONVENTIONS NOS
2019	**Africa**	Cabo Verde	C.182
		Côte d'Ivoire	C.138
		Democratic Republic of the Congo	C.111
		Eswatini	C.87
		Guinea	C.29
		Morocco	C.105, C.182
		Mozambique	C.138, C.182
		Niger	C.182
	Americas	Ecuador	C.138
		El Salvador	C.182
	Arab States	Iraq	C.100
	Asia and the Pacific	Malaysia	C.182
		Viet Nam	C.29
	Europe	Albania	C.138
		Poland	C.87, C.98
2018	**Africa**	Benin	C.105
		Cabo Verde	C.155
		Liberia	C.87
		Mali	C.100
		Uganda	C.182
	Americas	Argentina	C.182
		Chile	C.138
		El Salvador	C.144
		Guatemala	C.98
		Mexico	C.87
		Peru	C.29
		Trinidad and Tobago	C.138, C.182

YEAR	REGION	COUNTRIES	CONVENTIONS NOS
2018	**Asia and the Pacific**	China – Macau Special Administrative Region	C.182
		Lao People's Democratic Republic	C.138
		Pakistan	C.29, C.105, C.138
	Europe	Belarus	C.29
		Belgium	C.138
		Bosnia and Herzegovina	C.138
		Ireland	C.98
		Italy	C.137
		Sweden	C.168
		The former Yugoslav Republic of Macedonia	C.182
		Turkey	C.138
2017	**Africa**	Angola	C.138, C.182
		Liberia	C.111
		Niger	C.98, C.154
		Seychelles	C.182
		Zambia	C.138
	Americas	Bahamas	C.182
		Canada	C.87, C.160
		Chile	C.87, C.98
		Costa Rica	C.87, C.98
		Cuba	C.87, C.98
		Paraguay	C.138
		United States	C.147
		Uruguay	C.73
	Asia and the Pacific	Australia	C.87
		Kiribati	C.87, C.98
		Philippines	C.17
	Europe	Albania	C.87
		Belarus	C.111
		Belgium	C.155
		Bosnia and Herzegovina	C.87
		France – French Polynesia	C.111
		France – New Caledonia	C.111
		Ireland	C.182

YEAR	REGION	COUNTRIES	CONVENTIONS NOS
2017	**Europe**	Republic of Moldova	C.111
		Spain	C.81
		Switzerland	C.102, C.182
2016	**Africa**	Kenya	C.138
		Madagascar	C.127
		Mozambique	C.87, C.98
		Namibia	C.182
		Swaziland	C.87
	Americas	Barbados	C.135
		Brazil	C.155
		Cuba	C.81
		Ecuador	C.87
		Mexico	C.182
		Panama	C.107
		Peru	C.87
	Arab States	Kuwait	C.138
	Asia and the Pacific	Fiji	C.87
		Philippines	C.111
		Samoa	C.98
	Europe	Netherlands – Aruba	C.138
		Serbia	C.98
2015	**Africa**	Benin	C.105, C.138
		Egypt	C.149
		Niger	C.135
		Senegal	C.13
	Americas	Antigua and Barbuda	C.182
		Argentina	C.138
		Barbados	C.118
		Colombia	C.81
		Costa Rica	C.138
		Cuba	C.138
		Ecuador	C.169
		Honduras	C.81
		Mexico	C.161
		Suriname	C.182
		Uruguay	C.111, C.161, C.167

YEAR	REGION	COUNTRIES	CONVENTIONS NOS
2015	**Arab States**	Bahrain	C.182
		Jordan	C.98
	Asia and the Pacific	Australia	C.182
		Bangladesh	C.182
		Fiji	C.182
	Europe	Albania	C.182
		Austria	C.138
		Cyprus	C.138, C.182
		France	C.149
		Georgia	C.87, C.98
		Lithuania	C.87
		Republic of Moldova	C.111
		Turkey	C.87
		United Kingdom	C.98
2014	**Africa**	Central African Republic	C.52
		Liberia	C.182
		Libya	C.103
		Malawi	C.138
		Mauritius	C.14, C.100
		Nigeria	C.19, C.155
		United Republic of Tanzania	C.138, C.182
		Uganda	C.29, C.182
		Zimbabwe	C.87
	Americas	Argentina	C.3
		Plurinational State of Bolivia	C.87
		Colombia	C.24
		Ecuador	C.121, C.130
		Grenada	C.99
		Saint Vincent and the Grenadines	C.182
		Bolivarian Republic of Venezuela	C.9
	Arab States	Lebanon	C.138, C.182
		Yemen	C.138
	Asia and the Pacific	Japan	C.102
		Malaysia	C.95
		Samoa	C.138, C.182

YEAR	REGION	COUNTRIES	CONVENTIONS NOS
2014	**Europe**	Bosnia and Herzegovina	C.87
		Czech Republic	C.132
		Denmark	C.52
		The former Yugoslav Republic of Macedonia	C.138
2013	**Africa**	Algeria	C.87
		Burkina Faso	C.17, C.138, C.161, C.182
		Cape Verde	C.81
		Egypt	C.87
		Guinea	C.182
		Niger	C.105
		Rwanda	C.138
	Americas	Bahamas	C.138
		Grenada	C.100
		Panama	C.98
		Saint Lucia	C.87
		Trinidad and Tobago	C.182
		United States	C.182
	Arab States	Jordan	C.182
		United Arab Emirates	C.138, C.182
	Asia and the Pacific	Australia	C.155
		Japan	C.19
		Malaysia	C.182
		Myanmar	C.29, C.87
		Pakistan	C.18
		Philippines	C.90
		Timor-Leste	C.98
	Europe	Bulgaria	C.98
		Croatia	C.119
		Hungary	C.29, C.98
		Ireland	C.182
		Portugal	C.6, C.77, C.78
		Romania	C.87
		Turkey	C.98, C.105
		Ukraine	C.87

YEAR	REGION	COUNTRIES	CONVENTIONS NOS
2012	**Africa**	Algeria	C.182
		Angola	C.17
		Benin	C.6, C.161
		Botswana	C.182
		Burundi	C.29, C.182
		Central African Republic	C.105
		Democratic Republic of the Congo	C.119
		Ethiopia	C.155
		Gabon	C.123
		Lesotho	C.138, C.182
		Mauritius	C.160
		Morocco	C.182
		Namibia	C.182
		South Africa	C.138, C.182
		Swaziland	C.87
		Tunisia	C.118
		Uganda	C.138
	Americas	Antigua and Barbuda	C.138
		Belize	C.98
		Brazil	C.138, C.155, C.161
		Costa Rica	C.102, C.111
		Dominica	C.138
		El Salvador	C.138, C.182
		Guatemala	C.182
		Nicaragua	C.138
		Panama	C.87
		Peru	C.138, C.169
		Suriname	C.182
		Uruguay	C.111, C.155, C.182
	Arab States	Iraq	C.115
		Kuwait	C.138
		Oman	C.182
	Asia and the Pacific	China – Macau Special Administrative Region	C.115
		Japan	C.98
		Republic of Korea	C.150

YEAR	REGION	COUNTRIES	CONVENTIONS NOS
2012	**Asia and the Pacific**	Lao People's Democratic Republic	C.29
		Malaysia	C.138
		New Zealand	C.160
		Pakistan	C.98
		Sri Lanka	C.138, C.182
	Europe	Azerbaijan	C.138
		Bulgaria	C.120
		Croatia	C.155
		Cyprus	C.95, C.182
		France	C.166
		France – New Caledonia	C.127
		Italy	C.139
		Luxembourg	C.155
		Republic of Moldova	C.105
		Netherlands	C.182
		Romania	C.98, C.138
		Spain	C.44, C.182
		Sweden	C.129
		The former Yugoslav Republic of Macedonia	C.182
		United Kingdom – British Virgin Islands	C.94, C.98
		United Kingdom – St Helena	C.17
2011	**Africa**	Cape Verde	C.19
		Côte d'Ivoire	C.138, C.182
		Egypt	C.138, C.182
		Kenya	C.98, C.105, C.129
		Mauritius	C.87, C.98
		Swaziland	C.98
		Togo	C.138, C.182
	Americas	Argentina	C.87, C.138
		Colombia	C.13
		Cuba	C.155
		Jamaica	C.81, C.182
		Kiribati	C.105
		Mexico	C.161

YEAR	REGION	COUNTRIES	CONVENTIONS NOS
2011	**Americas**	Panama	C.16, C.87, C.182
		Paraguay	C.182
		Peru	C.139
		Uruguay	C.98, C.184
	Arab States	Jordan	C.81, C.182
		Kuwait	C.87, C.98
		Saudi Arabia	C.100
	Asia and the Pacific	Bangladesh	C.81
		China	C.23
		China – Macau Special Administrative Region	C.138
		Papua New Guinea	C.182
		Philippines	C.87, C.98
		Thailand	C.182
	Europe	Albania	C.138
		Belgium	C.87
		Croatia	C.138, C.162
		Czech Republic	C.132
		France	C.81, C.129, C.148, C.149
		Italy	C.127
		Norway	C.81
		Portugal	C.98, C.155, C.162
		San Marino	C.103
		Slovakia	C.115
		Spain	C.87, C.148
		The former Yugoslav Republic of Macedonia	C.87
		Turkey	C.29, C.98
		United Kingdom	C.98
2010	**Africa**	Botswana	C.111
		Central African Republic	C.182
		Côte d'Ivoire	C.182
		Gabon	C.105
		Gambia	C.98
		Kenya	C.111

YEAR	REGION	COUNTRIES	CONVENTIONS NOS
2010	**Africa**	Lesotho	C.111
		Liberia	C.105
		Madagascar	C.138
		Mauritius	C.26, C.105, C.138
		Mozambique	C.182
		Rwanda	C.17
		United Republic of Tanzania	C.105, C.182
		Uganda	C.182
	Americas	Barbados	C.102, C.128
		Bolivia	C.87, C.98, C.100, C.169
		Brazil	C.115, C.152
		Colombia	C.87, C.98, C.154
		El Salvador	C.87, C.151
		Mexico	C.155
		Nicaragua	C.98, C.105, C.182
		Panama	C.98
		Saint Vincent and the Grenadines	C.105
		Uruguay	C.151, C.155
	Arab States	Kuwait	C.106
		Syrian Arab Republic	C.139
		United Arab Emirates	C.182
	Asia and the Pacific	Afghanistan	C.139
		Australia	C.98, C.158
		China – Hong Kong Special Administrative Region	C.81
		Japan	C.147
		Malaysia – Sarawak	C.14
		Mongolia	C.138
		Viet Nam	C.155
	Europe	Denmark	C.87, C.129
		Finland	C.150
		Germany	C.3
		Greece	C.29, C.81, C.147, C.180
		Malta	C.132

YEAR	REGION	COUNTRIES	CONVENTIONS NOS
2010	**Europe**	Netherlands	C.152
		Norway	C.169
		Portugal	C.115
		Romania	C.100, C.183
		Slovakia	C.100
		Slovenia	C.148
		Spain	C.138
		Sweden	C.129, C.167
		Switzerland	C.81
		United Kingdom	C.81
		United Kingdom – Isle of Man	C.151
2009	**Africa**	Algeria	C.81
		Burkina Faso	C.3
		Djibouti	C.100
		Kenya	C.100, C.138
		Liberia	C.87
		Mauritius	C.94
		Senegal	C.6, C.120
		Uganda	C.17, C.105
		Zambia	C.138
	Americas	Argentina	C.138
		Colombia	C.87
		Ecuador	C.138
		Honduras	C.138
		Nicaragua	C.138
		Panama	C.98
	Arab States	Jordan	C.29, C.81
	Asia and the Pacific	Bangladesh	C.106
		China – Hong Kong Special Administrative Region	C.97
		Malaysia	C.98
	Europe	Belgium	C.111
		Bulgaria	C.106
		Croatia	C.162
		Cyprus	C.105
		Denmark	C.81

YEAR	REGION	COUNTRIES	CONVENTIONS NOS
2009	**Europe**	Finland	C.128, C.130
		France	C.81, C.158
		Georgia	C.138
		Latvia	C.81
		Netherlands	C.98, C.103
		Portugal	C.103, C.132
		Romania	C.14
		Slovenia	C.129
		Spain	C.87
		Switzerland	C.173
		Turkey	C.138
		Ukraine	C.111
		United Kingdom – Isle of Man	C.180
		United Kingdom – Jersey	C.98

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CHAPTER VI.

Part XIII of the Treaty of Peace of Versailles.

The Treaty of Peace of Versailles was signed on 28 June 1919. Its Part XIII (Labour), the text of which is reproduced below, was also incorporated *(a)* as Part XIII, Articles 332-372, in the Treaty of Peace with Austria, signed at Saint-Germain-en-Laye, 10 September 1919 ; *(b)* as Part XII, Articles 249-289, in the Treaty of Peace with Bulgaria, signed at Neuilly-sur-Seine, 27 November 1919 ; and *(c)* as Part XIII, Articles 315-355, in the Treaty of Peace with Hungary, signed at Trianon, 4 June 1920.

The text of Part XIII of the Treaty of Versailles is as follows :

Part. XIII.

LABOUR.

SECTION I.

ORGANISATION OF LABOUR.

Whereas the League of Nations has for its object the establishment of universal peace, and such a peace can be established only if it is based upon social justice;

And whereas conditions of labour exist involving such injustice, hardship and privation to large numbers of people as to produce unrest so great that the peace and harmony of the world are imperilled ; and an improvement of those conditions is urgently required : as, for example, by the regulation of the hours of work, including the establishment of a maximum working day and week, the regulation of the labour supply, the prevention of unemployment, the provision of an adequate living wage, the protection of the worker against sickness, disease and injury arising out of his employment, the protection of children, young persons and women, provision for old age and injury, protection of the interests of workers when employed in countries other than their own, recognition of the principle of freedom of association, the organisation of vocational and technical education and other measures ;

Whereas also the failure of any nation to adopt humane conditions of labour is an obstacle in the way of other nations which desire to improve the conditions in their own countries ;

The HIGH CONTRACTING PARTIES, moved by sentiments of justice and humanity as well as by the desire to secure the permanent peace of the world, agree to the following :

CHAPTER I.

ORGANISATION.

ARTICLE 387.

A permanent organisation is hereby established for the promotion of the objects set forth in the Preamble.

The original Members of the League of Nations shall be the original Members of this organisation, and hereafter membership of the League of Nations shall carry with it membership of the said organisation.

ARTICLE 388.

The permanent organisation shall consist of :

1. A General Conference of Representatives of the Members and,

2. An International Labour Office controlled by the Governing Body described in Article 393.

ARTICLE 389.

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

Each Delegate may be accompanied by advisers, who shall not exceed two in number for each item on the agenda of the meeting. When questions specially affecting women are to be considered by the Conference, one at least of the advisers should be a woman.

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

Advisers shall not speak except on a request made by the Delegate whom they accompany and by the special authorisation of the President of the Conference, and may not vote.

A Delegate may by notice in writing addressed to the President appoint one of his advisers to act as his deputy, and the adviser, while so acting, shall be allowed to speak and vote.

The names of the Delegates and their advisers will be communicated to the International Labour Office by the Government of each of the Members.

The credentials of Delegates and their advisers shall be subject to scrutiny by the Conference, which may, by two-thirds of the votes cast by the Delegates present, refuse to admit any Delegate or adviser whom it deems not to have been nominated in accordance with this Article.

ARTICLE 390.

Every Delegate shall be entitled to vote individually on all matters which are taken into consideration by the Conference.

If one of the Members fails to nominate one of the non-Government Delegates whom it is entitled to nominate, the other non-Government Delegate shall be allowed to sit and speak at the Conference, but not to vote.

If in accordance with Article 389 the Conference refuses admission to a Delegate of one of the Members, the provisions of the present Article shall apply as if that Delegate had not been nominated.

ARTICLE 391.

The meetings of the Conference shall be held at the seat of the League of Nations, or at such other place as may be decided by the Conference at a previous meeting by two-thirds of the votes cast by the Delegates present.

ARTICLE 392.

The International Labour Office shall be established at the seat of the League of Nations as part of the organisation of the League.

ARTICLE 393.

The International Labour Office shall be under the control of a Governing Body consisting of twenty-four persons, appointed in accordance with the following provisions :

The Governing Body of the International Labour Office shall he constituted as follows :

Twelve persons representing the Governments ;

Six persons elected by the Delegates to the Conference representing the employers :

Six persons elected by the Delegates to the Conference representing the workers.

Of the twelve persons representing the Governments eight shall be nominated by the Members which are of the chief industrial importance, and four shall be nominated by the Members selected

for the purpose by the Government Delegates to the Conference, excluding the Delegates of the eight Members mentioned above.

Any question as to which are the Members of the chief industrial importance shall be decided by the Council of the League of Nations.

The period of office of the members of the Governing Body will be three years. The method of filling vacancies and other similar questions may be determined by the Governing Body subject to the approval of the Conference.

The Governing Body shall, from time to time, elect one of its members to act as its Chairman, shall regulate its own procedure and shall fix its own times of meeting. A special meeting shall be held if a written request to that effect is made by at least ten members of the Governing Body.

ARTICLE 394.

There shall be a Director of the International Labour Office, who shall be appointed by the Governing Body, and, subject to the instructions of the Governing Body, shall be responsible for the efficient conduct of the International Labour Office and for such other duties as may be assigned to him.

The Director or his deputy shall attend all meetings of the Governing Body.

ARTICLE 395.

The staff of the International Labour Office shall be appointed by the Director, who shall, so far as is possible with due regard to the efficiency of the work of the Office, select persons of different nationalities. A certain number of these persons shall be women.

ARTICLE 396.

The functions of the International Labour Office shall include the collection and distribution of information on all subjects relating to the international adjustment of conditions of industrial life and labour, and particularly the examination of subjects which it is proposed to bring before the Conference with a view to the conclusion of international conventions, and the conduct of such special investigations as may be ordered by the Conference.

It will prepare the agenda for the meetings of the Conference.

It will carry out the duties required of it by the provisions of this Part of the present Treaty in connection with international disputes.

It will edit and publish in French and English, and in such other languages as the Governing Body may think desirable, a periodical paper dealing with problems of industry and employment of international interest.

Generally, in addition to the functions set out in this Article, it shall have such other powers and duties as may be assigned to it by the Conference.

ARTICLE 397.

The Government Departments of any of the Members which deal with questions of industry and employment may communicate directly with the Director through the Representative of their Government on the Governing Body of the International Labour Office, or failing any such Representative, through such other qualified official as the Government may nominate for the purpose.

ARTICLE 398.

The International Labour Office shall be entitled to the assistance of the Secretary-General of the League of Nations in any matter in which it can be given.

ARTICLE 399.

Each of the Members will pay the travelling and subsistence expenses of its Delegates and their advisers and of its Representatives attending the meetings of the Conference or Governing Body, as the case may be.

All the other expenses of the International Labour Office and of the meetings of the Conference or Governing Body shall be paid to the Director by the Secretary-General of the League of Nations out of the general funds of the League.

The Director shall be responsible to the Secretary-General of the League for the proper expenditure of all moneys paid to him in pursuance of this Article.

CHAPTER II.

PROCEDURE.

ARTICLE 400.

The agenda for all meetings of the Conference will be settled by the Governing Body, who shall consider any suggestion as to the agenda that may be made by the Government of any of the Members or by any representative organisation recognised for the purpose of Article 389.

ARTICLE 401.

The Director shall act as the Secretary of the Conference, and shall transmit the agenda so as to reach the Members four months before the meeting of the Conference, and, through them, the non-Government Delegates when appointed.

ARTICLE 402.

Any of the Governments of the Members may formally object to the inclusion of any item or items in the agenda. The grounds for such objection shall be set forth in a reasoned statement addressed to the Director, who shall circulate it to all the Members of the Permanent Organisation.

Items to which such objection has been made shall not, however, be excluded from the agenda, if at the Conference a majority of two-thirds of the votes cast by the Delegates present is in favour of considering them.

If the Conference decides (otherwise than under the preceding paragraph) by two-thirds of the votes cast by the Delegates present that any subject shall be considered by the Conference, that subject shall be included in the agenda for the following meeting.

ARTICLE 403.

The Conference shall regulate its own procedure, shall elect its own President, and may appoint committees to consider and report on any matter.

Except as otherwise expressly provided in this Part of the present Treaty, all matters shall be decided by a simple majority of the votes cast by the Delegates present.

The voting is void unless the total number of votes cast is equal to half the number of the Delegates attending the Conference.

ARTICLE 404.

The Conference may add to any committees which it appoints technical experts, who shall be assessors without power to vote.

ARTICLE 405.

When the Conference has decided on the adoption of proposals with regard to an item in the agenda, it will rest with the Conference to determine whether these proposals should take the form : *(a)* of a recommendation to be submitted to the Members for consideration with a view to effect being given to it by national legislation or otherwise, or *(b)* of a draft international convention for ratification by the Members.

In either case a majority of two-thirds of the votes cast by the Delegates present shall be necessary on the final vote for the adoption of the recommendation or draft convention, as the case may be, by the Conference.

In framing any recommendation or draft convention of general application the Conference shall have due regard to those countries in which climatic conditions, the imperfect development of industrial organisation or other special circumstances make the industrial conditions substantially different and shall suggest the modifications, if any, which it considers may be required to meet the case of such countries.

A copy of the recommendation or draft convention shall be authenticated by the signature of the President of the Conference and of the Director and shall be deposited with the Secretary-General of the League of Nations. The Secretary-General will communicate a certified copy of the recommendation or draft convention to each of the Members.

Each of the Members undertakes that it will, within the period of one year at most from the closing of the session of the Conference, or if it is impossible owing to exceptional circumstances to do so within the period of one year, then at the earliest practicable moment and in no case later than eighteen months from the closing of the session of the Conference, bring the recommendation or draft convention before the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action.

In the case of a recommendation, the Members will inform the Secretary-General of the action taken.

In the case of a draft convention, the Member will, if it obtains the consent of the authority or authorities within whose competence the matter lies, communicate the formal ratification of the convention to the Secretary-General and will take such action as may be necessary to make effective the provisions of such convention.

If on a recommendation no legislative or other action is taken to make a recommendation effective, or if the draft convention fails to obtain the consent of the authority or authorities within whose competence the matter lies, no further obligation shall rest upon the Member.

In the case of a federal State, the power of which to enter into conventions on labour matters is subject to limitations, it shall be in the discretion of that Government to treat a draft convention to which such limitations apply as a recommendation only, and the provisions of this Article with respect to recommendations shall apply in such case.

The above Article shall be interpreted in accordance with the following principle :

In no case shall any Member be asked or required, as a result of the adoption of any recommendation or draft convention by the Conference, to lessen the protection afforded by its existing legislation to the workers concerned.

ARTICLE 406.

Any convention so ratified shall be registered by the Secretary-General of the League of Nations, but shall only be binding upon the Members which ratify it.

ARTICLE 407.

If any convention coming before the Conference for final consideration fails to secure the support of two-thirds of the votes

cast by the Delegates present, it shall nevertheless be within the right of any of the Members of the Permanent Organisation to agree to such convention among themselves.

Any convention so agreed to shall be communicated by the Governments concerned to the Secretary-General of the League of Nations, who shall register it.

ARTICLE 408.

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. The Director shall lay a summary of these reports before the next meeting of the Conference.

ARTICLE 409.

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

ARTICLE 410.

If no statement is received within a reasonable time from the Government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it.

ARTICLE 411.

Any of the Members shall have the right to file a complaint with the International Labour Office if it is not satisfied that any other Member is securing the effective observance of any convention which both have ratified in accordance with the foregoing Articles.

The Governing Body may, if it thinks fit, before referring such a complaint to a Commission of Enquiry, as hereinafter provided for, communicate with the Government in question in the manner described in Article 409.

If the Governing Body does not think it necessary to communicate the complaint to the Government in question, or if, when they have made such communication, no statement in reply has been received within a reasonable time which the Governing Body considers to be satisfactory, the Governing Body may apply for the

appointment of a Commission of Enquiry to consider the complaint and to report thereon.

The Governing Body may adopt the same procedure either of its own motion or on receipt of a complaint from a Delegate to the Conference.

When any matter arising out of Articles 410 or 411 is being considered by the Governing Body, the Government in question shall, if not already represented thereon, be entitled to send a representative to take part in the proceedings of the Governing Body while the matter is under consideration. Adequate notice of the date on which the matter will be considered shall be given to the Government in question.

ARTICLE 412.

The Commission of Enquiry shall be constituted in accordance with the following provisions :

Each of the Members agrees to nominate within six months of the date on which the present Treaty comes into force three persons of industrial experience, of whom one shall be a representative of employers, one a representative of workers, and one a person of independent standing, who shall together form a panel from which the members of the Commission of Enquiry shall be drawn.

The qualifications of the persons so nominated shall be subject to scrutiny by the Governing Body, which may by two-thirds of the votes cast by the representatives present refuse to accept the nomination of any person whose qualifications do not in its opinion comply with the requirements of the present Article.

Upon the application of the Governing Body, the Secretary-General of the League of Nations shall nominate three persons, one from each section of this panel, to constitute the Commission of Enquiry, and shall designate one of them as the President of the Commission. None of these three persons shall be a person nominated to the panel by any Member directly concerned in the complaint.

ARTICLE 413.

The Members agree that, in the event of the reference of a complaint to a Commission of Enquiry under Article 411, they will each, whether directly concerned in the complaint or not, place at the disposal of the Commission all the information in their possession which bears upon the subject-matter of the complaint.

ARTICLE 414.

When the Commission of Enquiry has fully considered the complaint, it shall prepare a report embodying its findings on all questions of fact relevant to determining the issue between the parties and containing such recommendations as it may think proper as to the steps which should be taken to meet the complaint and the time within which they should be taken.

It shall also indicate in this report the measures, if any, of an economic character against a defaulting Government which it considers to be appropriate, and which it considers other Governments would be justified in adopting.

ARTICLE 415.

The Secretary-General of the League of Nations shall communicate the report of the Commission of Enquiry to each of the Governments concerned in the complaint, and shall cause it to be published.

Each of these Governments shall within one month inform the Secretary-General of the League of Nations whether or not it accepts the recommendations contained in the report of the Commission ; and if not, whether it proposes to refer the complaint to the Permanent Court of International Justice of the League of Nations.

ARTICLE 416.

In the event of any Member failing to take the action required by Article 405, with regard to a recommendation or draft convention, any other Member shall be entitled to refer the matter to the Permanent Court of International Justice.

ARTICLE 417.

The decision of the Permanent Court of International Justice in regard to a complaint or matter which has been referred to it in pursuance of Article 415 or Article 416 shall be final.

ARTICLE 418.

The Permanent Court of International Justice may affirm, vary or reverse any of the findings or recommendations of the Commission of Enquiry, if any, and shall in its decision indicate the measures, if any, of an economic character which it considers to be appropriate, and which other Governments would be justified in adopting against a defaulting Government.

ARTICLE 419.

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 Enquiry, or in the decision of the Permanent Court of International Justice, as the case may be, any other Member may take against that Member the measures of an economic character indicated in the report of the Commission or in the decision of the Court as appropriate to the case.

ARTICLE 420.

The defaulting Government may at any time inform the Governing Body that it has taken the steps necessary to comply with

the recommendations of the Commission of Enquiry or with those in the decision of the Permanent Court of International Justice, as the case may be, and may request it to apply to the Secretary-General of the League to constitute a Commission of Enquiry to verify its contention. In this case the provisions of Articles 412, 413, 414, 415, 417 and 418 shall apply, and if the report of the Commission of Enquiry or the decision of the Permanent Court of International Justice is in favour of the defaulting Government, the other Governments shall forthwith discontinue the measures of an economic character that they have taken against the defaulting Government.

CHAPTER III.

GENERAL.

ARTICLE 421.

The Members engage to apply conventions which they have ratified in accordance with the provisions of this Part of the present Treaty to their colonies, protectorates and possessions which are not fully self-governing :

(1) Except where owing to the local conditions the convention is inapplicable, or

(2) Subject to such modifications as may be necessary to adapt the convention to local conditions.

And each of the Members shall notify to the International Labour Office the action taken in respect of each of its colonies, protectorates and possessions which are not fully self-governing.

ARTICLE 422.

Amendments to this Part of the present Treaty which are adopted by the Conference by a majority of two-thirds of the votes cast by the Delegates present shall take effect when ratified by the States whose representatives compose the Council of the League of Nations and by three-fourths of the Members.

ARTICLE 423.

Any question or dispute relating to the interpretation of this Part of the present Treaty or of any subsequent convention concluded by the Members in pursuance of the provisions of this Part of the present Treaty shall be referred for decision to the Permanent Court of International Justice.

CHAPTER IV.

TRANSITORY PROVISIONS.

ARTICLE 424.

The first meeting of the Conference shall take place in October, 1919. The place and agenda for this meeting shall be as specified in the Annex hereto.

Arrangements for the convening and the organisation of the first meeting of the Conference will be made by the Government designated for the purpose in the said Annex. That Government shall be assisted in the preparation of the documents for submission to the Conference by an International Committee constituted as provided in the said Annex.

The expenses of the first meeting and of all subsequent meetings held before the League of Nations has been able to establish a general fund, other than the expenses of Delegates and their advisers, will be borne by the Members in accordance with the apportionment of the expenses of the International Bureau of the Universal Postal Union.

ARTICLE 425.

Until the League of Nations has been constituted all communications which under the provisions of the foregoing Articles should be addressed to the Secretary-General of the League will be preserved by the Director of the International Labour Office, who will transmit them to the Secretary-General of the League.

ARTICLE 426.

Pending the creation of a Permanent Court of International Justice, disputes which in accordance with this Part of the present Treaty would be submitted to it for decision will be referred to a tribunal of three persons appointed by the Council of the League of Nations.

ANNEX.

FIRST MEETING OF ANNUAL LABOUR CONFERENCE, 1919.

The place of meeting will be Washington.

The Government of the United States of America is requested to convene the Conference.

The International Organising Committee will consist of seven members, appointed by the United States of America, Great Britain, France, Italy, Japan, Belgium and Switzerland. The Committee may, if it thinks necessary, invite other Members to appoint representatives.

Agenda :

(1) Application of principle of the 8-hours day or of the 48-hours week.

(2) Question of preventing or providing against unemployment.

(3) Women's employment :
   (a) Before and after child-birth, including the question of maternity benefit ;
   (b) During the night ;
   (c) In unhealthy processes.

(4) Employment of children :
   (a) Minimum age of employment ;
   (b) During the night ;
   (c) In unhealthy processes.

(5) Extension and application of the International Conventions adopted at Berne in 1906 on the prohibition of night work for women employed in industry and the prohibition of the use of white phosphorus in the manufacture of matches.

SECTION II.

GENERAL PRINCIPLES.

ARTICLE 427.

The HIGH CONTRACTING PARTIES, recognising that the well-being, physical, moral and intellectual, of industrial wage-earners is of supreme international importance, have framed, in order to further this great end, the permanent machinery provided for in Section I, and associated with that of the League of Nations.

They recognise that differences of climate, habits and customs, of economic opportunity and industrial tradition, make strict uniformity in the conditions of labour difficult of immediate attainment. But, holding as they do that labour should not be regarded merely as an article of commerce, they think that there are methods and principles for regulating labour conditions which all industrial communities should endeavour to apply, so far as their special circumstances will permit.

Among these methods and principles, the following seem to the HIGH CONTRACTING PARTIES to be of special and urgent importance :

First. — The guiding principle above enunciated that labour should not be regarded merely as a commodity or article of commerce.

Second. — The right of association for all lawful purposes by the employed as well as by the employers.

Third. — The payment to the employed of a wage adequate to maintain a reasonable standard of life as this is understood in their time and country.

Fourth. — The adoption of an eight hours day or a forty-eight hours week as the standard to be aimed at where it has not already been attained.

Fifth. — The adoption of a weekly rest of at least twenty-four hours, which should include Sunday wherever practicable.

Sixth. — The abolition of child labour and the imposition of such limitations on the labour of young persons as shall permit the continuation of their education and assure their proper physical development.

Seventh. — The principle that men and women should receive equal remuneration for work of equal value.

Eighth. — The standard set by law in each country with respect to the conditions of labour should have due regard to the equitable economic treatment of all workers lawfully resident therein.

Ninth. — Each State should make provision for a system of inspection in which women should take part, in order to ensure the enforcement of the laws and regulations for the protection of the employed.

Without claiming that these methods and principles are either complete or final, the HIGH CONTRACTING PARTIES are of opinion that they are well fitted to guide the policy of the League of Nations ; and that, if adopted by the industrial communities who are Members of the League, and safeguarded in practice by an adequate system of such inspection, they will confer lasting benefits upon the wage-earners of the world.

Document No. 71

ILC, 8th Session, 1926, Record of Proceedings, Committee on Article 408 of the Treaty of Versailles, pp. 238–260

SOCIÉTÉ DES NATIONS
LEAGUE OF NATIONS

CONFÉRENCE INTERNATIONALE DU TRAVAIL

INTERNATIONAL LABOUR CONFERENCE

HUITIÈME SESSION — EIGHTH SESSION

GENÈVE — GENEVA
1926

VOLUME I. — PREMIÈRE, DEUXIÈME ET TROISIÈME PARTIES.

VOLUME I. — FIRST, SECOND AND THIRD PARTS.

BUREAU INTERNATIONAL DU TRAVAIL
INTERNATIONAL LABOUR OFFICE
GENÈVE — GENEVA
1926

Le PRÉSIDENT — Si personne ne demande la parole, nous procéderons au vote sur la proposition d'adoption d'un troisième alinéa à l'article 7 E. En voici le texte :

« Tout délégué, ou tout conseiller technique autorisé par écrit à cet effet par le délégué auquel il est adjoint, aura le droit d'assister aux séances des Commissions visées dans le présent paragraphe et jouira de tous les droits des membres desdites Commissions, à l'exception du droit de vote. »

Ceux qui sont pour l'adoption de cette proposition sont priés de bien vouloir lever la main.

Interpretation : The PRESIDENT : If no other Delegate wishes to speak we can take a vote on this point. A vote will be taken on the amendment which you will find at the foot of page XVII and the top of page XVIII of No. 8 of the *Provisional Record :* " Any Delegate, or any technical adviser who has received a written authorisation for the purpose from the Delegate to whom he is attached, shall be entitled to be present at the meetings of the Committees referred to in the present paragraph, and shall have the full rights of the members of such Committees, except the right to vote. "

(Il est procédé au vote à mains levées. La proposition est adoptée par 67 voix contre 0.)

(A vote is taken by show of hands. The amendment is adopted by 67 votes to 0.)

Le PRÉSIDENT — La Commission propose à la Conférence de renvoyer au Conseil d'administration pour étude, puis à la dixième session de la Conférence, les amendements qui sont indiqués à la page XIX du N° 8 du *Compte rendu provisoire* et dont la lecture nous retarderait trop.

Y a-t-il une opposition ?

Interpretation : The PRESIDENT : The second proposal of the Committee is that the Conference should refer to the Governing Body for examination and report to the Tenth Session of the Conference, the following amendments, and the amendments in question are to be found on pages XIX and XX of No. 8 of the *Provisional Record.* If there is no opposition, I will take it that that is adopted unanimously.

(La proposition est adoptée à l'unanimité.)

(The proposal is adopted unanimously.)

Le PRÉSIDENT — L'ordre du jour appelle maintenant le rapport de la Commission de l'article 408. Je prie le Président de cette Commission de bien vouloir prendre place au Bureau. On trouvera le rapport de cette Commission dans le N° 6 du *Compte rendu provisoire,* à la page VI.

Interpretation : The PRESIDENT : The next item on the agenda is the consideration of the Report of the Committee on Article 408. I will ask the Chairman and Reporter to come to the platform. The Report of the Committee is to be found on page VI in No. 6 of the *Provisional Record.*

Mr. WOLFE (British Empire), *Chairman and Reporter of the Committee on the examination of annual reports under Article 408* — Mr. President, I do not propose to weary the Conference at this stage of its proceedings with a long statement on the results of the work of this Committee. The matters under review were discussed at great length, not only in the Committee itself, but in the various Groups of the Conference, and I think it is probably true to say that the whole Conference is familiar with the matters at issue, and that therefore it will not wish me to delay it long with a further exposé of the position.

I will begin by saying that I am not in quite the same happy position as the Chairman of the Committee on the double-discussion procedure and the Chairman of the Committee on Standing Orders, in being able to say that this is a unanimous Report. In fact, the Report was ultimately adopted by 23 votes to 6, a considerable majority which in itself, I think, is proof that it can be recommended with confidence to the Conference, and I would add to that that the apprehensions which led to a certain amount of opposition have, I hope and believe, been somewhat allayed and removed in the meantime, and I imagine that it is not impossible that, when we come to take the vote on the Report, we shall find that the Conference is, on the whole, agreed to adopt it as it stands, subject to certain amendments with which I will deal in a moment.

Now, Sir, the proposals are simple. You are all aware that, under Article 408, Members are required to present an annual report. You are also aware that when that report is presented, it must be presented in the form laid down by the Governing Body, and that the duty of the Director of the International Labour Office is to summarise it and to submit it to this Conference annually. Well, Ladies and Gentlemen, what has happened in the past and what

has happened this year has been this, that the summaries have occupied a very large amount of space, ranging from 200 to 300 pages. That large volume, taken in addition to the considerable volume of the Director's Report, has made it almost impossible—indeed it has made it actually impossible—for the Delegates to the Conference to discuss the reports with profit and in detail. In consequence, it was generally agreed that some step further should be taken. I do not believe that there is any dispute as to the necessity for a further step. The question was: What should the further step be ?

It was decided accordingly by the Committee that what was required was a preparatory examination of the reports by some body which would bring into light the particular points to which the attention of the Conference should be directed. Arguments for one form of committee and another were considered; but finally it seemed to the Committee by a majority that the proper course would be to appoint a small Committee of experts chosen not by virtue of their national origin, chosen not by virtue of representing any particular form of opinion, but chosen solely on the basis of their qualifications. It has been asked what was meant by the qualifications, and on that I would reply that the sort of qualifications that we had in mind was knowledge of international legislation and experience of international labour conditions. Those are the qualifications, and no other qualifications, except personal ability, are in question. That was the first proposal which commended itself to the Committee.

Now, Sir, the second question, assuming that the Committee was to be appointed, was: by whom was it to be appointed ? and the third was: what were its functions to be ? As regards the method of appointment, it was decided ultimately that this should be in the hands of the Governing Body, though the Governing Body would clearly have directions given to it, in that, as I have previously said, the persons chosen should essentially be persons chosen on the ground of expert qualifications and on no other ground whatever.

Then there is the question of the functions of the Committee, and that I believe is the sole point which excited apprehension, and which perhaps still, in some quarters, may excite some slight apprehension, which I hope that I shall be able to remove. In the first place, I wish it to be clearly understood that this Committee can in no way infringe on the Treaty rights given by Articles 409-420. Nothing that the Conference could do here, nothing that we could do in committee, could affect those rights; therefore it must be clearly understood that this Committee is in no sense a statutory committee—if I may use the word —under Articles 409-420. It is purely an explanatory committee, it is purely a technical committee, and if I may envisage the way in which I imagine it will work, it would be the following. Let us imagine that country X has sent in a report; let us imagine that the Committee is examining the report and finds that, within the limits of the questionnaire settled by the Governing Body, there is some lacuna, something missing in the reply. The Committee would then invite the Office, through the Director, to ask the State in question to supply further information. It would be perfectly open to the State to refuse to supply the information, it would be perfectly open to the State to supply the information in the form which it thinks is best. Thereafter, when the information, or no information, has reached the Committee, the Committee will limit itself strictly to saying: "The following are the facts with regard to this particular reply." The Committee will neither be invited nor authorised to express an opinion on the nature of the reply or to pass a censure or to offer praise of the work of ratification in any nation—not at all. Its sole duty will be to register definitely what the facts are and to register those facts in a way which has hitherto been impossible because of the great volume of material with which we have to deal. Then it is proposed that, when the material so adjusted has been received, it shall go to the Director who, either through the Governing Body or direct, will forward it to the Conference. It is then proposed that, as a matter of machinery, the Conference shall annually appoint a Committee of its own members to examine the report as rendered by the Director as a general summary and by his expert Committee, as pointing to particular facts to which attention should be directed. Therefore, Mr. President, it seemed to the Committee as a whole that we had devised an instrument which, without infringing on any part of the Treaty, without infringing on the rights of

any members of the Conference, would materially assist their labours, and it is solely as a means of assisting the labours of the Conference that this is proposed.

Now, Sir, before coming to the amendments which are presented I would like to say one more word. It is no good concealing from the Conference, it would be foolish and it would be unfair to conceal from them that, in proposing this additional Committee, there is the hope that we shall render application more solid and more frequent. It has been said in some quarters that if we insist on having further information we shall get fewer ratifications. I cannot believe that anybody advances what I may describe as so sinister an argument seriously ; because what can it mean ? It could only mean, if it were advanced seriously, that States which ratify do so without the intention of applying, and that they do not wish that fact to become apparent. Well, Sir, I know very well that that is not in the mind of any of the States here. It is certainly not in the mind of the Committee ; but I do suggest that to advance the argument that, if further information is forthcoming, States will not ratify, is to throw a reflection, an entirely unmerited reflection, on the integrity and the honour of States. It is the belief of the Committee, and it is my personal belief, that all States here who enter into obligations intend to carry them out and for the most part do carry them out. It is my belief that all States here would welcome the opportunity of proving to the world that they have in fact carried out their obligations. Thus, not only should we achieve a greater mutual self-confidence as a result of this procedure, but we should be able to prove to the world at large that the common taunt which is so often levelled at our work, namely, that our Conventions are purely paper Conventions, would be finally and completely dissipated, and we should be able to prove to the world by the best possible means, by actual fact, that when we pass Conventions, and when they are ratified a definite measure of social progress has followed. For that reason, Mr. President, I strongly advocate the Report as a whole, and the Resolution contained in it, to the votes of this Conference.

There remains only one thing for me to say. I have two amendments, one in the name of Mr. Arthur Fontaine, the senior French Delegate, and the other in the name of Count de Altea, the senior Spanish Delegate. As regards Mr. Arthur Fontaine's amendment, it appears to me, as Chairman and Reporter of the Committee, to fall entirely within the general scheme as proposed by the Committee, and merely to underline and emphasise more clearly what the actual intentions of the Committee were. I should therefore personally, and on behalf of the Committee, have no difficulty in accepting Mr. Arthur Fontaine's amendment.

As far as Count de Altea's amendment is concerned, the position is rather different. It is true to say that the one point which was unanimously adopted by the Committee was the Committee of the Conference. I do not think therefore that I am authorised, as Chairman and Reporter of the Committee, to accept an amendment which definitely negatives part of the labours of the Committee ; but in order to secure that it shall be possible for the Conference to take this particular point separately from the rest of the Committee's proposals, which are perfectly distinct and perfectly coherent with the first part, I shall ask the President, when we come to vote, to take this point first and the other point second. When that happens I should like to say to the Conference what I said to the Committee, that it appears to me that these two parts of the Committee's resolution are not necessarily required one for the other. It would be quite possible to adopt either or both, but to reject either does not necessarily hurt or alter the value of the other. In these circumstances, Mr. President, I venture to recommend the Report of the Committee, with the amendment of Mr. Arthur Fontaine, to the votes of the Conference.

Traduction : M. WOLFE (Empire britannique), *Président et Rapporteur de la Commission de l'article 408 :* M. le Président, Messieurs les délégués, je ne voudrais pas abuser de votre patience par une longue déclaration exposant les travaux de la Commission qui a eu à s'occuper de la question de l'article 408. Cette question a d'ailleurs été discutée longuement à la Commission et elle l'a été également par chacun des groupes qui composent cette Conférence. Tous les délégués sont familiarisés avec le problème qui leur est présenté.

Malheureusement, je ne me trouve pas dans une situation si heureuse que celle dans laquelle étaient les Présidents de la Commission de la double discussion et de la Commission du Règlement, étant donné que je ne puis pas vous présenter un rapport adopté par l'unanimité de la Commission. Néanmoins, le rapport qui vous est soumis a été adopté par 23 voix contre 6, ce qui constitue pourtant une sérieuse majorité, grâce à laquelle le rapport de la Commission se recommande à l'attention bienveillante de la Conférence.

On a indiqué que certaines appréhensions se sont manifestées à l'égard de propositions qui vous ont été faites par la Commission. Je crois savoir que depuis que le rapport de la Commission a été déposé, ces appréhensions ont été, dans une certaine mesure, apaisées. J'espère que ce rapport pourra être adopté, sinon à l'unanimité, du moins à une forte majorité, mais sous réserve d'un certain nombre d'indications dont j'aurai l'occasion de vous parler tout à l'heure.

Les propositions présentées par la Commission sont tres simples. Vous connaissez tous l'article 408 du Traité de Paix, qui stipule que les Membres de l'Organisation doivent adresser au Bureau un rapport annuel exposant les mesures d'application prises à l'égard des conventions ratifiées par eux.

Ce rapport, stipule le même article, doit être présenté sous la forme établie par le Conseil d'administration. D'autre part, cet article donne au Directeur le devoir de présenter à la Conférence un résumé des rapports adressés par les Etats Membres de l'Organisation.

Pratiquement, que s'est-il passé jusqu'à présent ? Le Directeur s'est trouvé en présence de la nécessité d'établir un rapport allant jusqu'à 250 et même 300 pages. Ce rapport, en dehors de celui proprement dit du Directeur qui est considérable, est d'une importance telle qu'il était pratiquement impossible aux délégués et à la Conférence de le discuter avec profit et d'une manière détaillée. Tout le monde a donc été d'avis qu'un certain nombre de mesures s'imposaient, de manière à rendre plus fructueux le résumé établi conformément à l'article 408. La Commission que vous avez instituée pour étudier ce problème a décidé ce qui suit : elle a pensé que l'examen des rapports adressés conformément à l'article 408 devait se faire par un organe spécial et que l'institution d'un organisme nouveau ne devait nullement porter atteinte aux droits que la Conférence détient elle-même.

Il a semblé à la majorité de votre Commission qu'il convenait de désigner une petite Commission d'experts nommée non pas en considération de leur nationalité ou de leurs opinions, mais uniquement sur la base de leurs qualifications. Et alors, quels devraient être les titres de ces experts ? Dans l'esprit de la Commission, les personnes désignées comme membres de la Commission d'experts devraient l'être uniquement en raison de leurs connaissances approfondies de la législation internationale du travail et de leur expérience en matière de conditions du travail envisagées du point de vue international.

L'idée d'une Commission d'experts étant admise, deux problèmes se posaient immédiatement à l'attention de la Commission : 1° celui de savoir par quelle autorité cette Commission d'experts serait désignée ; 2° celui de déterminer quelles seraient les attributions de la Commission d'experts.

Pour le premier point, à savoir l'autorité qui serait appelée à désigner les experts, la Commission a été d'avis que c'était le Conseil d'administration du Bureau international du Travail qui devait avoir cette tâche, étant entendu qu'il désignerait cette Commission en tenant compte des qualifications exigées des membres.

Pour le deuxième point : attributions de la Commission, il semble qu'il ait suscité un certain nombre de craintes et je voudrais m'efforcer à l'heure actuelle de les apaiser.

Il a été entendu au sein de la Commission que la Commission d'experts dont on envisageait la désignation ne devait porter nullement atteinte aux droits qui sont établis par les articles 409 à 420 du Traité de Paix. Il était entendu que la Commission qui serait constituée ne serait nullement une sorte de Commission statutaire au sens de la constitution de l'Organisation. Comme je l'ai indiqué tout à l'heure, elle devait être purement technique et sa méthode de travail devait être celle d'un organisme envisageant la question uniquement du point de vue technique.

Il était entendu qu'elle aurait à voir les rapports adressés par les Membres et résumés par le Directeur pour voir s'il y avait certaines lacunes à combler, certains points qui n'étaient pas suffisamment éclaircis.

Imaginons, par exemple, que la Commission d'experts, en examinant le rapport d'un Etat, présenté conformément à l'article 408, découvre qu'il manque certaines observations. La Commission demandera alors au Bureau de prier l'Etat dont il s'agit d'adresser des informations complémentaires sur le point en question. Il serait entendu que le pays visé aurait parfaitement la faculté de refuser d'adresser les informations complémentaires demandées, ou, s'il le préfère, il pourrait adresser les informations sous la forme qu'il jugerait utile. Supposons donc que l'Etat consente à adresser à la Commission d'experts les informations demandées. Il serait entendu que la Commission se bornerait à examiner l'ensemble du rapport uniquement du point de vue des faits. Elle se gardera bien de formuler une opinion sur les rapports des Etats, de formuler une critique ou même une louange. La Commission se bornera à enregistrer les faits dans la mesure où cela lui sera possible.

Lorsque la Commission aura enregistré et rassemblé tous les éléments, elle les transmettra au Conseil d'administration, qui lui-même, à son tour, les fera parvenir à la Conférence.

La Conférence désignerait chaque année une Commission qui serait chargée d'examiner les rapports établis conformément à l'article 408 tels qu'ils auront été résumés par le Directeur et complétés, le cas échéant, par la Commission d'experts.

L'ensemble de la procédure qui vous est proposée n'est nullement contraire aux prescriptions du Traité de Paix. Elle a simplement pour objet de faciliter les travaux de la Conférence. Il serait dangereux de cacher à la Conférence certains éléments. La Commission, en vous proposant cet ensemble de mesures, a eu naturellement pour but de rendre l'application des conventions plus stricte et plus efficace. Certaines personnes ont formulé la critique suivante : si vous insistez trop pour l'application des conventions, n'allez-vous pas courir le risque de voir diminuer le nombre des ratifications ?

Il nous semble qu'un tel argument est cynique et ne peut être pris au sérieux. En effet, cela reviendrait à dire que les Etats qui ratifient des conventions n'ont nullement l'intention de les appliquer. Il nous semble que ce n'est nullement dans l'esprit de la Commission ni dans l'esprit d'aucun Etat représenté ici à la Conférence. Un tel argument contesterait la bonne foi des Etats et porterait atteinte à leur honneur.

Nous sommes tous convaincus que les Etats ont pleinement l'intention d'appliquer les conventions qu'ils ratifient. Nous pensons qu'ils seront tous heureux d'avoir l'occasion de fournir la preuve de leur bonne foi.

Pour ces différents motifs, j'ai l'honneur de vous proposer l'adoption du rapport de la Commission et les différentes résolutions qui y sont contenues. Je voudrais, avant de terminer, faire allusion à deux amendements apportés, l'un par M. Arthur Fontaine, premier délégué de la France, l'autre par M. le comte de Altea, premier délégué de l'Espagne.

Pour l'amendement apporté par M. Arthur Fontaine, il me semble qu'il est parfaitement en harmonie avec la conception générale qui inspire les propositions de la Commission.

Cet amendement se borne à préciser la portée de ces propositions et je crois que, comme Président et rapporteur de la Commission, je puis vous déclarer en son nom qu'elle est prête à l'accepter.

Pour ce qui est de l'amendement déposé par M. le comte de Altea, la position est sensiblement différente.

Je crois qu'il y a un point sur lequel nous avons tous été d'accord, au sein de la Commission,

c'est l'opportunité de la constitution d'une commission pour l'examen des rapports déposés conformément à l'article 408.

En qualité de Président et rapporteur de la Commission, il m'est difficile d'accepter l'amendement présenté par M. de Altea, parce que cet amendement ne paraît détruire une conclusion à laquelle la Commission est arrivée et modifier de fond en comble le sens de ses travaux.

Toutefois, afin de donner à la Conférence l'occasion de se prononcer sur cet amendement, je demanderai tout à l'heure à M. le Président, lorsqu'on en viendra au vote, de vouloir bien mettre aux voix en premier lieu l'amendement de M. le comte de Altea.

J'ajoute un mot : les deux parties des résolutions présentées par la Commission ne sont pas solidaires, c'est-à-dire qu'on peut parfaitement bien les dissocier et voter sur une partie, puis sur l'autre.

Je termine en recommandant à votre bienveillance le rapport de la Commission qui, je crois, contribuera à assurer d'une manière plus heureuse et plus efficace le fonctionnement de notre institution.

M. SOKAL (Pologne) — Je demande la parole pour la motion d'ordre suivante : Je prierai les membres de la Conférence de vouloir bien prendre les *Statuts et Règlements* à la page 31 et d'y relire l'article 13 ainsi conçu :

Propositions entraînant des dépenses.

« Toute résolution ou motion entraînant des dépenses doit, tout d'abord, être renvoyée au Conseil d'administration, lequel, après examen de son Comité du budget, fait connaître son avis à la Conférence. L'avis du Conseil d'administration est communiqué aux délégués au plus tard vingt-quatre heures avant que la Conférence ne procède à la discussion de la motion ou résolution. »

Je m'adresse donc à M. le Président pour lui demander si une discussion de la résolution dont il s'agit est possible sans avoir l'avis du Conseil d'administration.

Interpretation : Mr. SOKAL (Poland) : I wish to bring up a point of order. On page 30 of the *Constitution and Rules*, Article 13 of the Standing Orders of the Conference reads as follows :

" Any motion or resolution involving expenditure shall in the first instance be referred to the Governing Body, which, after consultation of its Finance Committee, shall communicate its opinion to the Conference. This communication shall be circulated to the Delegates at least 24 hours before the motion or resolution is discussed by the Conference."

In view of this, I would ask the President if a discussion at the present moment on the Resolution submitted by the Committee is possible.

Le SECRÉTAIRE GÉNÉRAL — L'article lu par M. Sokal est formel. Je m'étonne simplement, puisque beaucoup de membres étaient présents au sein de la Commission, — et même des membres du Conseil — que ce soit en séance de Conférence et au moment où le rapport est apporté qu'on soulève l'objection.

Mais nous avons une chance : notre Conseil d'administration se réunit aujourd'hui. Nous allons consulter notre Conseil d'administration à 3 heures. A 4 heures ou 4 h. 30, nous pourrons communiquer à la Conférence la résolution du Conseil. Et si M. Sokal insiste pour la prise en considération de l'article 13 du Règlement, nous nous réunirons demain, à 4 h. 30, pour le vote final concernant cette motion.

Interpretation : The SECRETARY-GENERAL : In view of the fact that the Committee itself contains members of the Governing Body, I am somewhat surprised that it is only at the full sitting of the Conference that this point has been raised. The Article in question does indeed contain formal provisions on the matter. Fortunately, however, the Governing Body is meeting to-day. We can consult it when it meets at 3 p.m., and at 4 or 4.30 p.m. we shall be in a position to communicate to the Conference the Governing Body's resolution. Should Mr. Sokal so insist, we can have the final vote to-morrow.

M. PAUWELS (Belgique) — Monsieur le Président, je me permets de faire remarquer que l'argument a été invoqué à la Commission par un représentant du groupe patronal. Je dois dire que la Commission a été d'avis de pouvoir passer outre, parce qu'elle délibérait précisément sur une suggestion présentée par le Conseil d'administration et tendant à la nomination d'une commission pour examiner les rapports présentés en vertu de l'article 408.

J'ai tenu à mettre la chose au point et à préciser que l'argument avait été apporté à la Commission qui avait donné son avis.

Interpretation : Mr. PAUWELS (Belgium) : This is a question which was raised in the Committee by an Employers' Delegate. The Committee was of the opinion that this was not a case where the Article should be applied, because the Governing Body itself had raised the question of the appointment of a Committee of experts.

Sir JOSEPH COOK (Australia) — I do not think the Article applies to a proposal of this kind. As I understand it, the Article only applies when there is a concrete and definite proposition for the expenditure of money. The proposal is to set up some machinery ; it says nothing about expenditure. You have to read expenditure into it for yourselves. There

is no definite proposal for expenditure of any kind ; it is possible that the whole thing will be done voluntarily and in an honorary capacity. This clause clearly does not relate to the mere setting up of machinery ; otherwise it would have to refer everything that takes place to the Governing Body for the same purpose. If machinery incidentally involves expenditure, then this would not be covered. It is only when there is a direct proposal for the expenditure of money that the Standing Order very properly says that money must not be voted without first consulting the Governing Body.

Traduction : Sir JOSEPH COOK (Australie) : Je ne crois pas que l'article que l'on a invoqué puisse s'appliquer dans le cas présent. A mon avis, il ne doit etre pris en considération que si l'on se trouve en présence d'une proposition bien définie et concrète entrainant une dépense. Ici, il s'agit de créer un organisme. Il n'y a pas de proposition concrète d'engager une dépense. Evidemment, la création de cet organisme peut aboutir à des dépenses. Mais le travail peut aussi être fait par des experts bénévoles et ne pas entrainer de dépenses.

Je crois que dans le cas présent l'article en question ne peut s'appliquer, car nous ne sommes pas saisis d'une proposition précise relative à des dépenses et sur laquelle le Conseil d'administration devrait être consulté au préalable.

Mr. WOLFE (British Empire), *Chairman and Reporter of the Committee on the examination of annual reports under Article 408* — Mr. Pauwels' statement is perfectly true. The point was raised at the Committee ; but as Mr. Sokal is not a member of that Committee, probably he did not know that it had been raised. It is therefore not to be wondered at that he brought up the question, and he cannot be accused of wishing to delay matters. It was raised by a member of the Employers' Group. It is perfectly useless to refer the matter back to the Governing Body, because the Governing Body has considered it and has asked the Conference to make recommendations. The Governing Body—presumably in the belief that the Conference might accept its resolution—has already made such provision in the budget as would be necessary to meet any expenditure entailed.

The decision of the Committee, of course, is not binding on the Conference, but I do suggest that the reasons which led my Committee not to accept that proposal from an Employers' Delegate apply equally in the present instance. I think, therefore, that if we proceed, we are fully in accordance with the Standing Orders. I would therefore suggest that the President should rule that we may proceed without reference back. Had it not been the case that the Governing Body had decided the matter, I should have been strongly in favour of a reference back, because, very rightly, all questions of expenditure must be, in the first place, settled in the Governing Body by its appropriate organ, namely, its Finance Committee.

Traduction : M. WOLFE (Empire britannique), *Président et Rapporteur de la Commission de l'article* 408 : Les explications qui ont été données par M. Pauwels sont absolument exactes. La question des dépenses a été soulevée au sein de la Commission. M. Sokal n'était pas présent à ce moment et par suite il ne pouvait pas le savoir au moment de son intervention actuelle. Il n'avait certainement pas l'intention de faire la moindre obstruction à nos débats. La question a en effet été soulevée à la Commission par un représentant patronal, et il a été rappelé à la Commission qu'il etait inutile de renvoyer cette question au Conseil puisque celui-ci s'était déjà prononcé à ce sujet, en chargeant la Conférence de traiter la question. Le Conseil avait déjà dû prévoir les dépenses que cela pourrait entrainer. La décision de la Commission ne lie pas la Conférence.

Je pense, dans les conditions présentes, que nous avons le droit de poursuivre la discussion sans enfreindre les règles qui viennent de nous être rappelées. Si le Conseil ne s'était pas prononcé sur ce point, j'aurais été en faveur du renvoi de la question au Conseil, parce que j'estime que le Conseil, et en particulier le Comité du budget, doivent être saisis de toutes les questions impliquant des dépenses.

M. SOKAL (Pologne) — J'étais présent à la Commission lorsque l'objection fut soulevée. Je crois que la Commission a passé outre. J'estime que la Conférence doit se conformer à son propre Règlement. L'article 13 est valable. Par conséquent, la Conférence ne peut pas discuter cette question sans en avoir référé au Conseil. Il n'est pas exact que le Conseil lui-même a saisi la Conférence de cette proposition. Le Conseil, sans avoir discuté la question, a tout simplement transmis à la Conférence une proposition britannique. Cette proposition n'était pas conforme aux propositions de la Commission. Cette résolution prévoit l'institution, comme Sir Joseph Cook l'a dit, d'un mécanisme. Il faut que le Conseil d'administration donne son avis à la Conférence sur la possibilité de l'institution de ce mécanisme. Il me semble qu'il est évident par contre que Sir John Cook n'a pas raison quand il dit que l'article 13 ne s'applique pas à une proposition prévoyant seulement un mécanisme sans proposer une dépense. Evidemment, si la Conférence décide d'instituer un tel mécanisme, les dépenses vont suivre et, conformément à

l'article 13 de votre Règlement, le Conseil d'administration doit être saisi et doit donner son avis. J'estime que nos travaux doivent se conformer au Règlement que vous avez voté vous-mêmes. Par conséquent, je demande le renvoi de la question au Conseil.

Interpretation : Mr. SOKAL (Poland) : I have two points to make. In the first place, I was present at the Committee when the Committee examined this very point ; but because the Committee decided not to follow the Standing Orders, I do not think that is any reason for the Conference taking the same attitude. Article 13 must be applied.

In the second place, I wish to say that it was not exact that the Governing Body transmitted this proposal to the Conference, and thus to this Committee. All that the Governing Body did was to communicate the proposal of the British Government. In any case the Resolution of the Committee differs from the proposal of the British Government, because the Resolution of the Committee sets up definite machinery for examining these reports, and on this proposal the Governing Body must give an opinion in accordance with Article 13. Sir Joseph Cook, I venture to maintain, is wrong in saying that Article 13 only applies in case of a definite proposal for expenditure, for in setting up machinery such as a Committee you are bound to involve expenditure. Our work in this Conference must be based on its own Standing Orders, and for that reason I urge that this matter be referred in the first place to the Governing Body

Le PRÉSIDENT — M. Sokal a demandé mon opinion si je ne me trompe. Je dois dire formellement que M. Sokal me paraît avoir raison ; pour prévenir toute incertitude et, d'autre part, étant donné l'heure, je pense qu'il vaut mieux le satisfaire et suivre strictement l'article 13 du Règlement, c'est-à-dire renvoyer cette proposition au Conseil d'administration qui se réunira cet après-midi pour l'examiner et faire connaître son avis à la Conférence. J'espère que la Conférence pourra avoir connaissance de cet avis avant le commencement de la prochaine séance plénière, c'est-à-dire avant 4 heures; ensuite nous pourrons procéder, en suivant strictement le Règlement, à la discussion de ce point de l'ordre du jour.

Interpretation : The PRESIDENT : It seems to me that Mr. Sokal has asked for my ruling on this matter. I will say then that, according to the strict interpretation of Article 13, it seems to me that Mr. Sokal is right. I consider that the Conference would do better to adhere strictly to its Standing Orders on the matter, that the Committee should refer the question to the Governing Body, which meets this afternoon, and then I hope that the report of the Governing Body on the matter can be submitted to the Conference before its meeting this afternoon at 4 o'clock.

Mr. WOLFE (British Empire), *Chairman and Reporter of the Committee on the examination of annual reports under Article 408* — Just one word, Mr. President. I should be the last, and my Committee would be the last, to wish to offend against any rules, and therefore naturally I bow to your ruling. We do not in the least wish to burke discussion in the Governing Body or elsewhere ; but I do want to say here and now that when Mr. Sokal says that this is not a resolution of the Governing Body, but a resolution of the British Government, it must follow that Mr. Sokal has not read the resolution itself, which begins by saying that the Governing Body, considering certain things, suggests that the Conference should do various things. If the Governing Body had meant that the British Government suggested various things, presumably it has sufficient control of the English and French languages to use the words it means, and not other words.

Traduction : M. WOLFE (Empire britannique), *Président et Rapporteur de la Commission de l'article* 408 : Je tiens à ajouter un mot. Je serais le dernier à vouloir proposer que l'on enfreigne le Règlement et, par suite, j'accepte la décision du Président en cette matière ; mais quand M. Sokal nous dit qu'il s'agit là d'une résolution du Gouvernement britannique, je dois en conclure qu'il n'a pas lu les textes. Le préambule de la résolution prise par le Conseil d'administration est parfaitement clair.

M. SOKAL (Pologne) — Je n'ai jamais dit cela.

Interpretation : Mr. SOKAL (Poland) : I did not say that.

(La séance est levée à 13 heures.)

(The Conference adjourned at 1 p.m.)

Délégués présents à la séance.

Afrique du Sud :
M. Cousins.
M. Freestone.
M. Pocock.
M. Curran.

Allemagne :
M. Feig.
M. Hering.
M. Vogel.
M. Müller.

Argentine :
M. Pinto.
M. Dell'Oro Maini.
M. Viola.

Australie :
Sir Joseph Cook.
M. McNeil.
M. Beasley.

Autriche :
M. Hawelka.
M. Montel.
M. Schmidt.
M. Weigl.

Belgique :
M. Mahaim.
M. Julin.
M. Carlier.
M. Mertens.

Brésil :
M. de Montarroyos.
M. de Mello.
M. Dias.

Empire britannique :
M. Wolfe.
M. Baker.
M. Snedden (suppléant de Sir James Lithgow).
Mlle Bondfield (suppléant de M. Pugh).

Bulgarie :
M. Bobochevsky.
M. Nicoloff.
M. Danoff.

Canada :
M. Riddell.
M. Pacaud.
M. Robb.
M. Merson (suppléant de M. Moore).

Chili :
M. Eliodoro Yanez.
M. Valdés-Mendeville.

Chine :
M. Chao Hsin Chu.
M. Chi Yung Hsiao.

Cuba :
M. de Agüero y Bethancourt.
M. Vidal Caro.
M. Guiral.
M. Domenech.

Danemark :
M. Bramsnaes.
M. Lassen.
M. Oersted.
M. Jacobsen (suppléant de M. Madsen).

Espagne :
M. le Comte de Altea.
M. Gascon y Marin.
M. de Biedma.
M. Martinez Gil (suppléant de M. Caballero).

Esthonie :
M. Grohmann.
M. Varna.
M. Masik.
M. Gustavson.

Finlande :
M. Mannio.
M. Valvanne.
M. Palmgren.
M. Halme.

France :
M. Arthur Fontaine.
M. Jules Gautier.
M. Marchegay (suppléant de M. Lambert-Ribot).
M. Jouhaux.

Grèce :
M. Zakkas.
M. Agalopoulos.
M. Koulouras.
M. Kalomiris.

Hongrie :
M. de Marffy-Mantuano
M. Nagy de Szentgericze.
M. de Tolnay.
M. Jaszai.

Inde :
Sir Atul Chatterjee.
Sir Louis Kershaw.
Sir Arthur Froom.
M. Lajpat Rai.

Etat libre d'Irlande :
M. Hearne (suppléant de M. McGilligan).
M. Deegan.
M. Roycroft.
M Duffy.

Italie :
M. de Michelis.
M. Gerbi (suppléant de M. Ingianni).
M. Olivetti.
M. Cucini (suppléant de M. Rossoni).

Japon :
M. Miyasaki.
M. Mayeda.
M. Matsukata.
M. Narasaki.

Lettonie :
M. Rubuls.
M. Duzmans.
M. Kurau.
M. Visna.

Lithuanie :
M. Zaunius.

Norvège :
M. Thorsen.
M. Hansen.
M. Salvesen (suppléant de M. Odfjell).
M. Steendal.

Pays-Bas :
M. Zaalberg.
M. Folmer.
M. de Beaufort.
M. Brautigam.

Pérou :
M. Paulet.

Pologne :
M. Sokal.
M. Gawronski.
M. Trepka.
M. Teller.

Portugal :
M. Rodriguez (suppléant de M. Ferreira).

Roumanie :
M. Comnène.

Royaume des Serbes, Croates et Slovènes :
M. Pétrovitch.
M. Yéremitch.
M. Tchourtchine.
M. Topalovitch.

Siam :
M. Sanpakitch Preecha

Suède :
M. Hennings.
M. Molin.
M. Lagergren (suppléant de M. Larson).
M. Johanson.

Suisse :
M. Pfister.
M. Giorgio.
M. Cagianut (suppléant de M. Tzaut).
M. Schürch.

Tchécoslovaquie :
M. Pokorny.
M. Hodac.
M. Stefka.

Uruguay :
M. Fernandez y Medina.
M. Charlone.

Vénézuéla :
M. Zumeta.

Delegates present at the Sitting.

South Africa :
Mr. Cousins.
Mr. Freestone.
Mr. Pocock.
Mr. Curran.

Germany :
Mr. Feig.
Mr. Hering.
Mr. Vogel.
Mr. Müller.

Argentina :
Mr. Pinto.
Mr. Dell'Oro Maini.
Mr. Viola.

Australia :
Sir Joseph Cook.
Mr. McNeil.
Mr. Beasley.

Austria :
Mr. Hawelka.
Mr. Montel.
Mr. Schmidt.
Mr. Weigl.

Belgium :
Mr. Mahaim.
Mr. Julin.
Mr. Carlier.
Mr. Mertens.

Brazil :
Mr. de Montarroyos.
Mr. de Mello.
Mr. Dias.

British Empire :
Mr. Wolfe.
Mr. Baker.
Mr. Snedden (substitute for Sir James Lithgow).
Miss Bondfield (substitute for Mr. Pugh).

Bulgaria :
Mr. Bobochevsky.
Mr. Nicoloff.
Mr. Danoff.

Canada :
Mr. Riddell.
Mr. Pacaud.
Mr. Robb.
Mr. Merson (substitute for Mr. Moore).

Chile :
Mr. Valdés-Mendeville.
Mr. Echegoyen.

China :
Mr. Chao Hsin Chu.
Mr. Chi Yung Hsiao.

Cuba :
Mr. de Agüero y Bethancourt.
Mr. Vidal Caro.
Mr. Guiral.
Mr. Domenech.

Denmark :
Mr. Bramsnaes.
Mr. Lassen.
Mr. Oersted.
Mr. Jacobsen (substitute for Mr. Lassen).

Spain :
Count de Altea.
Mr. Gascon y Marin.
Mr. de Biedma.
Mr. Martinez Gil (substitute for Mr. Caballero).

Esthonia :
Mr. Grohmann.
Mr. Varma.
Mr. Masik.
Mr. Gustavson.

Finland :
Mr. Mannio.
Mr. Valvanne.
Mr. Palmgren.
Mr. Halme.

France :
Mr. Arthur Fontaine.
Mr. Jules Gautier.
Mr. Marchegay (substitute for Mr. Lambert-Ribot).
Mr. Jouhaux.

Greece :
Mr. Zakkas.
Mr. Agalopoulos.
Mr. Koulouras.
Mr. Kalomiris.

Hungary :
Mr. de Marffy-Mantuano.
Mr. Nagy de Szentgericze.
Mr. de Tolnay.
Mr. Jaszai.

India :
Sir Atul Chatterjee.
Sir Louis Kershaw.
Sir Arthur Froom.
Mr. Lajpat Rai.

Irish Free State :
Mr. Hearne (substitute for Mr. McGilligan).
Mr. Deegan.
Mr. Roycroft.
Mr. Duffy.

Italy :
Mr. de Michelis.
Mr. Gerbi (substitute for Mr. Ingianni).
Mr. Olivetti.
Mr. Cucini (substitute for Mr. Rossoni).

Japan :
Mr. Miyasaki.
Mr. Mayeda.
Mr. Matsukata.
Mr. Narasaki.

Latvia :
Mr. Rubuls.
Mr. Duzmans.
Mr. Kurau.
Mr. Visna.

Lithuania :
Mr. Zaunius.

Norway :
Mr. Thorsen.
Mr. Hansen.
Mr. Salvesen (substitute for Mr. Odfjell).
Mr. Steendal.

Netherlands :
Mr. Zaalberg.
Mr. Folmer.
Mr. de Beaufort.
Mr. Brautigam.

Peru :
Mr. Paulet.

Poland :
Mr. Sokal.
Mr. Gawronski.
Mr. Trepka.
Mr. Teller.

Roumania :
Mr. Rodriguéz (substitute for Mr. Ferreira).

Kingdom of the Serbs, Croats and Slovenes :
Mr. Pétrovitch.
Mr. Yéremitch.
Mr. Tchourtchine.
Mr. Topalovitch.

Siam :
Mr. Sanpakitch Preecha.

Sweden :
Mr. Hennings.
Mr. Molin.
Mr. Lagergren (substitute for Mr. Larson).
Mr. Johanson.

Switzerland :
Mr. Pfister.
Mr. Giorgio.
Mr. Cagianut (substitute for Mr. Tzaut).
Mr. Schürch.

Czechoslovakia :
Mr. Pokorny.
Mr. Hodac.
Mr. Stefka.

Uruguay :
Mr. Fernandez y Medina.
Mr. Charlone.

Venezuela :
Mr. Zumeta.

TREIZIÈME SÉANCE. — THIRTEENTH SITTING.

Vendredi, 4 juin 1926, 16 h.
Friday, 4 June 1926, 4 p.m.

Présidence de Mgr. Nolens.
President: Mgr. Nolens.

Le PRÉSIDENT — Je rappelle que la Conférence a décidé ce matin de renvoyer la résolution sur l'article 408 au Conseil d'administration, lequel, après examen de son Comité du budget, devait faire connaître son avis à la Conférence.

Je prie Monsieur le Président du Conseil d'administration de communiquer à la Conférence, si possible, l'avis du Conseil.

Interpretation: The PRESIDENT: You will remember that this morning the Conference referred to the Governing Body the proposal submitted to it by the Committee on Article 408. I shall ask the Chairman of the Governing Body to report on behalf of the Governing Body.

M. ARTHUR FONTAINE (France), *Président du Conseil d'administration* — Le Conseil d'administration, sur le rapport de son Comité du budget, et après avoir constaté que la dépense probable serait d'environ 6.000 francs, a donné un avis favorable à la proposition. Il a seulement fait remarquer que, ne pouvant pas s'engager pour plusieurs années, il priait la Commission d'indiquer que l'essai aurait lieu pour un, deux ou trois ans, au lieu de mettre : pour deux ou trois ans.

Interpretation: Mr. ARTHUR FONTAINE (France), *Chairman of the Governing Body:* On the report of the Finance Committee, and learning that the expense of such a Committee would probably be about 6,000 francs per year, the Governing Body arrived at a favourable opinion upon the question. It was, however, pointed out that the Finance Committee could not make any engagement for more than one year. Therefore it was proposed that the Committee should be asked to change its text, so that the Committee should be set up for "one, two or three years."

Le PRÉSIDENT — Nous pouvons maintenant continuer la discussion sur la résolution.

Interpretation: The PRESIDENT: Now that the Conference has heard the report from the Governing Body, the discussion will continue on the Resolution.

Mr. BEASLEY (Australia) — Mr. President and Delegates, all I wish to do is to express my disappointment at the Resolution which has been put forward by the Chairman of this Committee. I listened very attentively to what Mr. Wolfe had to say, and I feel disposed to extend to him the same compliment as was extended to him by the Irish Workers' Delegate when speaking on the Director's Report, that is to say, he said quite a good deal, but it did not mean anything. I was of the opinion that the Committee would make some attempt to explain to us that they were prepared to bring forward something by which the Governments, should they fail to ratify, would be to some extent forced to do so. But apparently such is not the case. It seems that the intention of quite a number of the Members of the Conference is just to utilise

the Office for the purpose of compiling statistics, and this Committee will only go into a class of work which the Director has done for a number of years. Of course, that might be quite all right, and it will no doubt be quite in keeping with the view which has been expressed by many of the Delegates here already. They are not anxious that the International Labour Office should go deeply into the question of the economic problems confronting the world to-day. Just imagine for a moment taking this clause into consideration : "And that careful examination of the information contained therein is calculated to throw light upon the practical value of the Conventions themselves and to further their general ratification." Just consider the matter from the point of view of the Government which Mr. Wolfe represents, namely, the question whether this Committee and the compiling of the information would be the means of forcing the British Government to give effect to the question of general ratification, even of the Washington Convention. You heard Mr. Wolfe speak at some length of the failure of his Government to ratify that Convention, and I cannot for the life of me see that a Committee which is set up here will tend in any way to bring about a state of affairs by which ratification might be brought about by the Government which Mr. Wolfe represents. I should have thought that the Committee would have gone into the matter from the point of view of the workers and that they would have shown that they were going to recommend something which would tend to further ratification. As a Workers' Delegate I want to see some action taken in this matter ; we do not want mere words. Again I wish to express my keen disappointment at the proposals which have been submitted to the Conference.

Traduction : M. BEASLEY (Australie) : Je tiens seulement à exprimer le désappointement que j'ai éprouvé en présence de la résolution qui nous a été présentée par la Commission. J'ai écouté les explications que M. Wolfe nous a données. Il a dit beaucoup de choses ; mais je me permettrai de lui dire qu'au fond cela ne signifie rien. J'espérais que la Commission ferait des propositions susceptibles d'obliger, dans une certaine mesure, les Gouvernements à appliquer les conventions. Or, il semble que l'on veuille seulement utiliser le Bureau international du Travail pour la compilation de statistiques. La Commission que l'on se propose d'instituer n'aura pas d'autre mission que de faire le travail dont le Directeur du Bureau s'acquittait jusqu'à présent. Cela nous montre que le Bureau ne veut pas aller au fond des questions économiques qui intéressent actuellement le monde. En effet, on nous dit que si l'on adoptait la résolution, l'examen attentif des renseignements contenus dans les rapports permettrait de connaître la valeur pratique des conventions et d'aider en général à leur ratification. Vous avez entendu dernièrement M. Wolfe vous expliquer pour quelles raisons son Gouvernement n'a pas encore pu ratifier la convention de Washington. Or, je ne crois pas que l'institution de la Commission, dont la création est proposée, donnera des résultats pratiques et contribuera à amener la ratification du Gouvernement britannique. Je tiens à répéter ce que j'ai dit au début. Nous, délégués ouvriers, nous ne nous contentons pas de paroles, nous voulons des actes. Je tiens à exprimer encore une fois le désappointement que j'ai éprouvé.

M. MAHAIM (Belgique) — Messieurs, j'aborde cette tribune, au sujet de cette question, dans un sentiment d'embarras. Je me rends très bien compte de l'importance de la question qui est posée devant vous, ainsi que des intentions qui ont animé les auteurs de cette proposition.

Le Gouvernement britannique et un grand nombre d'amis du Bureau international du Travail et de l'Organisation permanente du Travail voient, dans l'application rigoureuse, élargie même, de l'article 408, un moyen d'affermir encore l'œuvre de l'Organisation permanente du Travail et de rendre plus efficace et plus étendue la législation internationale du travail.

Sous ce rapport là, je suis complètement d'accord avec les auteurs de la proposition. Quand on examine le système des sanctions déterminées par le Traité de paix, on constate qu'il existe des réclamations qui sont non seulement à la disposition de toutes les organisations patronales et ouvrières, mais aussi, pour ainsi dire, du public. Mais la réclamation ne va pas plus loin que le Conseil d'administration.

Ensuite, il y a la plainte. La plainte est à la disposition des Gouvernements, des Membres qui ont ratifié, et aussi des délégués à la Conférence ; mais c'est une procédure extrêmement grave. Elle conduit à une enquête et elle va jusqu'à la Cour permanente de Justice. La sanction peut entraîner jusqu'au blocus économique et financier. Autrement dit, elle ne peut être appliquée que dans des cas scandaleux, que dans des cas dans lesquels il est absolument nécessaire d'avoir une intervention internationale et générale.

On a pensé alors que, pour assurer davantage l'exécution des conventions ratifiées, il y avait lieu de trouver un système que j'appellerai intermédiaire, par l'examen attentif du rapport annuel que les Etats ayant ratifié doivent présenter au Bureau.

Lisez l'article 408. Le rôle du Bureau est simplement un rôle mécanique. Il doit résumer les rapports purement et simplement, rien de plus. Seulement, si vous lisez la première partie de l'article, vous voyez que l'intention des auteurs a tout de même été de ne pas laisser absolument sans surveillance, si j'ose employer ce mot, l'application des conventions, puisque, en demandant un rapport annuel aux Etats, ils ont voulu que la Conférence soit informée, par les parties elles-mêmes, des mesures qui ont été prises à la suite des conventions.

Et, en donnant au Conseil d'administration le droit de faire rédiger le questionnaire sur la base duquel les rapports doivent être faits, le Traité de Paix organise certainement un système de contrôle de l'application des conventions. Faut-il le renforcer ? Faut-il l'augmenter ? Faut-il aller plus loin et organiser tout un système nouveau qui, en fait, représente un nouveau contrôle pour les Etats qui ont ratifié. Evidemment, c'est tentant. Je comprends très bien, notamment, que les Etats qui ont ratifié des conventions demandent aujourd'hui que l'on ouvre l'œil sur l'application des conventions par les autres. Je comprends très bien cela. Mais il ne faut pas nous dissimuler qu'il y a à cette mesure quelque danger. Le premier danger, c'est que toute espèce d'organisme de contrôle ainsi institué sorte de ses attributions. Vous nommez des experts inoffensifs, et ils deviennent facilement des inspecteurs. Allez un peu plus loin : laissez-les correspondre avec les Gouvernements, laissez-les ordonner des enquêtes, et vous avez alors tout un système de surveillance des Etats.

Je ne suis pas de ceux qui ont peur de choses semblables. Je reconnais très bien que toute l'organisation nouvelle du droit international, et à la Société des Nations et chez nous, implique des limitations nouvelles de la souveraineté des Etats. Chaque fois que nous signons un traité, nous limitons notre souveraineté. Nous le savons bien. Le mot même n'est pas de nature à m'effrayer. Mais, en présence du petit nombre de ratifications, il y a lieu de se demander si ce renforcement du contrôle, si cette institution d'un organisme qui pourrait aisément sortir de ses attributions et gêner les administrations intérieures des Etats, est bien opportun.

C'est pourquoi j'ai demandé aux auteurs de la proposition de nous donner les assurances et les garanties que le système dont on veut faire l'essai ne conduira pas à des abus. Je veux aussi avoir des apaisements sur un point qui m'inquiète. Un certain nombre de mes collègues ont exprimé l'avis qu'en renforçant ainsi le contrôle de l'application des conventions on allait rendre encore plus difficile et plus rare la ratification des conventions. Ils font observer que l'attitude des Etats qui ont déjà ratifié, et qui sont inquiets de ce qui nous est proposé aujourd'hui, n'est pas de nature à faciliter la ratification et à engager d'autres Etats à entrer dans la même voie.

D'autre part, il y a une partie de la proposition à laquelle il me semble difficile de nous rallier. C'est la partie de la résolution qui vous demande de faire nommer par la Conférence une Commission qui rapportera immédiatement devant la Conférence. Il faut être pratique ; il faut voir les choses comme elles sont. Nous venons ici pour quinze jours, trois semaines, mettez même pour un mois, il me paraît impossible de tirer des rapports, de l'étude documentaire des rapports, autre chose que ce que le Directeur en aura tiré. Je ne vois pas la possibilité de nommer une Commission de la Conférence qui soit capable d'étudier, dans leur détail, les rapports de façon à présenter des résultats pratiques.

Ah ! si vous voulez seulement — comment dirai-je — attraire devant la Conférence un certain nombre d'Etats plus ou moins récalcitrants ? Eh bien, ce n'est pas au moyen d'une Commission de ce genre qu'il faut essayer de le faire. Il faut avoir des faits précis, et il faut avoir une autre procédure. Je considérerais, pour ma part, comme extrêmement dangereux d'organiser ici un tribunal — on a dit un conseil de guerre — qui serait improvisé.

Autre chose est l'étude par les experts, pendant l'intervalle des Conférences et sous la direction du Bureau. Au point de vue légal, je ne vois pas de difficulté à ce que ce Comité soit adjoint au Directeur par le Conseil d'administration. Le Conseil d'administration, ayant le droit de rédiger le questionnaire, peut s'entourer de toutes les informations nécessaires, de tous les renseignements utiles. Par conséquent, en ce qui me concerne, je suis tout disposé à accepter la proposition. Pour le moment, je ne demande qu'une chose, c'est que les appréhensions que j'exprime ici — et que

j'ai déjà exprimées devant le groupe gouvernemental — soient dissipées. Si vous trouvez un système satisfaisant pour écarter tous ces dangers, toutes ces appréhensions, je ne demande pas mieux que de voter la proposition. Je tiens à dire — on l'a déjà dit, je crois que c'est l'honorable M. Wolfe — que nous avons, nous autres, une bonne conscience. On peut venir nous demander tout ce qu'on veut sur l'application des conventions que nous avons ratifiées. Je suis bien persuadé qu'il n'y aura rien à reprendre à notre conduite. Nous ne demandons qu'une chose, c'est que tous les Etats puissent en dire autant. Ce n'est donc pas une question personnelle ; mais je répète que la grande appréhension que j'ai, c'est que le système qui peut se justifier par lui-même, au point de vue du fond, soit de nature à diminuer ou à empêcher les ratifications futures.

Interpretation : Mr. MAHAIM (Belgium) : I am speaking on this question with feelings of some embarrassment. I understand fully the importance of the question before us. I understand fully the intentions of the authors of this proposal. Both the British Government and the many friends of the Office and of the International Labour Organisation see in a strict application of Article 408 of the Treaty a means of strengthening the work of the Organisation and of extending international labour legislation. On this point I am in full agreement with the authors of the proposal. When, however, we examine the system of sanctions laid down in the Treaty of Peace, we find that it contains first of all a possibility of protest which is open to all organisations—in fact, open to public opinion in general—but it only leads to the Governing Body. Then in the Treaty of Peace we find a system by which formal complaints can be made with regard to the non-application or the faulty application of ratified Conventions. This is a matter at the disposal of the Governments of countries which have ratified Conventions ; but it constitutes a serious step, for it leads to an official enquiry, it may lead to a judgment on the part of the Permanent Court of International Justice, and it may lead to a financial and economic blockade of a defaulting State. It is therefore a sanction applicable only in cases which I can only describe as scandalous.

It was thought that, to secure the fuller application of Conventions which have been ratified, it was necessary to find an intermediate system, and this was found in the annual reports which, under Article 408 of the Treaty, have to be presented to the Conference through the Office in the form of a summary.

The work of the Office in connection with these reports is purely mechanical. All it has to do is to summarise the reports for submission to the Conference. Nevertheless, the first part of Article 408 shows that the authors of the Treaty do not intend to leave the application and ratification of Conventions free from control. Article 408 asks for the submission of annual reports, by which the Conference can learn the extent to which the Conventions are being applied by the countries which have ratified them, and it further gives the Governing Body the right to draw up a questionnaire on which these reports are to be based. Thus, the Treaty organises a system of control separate from the system of sanctions. The question arises, should this system of control be strengthened or should a whole new system be organised to supervise further the action of States which have ratified Conventions. I understand fully the position of such States. I understand fully the wishes of such States that the measures by which they applied Conventions should be more fully known, but we must avoid certain dangers which may arise in adopting a new procedure.

The first danger is that any kind of control is legally beyond the functions of the Office. If we appoint experts they will inevitably tend to become inspectors. If you allow them to correspond with the Governments, you have in fact set up a system of supervision of the action of the States. I realise that the whole basis of the League of Nations and of the International Labour Organisations means a limitation of national sovereignty ; but in view of the small number of ratifications which we have obtained, I ask whether it is necessary to set up a whole new system of control which may exceed our proper functions and which may hinder further ratifications. I ask the authors of the proposal before us for the assurance that the system will not lead to any abuses. In particular, I ask for an assurance on one point which alarms me.

Certain of my colleagues have pointed out that if there is an increased control of the application of ratified Conventions, ratifications will become more and more difficult, and they point out that States which have already ratified the Conventions and are nervous of the results of such a system will not be encouraged to make further ratifications.

There is in the proposal a part asking for the nomination each year by the Conference of a Committee of the Conference to report to the Conference on the question. I would point out that the Conference meets for a period of one month at most. It seems impossible for a Committee appointed for such a short time to gain more from an examination of the reports submitted under Article 408 than the Director already gives us. I feel that it is impossible for the Conference to study these reports in greater detail.

Again, with regard to the Committee of the Conference, if it is a method to bring before the Conference reports on more or less recalcitrant States, it is extremely dangerous and will lead to the institution of a kind of court, which is not provided for in the Treaty.

Another point is in connection with the Committee of Experts which is to study the reports under the general direction of the Director. Legally I see no difficulty in this, since the Governing Body can certainly appoint experts to assist the Director. Therefore, all I am asking is for an assurance that my fears are not well-founded. If I am assured on the points which I have raised, I shall be quite ready to vote in favour of the proposal, for Belgium has a clear conscience in the matter of application of the Conventions which she has ratified. This is not a personal question which I have brought up. It is merely a question of my fears that the system may lessen the speed of ratification.

M. MERTENS (Belgique) — Monsieur le Président, Mesdames, Messieurs. Je voudrais dire quelques mots en faveur de la proposition qui nous est soumise. Et ceci pour deux raisons : la première, c'est qu'en examinant le Traité de Versailles lui-même, de l'article 411 à l'article 416, je constate que les Etats qui ont ratifié des conventions et qui ont des doutes sur l'application intégrale et loyale de ces conventions par

d'autres pays qui les ont également ratifiées, ont le droit de déposer une plainte auprès du Bureau international du Travail. Ils peuvent même aller jusque devant la Cour permanente de Justice internationale, pour faire appliquer les sanctions prévues aux Etats qui n'appliquent pas les conventions ratifiées, sanctions qui peuvent aller jusqu'au boycottage économique.

Pour ma part, je préfère qu'on ne soit pas obligé d'en arriver à de pareilles mesures ; je préfère qu'on n'ait pas besoin de déposer plainte auprès du Bureau international du Travail et qu'on trouve le moyen d'éviter d'une autre manière les difficultés qui peuvent surgir d'une telle attitude d'Etats ayant ratifié l'une ou l'autre des conventions adoptées par les Conférences internationales du Travail.

On invoque alors l'argument que certains pays, dès maintenant, s'abstiennent de ratifier pour éviter précisément que l'on puisse venir voir chez eux s'ils appliquent oui ou non les conventions ratifiées. A mon avis, cet argument n'est si souvent invoqué que par ceux qui ont la volonté de ne pas ratifier.

Un autre argument avancé est celui que j'ai trouvé il n'y a pas très longtemps dans le compte rendu sténographique des débats d'un Parlement d'Europe. Un parlementaire qui ne connaissait rien de la Partie XIII du Traité de Versailles déclarait qu'un pays qui n'a pas ratifié a le droit de venir faire des enquêtes dans des pays qui ont ratifié. Ce parlementaire ignorait tout des règlements qui régissent l'Organisation internationale du Travail. Tous ces arguments sont invoqués pour justifier la non-ratification. Et c'est pourquoi je suis partisan de la proposition qui nous est faite.

Vous devez constater, en effet, que le rapport déjà assez volumineux soumis par M. le Directeur à la Conférence sur les résultats d'application des conventions ratifiées dans les différents pays ne donne quand même pas les éléments nécessaires pour juger définitivement.

Si on nomme une Commission qui doive faire rapport sur ce qui se passe dans les différents pays, qui puisse obtenir tous les renseignements voulus pour juger des conditions d'application, qui puisse, au besoin, faire les investigations nécessaires pour s'entourer de toutes les garanties, je vois dans le fonctionnement d'une telle commission de techniciens la possibilité de découvrir certaines faiblesses que peuvent présenter nos conventions, qui peuvent en rendre l'application difficile dans certains pays et qui ont pu nous échapper au moment où nous avons voté les conventions.

Et lors du vote de nouvelles conventions, ou encore au moment où il nous faudra modifier ou tout au moins discuter à nouveau les conventions que nous avons votées depuis 1919, ainsi qu'il est stipulé dans le dernier article de chaque convention (pour la convention des huit heures, par exemple, après un délai de dix ans la Conférence aura à examiner si elle veut maintenir le texte, le modifier ou le compléter), nous pourrions éviter que les textes adoptés présentent les mêmes faiblesses, celles-ci ayant été découvertes par la Commission.

Je préfère qu'à ce moment, lorsque la Conférence aura à s'occuper d'une convention dont le terme vient d'expirer, cette Commission puisse nous indiquer les faiblesses qui existent dans certaines parties de cette convention, faiblesses qui ont rendu difficile son application dans tel ou tel pays et que nous pourrions éviter dans l'avenir en votant de nouvelles conventions ou en complétant les conventions déjà ratifiées ou appliquées. Nous arriverions ainsi à voter des conventions qui ne prêteraient plus le flanc à certaines critiques ni à des arguments qui permettent encore actuellement à certains Etats de ne pas ratifier les conventions votées.

Non seulement je voterai, pour toutes ces raisons, la proposition qui est faite, mais j'ai la conviction que le Gouvernement belge, s'il est averti des raisons invoquées en faveur de cette résolution, la votera également des deux mains.

Interpretation : Mr. MERTENS (Belgium) : I wish to support the proposal before us. In examining the Treaty of Peace, I note in Articles 413 to 416 that the States which ratify a Convention and have any doubt as to the loyal application of such Convention by any other country which has ratified it, have a right to complain to the Office, and have even a right to take the matter as far as the Permanent Court of International Justice, with the possible result of an economic blockade of the defaulting country.

I do not like such measures, and I hope they will not be taken, but that any defect with regard to application will be met by other means. I do not think that the argument that any such system will lead to difficulties of ratification in certain countries is a sound one : I think that for the most part this argument is brought forward by countries which do not wish to ratify.

In these last years we have had a bulky report by the Director on the application in various countries of the Conventions ratified. I think, however, that this report does not afford the necessary elements for us to judge to what extent

the Conventions are duly applied. In nominating a committee we shall supplement this information, and we shall then be able to obtain any necessary additional information from it. We shall further be able to obtain from this committee information on the weaknesses of any of the Conventions adopted. This will be of great value to us, both when we adopt new, and when we discuss the maintenance or revision of old Conventions. You will remember that in all the Conventions we have adopted, we have included an Article providing for the possibility of revision. For example, in the Hours Convention it is provided that the Convention may be brought before the Conference after the expiration of a period of ten years, and the Conference will then be in a position to decide whether it should be maintained, modified or completed.

I hope that, when the Conference is dealing with this question, the information given it by the committee will enable it to see the difficulties in the way of ratification of the Conventions. This will strengthen us, both in revising old Conventions and adopting new ones. For this reason I ask the Conference to adopt the Resolution before it. I am sure, also, that the Belgian Government will be re-assured as to its fears, and will feel itself able to vote in favour of this Resolution.

Sir JOSEPH COOK (Australia) — I propose to vote for the Resolution because I believe it goes quite as far as it is possible to go at the present time.

With regard to the application of sanctions, I should like to make this remark. I was one of those who assisted at the Peace Conference to put this Labour Covenant into the Treaty. I worked earnestly in its favour. I did so because I believed that the objects sought were desirable from every point of view. I sometimes wonder whether a mistake is not made in applying the word "labour" in its narrow sense to this Conference. What was really intended was that this Conference—this Organisation—was to be an international industrial Organisation, resembling more than anything else an international conciliation court in which both sides could compose their differences and reach conclusions fair to all. It was never intended that it should be a court to wield a big stick and go about with a blackthorn to flagellate nations which were recalcitrant. It was intended to be an Organisation where reason and persuasion and public opinion should be enthroned. It was proposed to gather the facts and let in the light of public opinion upon them. That, I venture to say, will, in the long run, perhaps prove the best sanction of all—the most effective and the most likely to give the best results. Anything different means the setting up of a super-State, and that is quite impossible in the present condition of the world. It is not possible to make a State do what it does not want to do—even with the League of Nations thrown in. That has been seen time and again already, and I am afraid that those people who desire further and more severe sanctions had better betake themselves to something which promises better success, that is, the cultivation and education of public opinion, bringing that to bear in a reasonable and proper way on the great industrial problems which are perplexing mankind to-day.

Traduction : Sir JOSEPH COOK (Australie) : J'ai l'intention de voter en faveur de la résolution qui vous est soumise parce que j'estime que celle-ci va aussi loin qu'il est possible en l'état actuel. J'ai toujours redouté le moment où les sanctions prévues par le Traité seraient appliquées, car cela mettrait en danger l'existence même de notre Organisation. J'ai pris part aux travaux de la Conférence de la Paix et j'ai collaboré à la rédaction de la Partie XIII. J'ai pris part à ses travaux avec la plus grande sympathie et le plus grand intérêt, parce que j'estimais extrêmement désirable de créer l'Organisation actuelle, mais je me demande s'il n'y a pas eu une erreur en appelant cette Conférence une Conférence du Travail. En réalité, il s'agit d'un organisme intervenant dans la vie industrielle, il s'agit d'un tribunal d'arbitrage international. C'est un organisme où l'opinion publique est saisie des faits. La proposition qui nous est soumise actuellement consiste simplement à réunir des faits et à les soumettre à l'opinion publique. C'est peut-être là une sanction que l'on peut envisager comme la plus efficace, comme celle qui pourra donner les meilleurs résultats. Toutes les autres propositions et sanctions aboutiraient à la proposition de créer un super-Etat. Dans l'état actuel des faits, c'est impossible. On a reconnu par expérience qu'il n'est pas possible d'obliger un Etat à faire ce qu'il ne veut pas faire. Mais si la Société des Nations veut essayer de l'y obliger, l'éducation de l'opinion publique est la meilleure solution. Par l'intervention de l'opinion publique, on pourra obtenir les meilleurs résultats et arriver à une véritable sanction.

M. ZAALBERG (Pays-Bas) — Je me sens un peu le collègue de notre Directeur, car chaque année j'ai à faire un rapport que j'extrais des onze rapports de mes inspecteurs divisionnaires. Vous comprenez que ces rapports sont rédigés avec soin et j'éprouve toujours une grande difficulté à trouver un employé qui puisse combiner ces onze rapports, pour en faire un seul, court et clair. Je ne vois pas, dans la proposition formulée par M. Wolfe, l'intention d'inspecter ou de contrôler, mais seulement de nous mettre en état d'étudier le plus facilement possible tous les renseignements que les Membres de l'Organisation ont communiqués au Bureau international du Travail. Mon pays n'a pas encore ratifié un grand nombre de conventions et c'est sans doute pourquoi je crois pouvoir parler un peu librement. Je n'ai pas contrôlé, mais je puis vous assurer qu'en ce qui me concerne, j'aurais moins d'objections contre beaucoup de ratifications par mon pays si, par ce rapport qui sera rédigé par les experts, on avait plus de

renseignements, plus de certitude sur la manière dont sont appliquées les conventions dans les pays qui les ont ratifiées.

Interpretation : Mr. ZAALBERG (Netherlands): In a way I am a colleague of the Director because every year I have to draw up a report on the basis of eleven reports submitted by my divisional inspectors. I always feel it extremely difficult to co-ordinate these reports and make a single brief, clear report. This seems to me the essential factor in the problem. In Mr. Wolfe's proposal I do not see any system of control ; I find only a means of studying the information communicated by the States.

My country has not ratified many Conventions and therefore I can speak openly. Personally I would not at any time have raised any objection to further ratification if I knew that in submitting my reports I had more instruction as to the form of them, and knew they would be examined by such a Committee.

Mr. COUSINS (South Africa) — It seems to me that there is such a mass of confusion on this subject that a plain statement of a very simple kind may help. We have had what in English we call "red herrings drawn across the track"—sovereignty, infringements of sovereignty, sanctions, and what not. All sorts of difficulties and all sorts of ulterior motives seem to be behind it, so that what should be a simple and reasonable proposition is so obscured that it is regarded on all sides with apparent suspicion. It seems to me a simple proposition that the International Labour Office, in its wisdom and in its experience, finds it necessary to suggest that it should have expert assistance in shedding light on obscure corners of the work.

Now, no man with an honest conscience fears the light. Never. If I were to try to place myself in the position of some of the objectors, I should try to find, and have to find, reasons for my objections, and, quite honestly and frankly, let me say here that the only reason that would suggest itself to me is that I had something to hide. I do not suggest for my own country that there is any measure of perfection—far from it—but the people in my country would never permit the hiding up of things that ought to be shown up ; and I am perfectly sure that the South African Government would accord to the International Labour Office in this matter its full and hearty support in the way of shedding any light that it may require on South African conditions. That is all the Resolution asks for. It is asking us to give information which we can refuse to give ; there is no compulsion upon anybody to give that information ; the Office is given, in the name of this Conference, simply the right to ask for it, and I do not think that any country here has any right to refuse the International Labour Office the whole measure of co-operation in its power. It is for us to say : "If you want this information it is for us to give it to you in full measure without any resistance, without any idea of hiding it ; to give you all the information that we have, in order to allow you to shed all the light upon our affairs that you find necessary for your purposes."

One word more. We have heard the argument that this Conference must appeal to reason, persuasion, and public opinion. Nothing truer has been said in this Conference. But it seems to me that if public opinion is to play its part it must have the real facts before it, not a camouflage, not a pretence, not an unreality, but the actual facts of the case. That is what I appeal for. I do not claim that my voice has any influence here, but as one speaking in the English language to a good many who understand English, I do say this, that it is part of our tradition to face the facts, to know the facts, and let other people know the facts, and we should do that in a fuller measure simply because it is required by this Office for its high and great purpose.

Traduction : M. COUSINS (Afrique du Sud) : Il me semble qu'une telle confusion a été jetée sur la question qu'une déclaration simple et franche sera très utile pour remettre les choses au point. On nous a parlé d'atteinte possible à la souveraineté des Etats, d'infractions possibles au Traité de Paix au sujet d'une proposition qui paraît très simple et on est arrivé ainsi à créer des appréhensions de la part de beaucoup de personnes qui sont maintenant pleines de suspicion à l'égard de cette proposition.

Cette proposition me paraît très claire. Le Bureau international du Travail estime que l'assistance d'experts lui est nécessaire pour s'acquitter de certaines de ses tâches. Or, si nous avons une bonne conscience, — et c'est le cas pour nous tous — nous n'avons rien à craindre. Je ne vois pas quelles peuvent être les raisons des objections formulées. Personnellement, si je m'opposais à la résolution, je ne pourrais avoir qu'une seule raison : c'est quelque chose à cacher. Or, dans mon pays, on n'admettrait jamais la possibilité de cacher ce qui doit être mis en pleine lumière. Je suis certain que mon Gouvernement sera toujours prêt à faire la lumière quand elle doit l'être. Lorsqu'on nous demande des renseignements, nous ne pouvons et nous ne devons pas les refuser. Je crois qu'aucun pays n'a le droit de refuser au Bureau international du Travail la collaboration que celui-ci lui demande, et il doit la lui accorder sans restriction. Personne n'a le droit de cacher ce qu'il est utile de faire connaître. Nous avons entendu dire ici que la Conférence doit faire appel à l'opinion publique. C'est une déclaration absolument juste ; mais, pour cela, il faut que l'opinion publique soit saisie des faits réels. Il faut donc la mettre en face des faits. Ce sera le meilleur moyen pour nous de permettre à notre Organisation de s'acquitter de ses tâches.

Le PRÉSIDENT — Si personne ne demande la parole, il me semble que nous pourrons voter sur les différents paragraphes. Il y aura d'ailleurs occasion de discuter encore chacun d'eux ; puis, nous voterons sur les amendements ; ensuite, nous voterons sur l'ensemble de la résolution.

La résolution commence par une introduction :

« La huitième session de la Conférence internationale du Travail,

« considérant que les rapports présentés par les Etats Membres de l'Organisation en vertu de l'article 408 du Traité de Versailles sont de la plus haute importance,

« et qu'un examen attentif des renseignements qu'ils contiennent permet de connaître la valeur pratique des conventions et d'aider en général aux ratifications... »

Je suppose que personne n'a d'objection à faire à ce paragraphe. Nous arrivons ensuite au cœur même de la résolution :

« recommande d'instituer chaque année une commission de la Conférence chargée d'examiner les résumés des rapports présentés à la Conférence en vertu de l'article 408... »

Il y a, à ce sujet, un amendement de M. de Altea, qui tend à la suppression même de ce paragraphe. Si M. de Altea désire le développer, nous voterons ensuite au sujet de cet amendement.

Interpretation : The PRESIDENT : If nobody else desires to speak I suggest that the Conference should vote on the various paragraphs. It will be possible to move amendments to each paragraph, and to speak to those amendments, and at the end of the discussion there will be a vote on the whole of the Resolution.

The Preamble to the Resolution is as follows : " The Eighth Session of the International Labour Conference,

Considering that the reports rendered by the States Members of the Organisation under Article 408 of the Treaty of Versailles are of the utmost importance,

And that careful examination of the information contained therein is calculated to throw light upon the practical value of the Conventions themselves and to further their general ratification.... "

I presume that there are no observations to be made on that.

The next paragraph is as follows :

" Recommends that a Committee of the Conference should be set up each year to examine the summaries of the reports submitted to the Conference in accordance with Article 408.... "

Count de Altea, the Government Delegate of Spain, has an amendment to move to that.

M. DE ALTEA (Espagne) *parle en espagnol.*

Count DE ALTEA (Spain) *speaks in Spanish.*

Traduction : M. DE ALTEA (Espagne) : Le projet de résolution qu'a présenté la Commission nommée pour étudier les moyens d'utiliser les rapports présentés en exécution de l'article 408 du Traité de Versailles, a sans doute un but digne d'éloge, mais, à mon avis, la méthode suivie n'a pas l'efficacité nécessaire pour aboutir à un résultat satisfaisant.

Selon le régime établi par la Partie XIII du Traité, la ratification de tout projet de convention implique l'obligation, pour l'Etat qui ratifie, de prendre toutes les mesures nécessaires pour assurer l'application de la dite convention. Il est certain que dans chaque pays, l'application effective de la loi nationale adoptée, réformée ou confirmée en vue de la ratification doit faire l'objet des préoccupations justifiées de tous les éléments qui forment l'Organisation internationale du Travail.

Dans l'application des conventions ratifiées, il est possible que les Etats ne les appliquent pas effectivement ou qu'ils n'assurent pas d'une manière satisfaisante l'application de toutes les dispositions. Ces deux cas sont prévus dans les articles 409 et 410 du Traité ; et les articles suivants jusqu'à l'article 420 contiennent toutes les dispositions relatives aux organes compétents pour connaître des plaintes, soit des syndicats ouvriers ou patronaux, soit des Etats Membres de l'Organisation contre quelqu'autre Membre qui n'a pas assuré l'exécution de la convention.

Il est évident que la suggestion du Gouvernement britannique, base du projet de résolution mis en discussion, ne comporte aucune intention de modifier, ni dans le texte, ni dans la pratique, la procédure établie par le Traité, parce que ceci aurait impliqué une modification essentielle du Traité qui ne peut être faite que conformément aux dispositions du Traité (article 422). D'autre part, dans les délibérations au sein de la Commission, M. le Secrétaire général adjoint a dit clairement que les commissions de la Conférence et les experts techniques dont l'établissement est proposé, ne sauraient avoir d'attribution judiciaire, ni de pouvoir d'interprétation.

Par conséquent, la question qui nous occupe rentre dans le domaine des préoccupations qui, en vue de l'efficacité des conventions internationales du Travail, doivent tendre à l'entière uniformité d'application des conventions dans les divers pays et à l'éclaircissement de tout malentendu empêchant l'application exacte, dans la loi nationale, des termes d'une convention.

Il s'agit donc de rechercher la conformité entre les projets de convention ratifiés et les lois nationales qui les mettent en vigueur. Le projet de résolution présenté par la Commission s'inspire certainement de ces idées, comme d'ailleurs l'ont exprimé divers orateurs au sein de la Commission.

A mon avis, la première des propositions, relative à l'établissement, chaque année, par la Conférence, d'une Commission chargée d'examiner le résumé des rapports envoyés par les Gouvernements en vertu de l'article 408, sera inefficace, étant donné que la courte durée de la Conférence ne permet pas à une Commission d'étudier consciencieusement et en détail chacun des différents cas.

D'autre part, par suite du changement chaque année des membres des Commissions, il n'y aurait pas de continuité au sein de la Commission.

Au contraire, le Conseil d'administration du Bureau international du Travail qui est un organe permanent, qui a des relations constantes avec le Directeur, et avec les services techniques du Bureau, qui est composé des trois éléments de l'Organisation internationale du Travail et qui, en vertu de l'article 396 du Traité, en a le droit, est l'organisme adéquat pour remplir une tâche qui ne pourrait sûrement pas être remplie dans les mêmes conditions par une commission de la Conférence, dont la constitution est proposée dans le quatrième paragraphe du projet de résolution.

Pour cette raison, je me permets de proposer à la Conférence d'adopter mon amendement.

Interpretation : Count DE ALTEA (Spain) : Undoubtedly the objects which the Committee

set up to examine reports sent in under Article 408 had before it in drawing up its Resolution are worthy of all praise ; but I fear that the solution reached will not give satisfactory results. Part XIII of the Treaty imposes an obligation on all States which ratify Conventions to apply their provisions by adapting or amending or confirming national laws. It is possible that in certain cases this application will not be entirely satisfactory. Such cases are covered by Articles 409 and 410 of the Treaty of Peace, and those Articles, with those that follow up to 420, lay down the whole procedure for action on complaints of non-application. Evidently, the suggestion of the British Government does not involve changing either in law or practice the provisions of the Treaty, which can only be done in accordance with Article 422. Further, in the Committee itself, the Deputy Secretary-General said quite clearly that the Committee of the Conference and the Committee of technical experts would have neither judicial nor interpretative powers. Thus, all we are trying to do is to obtain the uniform application of the Conventions in the various countries, and enlightenment on such application and on the difficulties of application. The draft Resolution before us seems to be based on this object. Nevertheless, I consider that to set up each year a Committee of the Conference to consider these reports will be of no value. In the first place, the Conference only meets for a short time and it will therefore be impossible for a Committee of the Conference to devote adequate time to such reports. In the second place, the Committees of the Conference lack continuity. On the other hand, we have in the Governing Body of the International Labour Office a permanent body, a body which is in permanent relation with the Director and a body which is composed of the three Groups. I think it is the Governing Body which is more fitted to carry on this work, and for these reasons I venture to ask the Conference to support my amendment, namely, to delete this paragraph of the draft Resolution.

Le PRÉSIDENT — Messieurs, je crois que nous pouvons procéder au vote.

Je vous fais remarquer que la portée de l'amendement de M. de Altea est de supprimer le paragraphe essentiel de la résolution qui est ainsi conçu : « ... recommande d'instituer chaque année une commission de la Conférence chargée d'examiner les résumés des rapports présentés à la Conférence en vertu de l'article 408 ».

Ceux qui sont en faveur de l'adoption de l'amendement et par conséquent de la suppression de ce paragraphe sont priés de lever la main.

Interpretation : The PRESIDENT : The amendment of Count de Altea is to strike out the paragraph reading " Recommends that a Committee of the Conference should be set up each year to examine the summaries of reports submitted to the Conference in accordance with Article 408 ." We will now vote on that amendment.

(Il est procédé au vote à mains levées. L'amendement est repoussé par 58 voix contre 45.)

(A vote is taken by show of hands. The amendment is rejected by 58 votes to 45.)

Le PRÉSIDENT — L'amendement étant repoussé, le paragraphe en question est adopté.

Interpretation : The PRESIDENT : The amendment is lost, and the paragraph is therefore adopted.

M. DE MICHELIS (Italie) — Je ne doute pas que si l'on procède à un vote sur le paragraphe en question, le résultat en soit le même. Mais il me semble que, pour la bonne règle, ce paragraphe doit être aussi mis aux voix. Nous avons voté seulement sur l'amendement de M. de Altea, sans entrer dans le fond de la question, de la proposition qui nous était faite. Je vous demande donc, Monsieur le Président, s'il ne serait pas plus correct de mettre aux voix le paragraphe lui-même.

Interpretation : Mr. DE MICHELIS (Italy) : I do not doubt that a vote taken on the first paragraph of the Resolution would have the same result. Nevertheless, the vote which has been taken was on the amendment only and therefore, for perfect regularity of procedure, I think it would be desirable for the President to put to the vote the paragraph itself.

Le PRÉSIDENT — Je ne veux pas entrer dans des explications, mais il me semble que nous pouvons adopter la procédure proposée par M. de Michelis consistant à voter maintenant sur le paragraphe lui-même. Je voudrais demander aux délégués de vouloir bien occuper leurs places respectives afin de faciliter le décompte des voix.

Interpretation : The PRESIDENT : I agree that the Conference might now vote on the paragraph itself.

(Il est procédé au vote à mains levées. Le paragraphe est adopté par 63 voix contre 38.)

(A vote is taken by show of hands. The paragraph is adopted by 63 votes to 38.)

Le PRÉSIDENT — Nous allons maintenant passer au dernier paragraphe, lequel comporte deux amendements de M. Arthur Fontaine. Je lirai encore le paragraphe et y ajouterai les amendements.

« Et charge le Conseil d'administration du Bureau international du Travail de nommer, à titre d'essai, pour une période de un, deux ou trois ans, une commission technique de six à huit membres ayant pour

mission d'utiliser ces renseignements de la façon la meilleure et la plus complète et d'obtenir telles données » — ici le premier amendement de M. Arthur Fontaine veut ajouter : « prévues dans les formulaires approuvés par le Conseil d'administration »; puis nous continuons « et qui pourraient paraître nécessaires pour compléter les informations déjà fournies ; cette Commission devra » — ici se place le second amendement de M. Arthur Fontaine — « présenter au Conseil d'administration un rapport que le Directeur, après avis de ce Conseil »; puis nous continuons « annexera à son résumé des rapports annuels soumis à la Conférence en vertu de l'article 408 ».

Interpretation : The PRESIDENT : The last paragraph which is to be voted on begins :

" And requests the Governing Body of the International Labour Office to appoint, as an experiment and for a period of one, two or there years,a technical Committee of experts, consisting of six or eight members, for the purpose of making the best and fullest use of this information and of securing such additional data as may be provided for in the forms approved by the Governing Body and found desirable to supplement that already available, and of reporting thereon to the Governing Body, which Report the Director, after consultation with the Governing Body, will annex to his summary of the annual reports presented to the Conference under Article 408."

The text of the amendments will be found on the last page of the *Provisional Record*, No. 8.

Mr. WOLFE (British Empire), *Chairman and Reporter of the Committee on the examination of annual reports under Article 408* — On behalf of my Committee, I desire to accept the two amendments proposed by Mr. Arthur Fontaine, and I would ask the President to incorporate them in the text in putting it to the vote. I accept them because they seem to represent completely the intentions of the Committee.

In regard to the addition of the word "one" before "two or three years," that word was inserted at the suggestion of the Finance Committee, so as to provide for the possibility of the Governing Body pledging its finances in advance. I therefore ask the Conference also to insert that word.

Traduction : M. WOLFE (Empire britannique), *Président et Rapporteur de la Commission de l'article* 408 : Au nom de la Commission, je déclare accepter les deux amendements de M. Arthur Fontaine, et je demanderai au Président, lorsque ce texte sera mis aux voix, d'y incorporer les amendements en question. En ce qui concerne les mots nouveaux « une période de un, deux ou trois ans », ils ont été ajoutés dans le texte à la demande du Comité du budget qui n'a pas voulu engager les finances de l'Organisation pour une période de longue durée.

Sir JOSEPH COOK (Australia) — What is meant by experts? I should have thought there were enough experts already in the department to do that work.

I am very glad that the duration of this proposal may be fixed at one year. I think it should be fixed for one year, so that we may see how this proposed new organisation is going to shape. If you let this thing glide on, you will surely have another elaborate organisation set up in the League, and it does seem to me that that should be avoided, if possible, on the score of expense alone. Besides, I should imagine that by now there are many experts on these questions in the Organisation who could do this work quite well. I sincerely hope it may not be necessary to bring in more experts from outside this Organisation, but rather to utilise those we have under the wise and sane control of the Governing Body. I therefore hope that it will be possible to vote this proposal for one year, just to see how it shapes during that period.

Traduction : Sir JOSEPH COOK (Australie) : Qu'entend-on par expert ?

Je suis heureux de constater que l'on donne la possibilité de limiter le fonctionnement du mécanisme que nous venons d'instituer à une période d'une année. Je crois qu'une telle proposition est sage, car il serait peut-être dangereux de laisser se développer, au sein de notre organisme, un nouveau mecanisme qui ne serait en fait qu'un organe nouveau susceptible d'occasionner des frais importants. Je crois qu'au stade actuel, nous possédons au sein de l'Organisation un grand nombre d'experts qualifiés pour cette tâche. Il me paraît superflu de faire venir ces experts de l'extérieur, alors que nous pouvons utiliser ceux que nous avons au sein de l'Organisation, sous le contrôle du Conseil. Je propose de limiter l'expérience à une période d'une année, afin de nous rendre compte comment fonctionne pratiquement ce nouvel organisme.

Le PRÉSIDENT — Je crois que nous devons procéder au vote.

Je mets d'abord aux voix l'amendement de la Commission du budget qui consiste à ajouter « un » à la quatrième ligne du projet, ce qui ferait lire « à titre d'essai pour une période de un, deux ou trois ans ».

Interpretation : The PRESIDENT : I shall put to the vote the proposal of the Committee to add, in the third line, the word " one, " so as to read : " for a period of one, two or three years. "

(L'amendement est adopté.)

(The amendment is adopted.)

Le PRÉSIDENT — Je mets aux voix le premier amendement de M. Arthur Fontaine

qui consiste à lire, à la vingt-troisième ligne du projet de résolution, « prévues dans les formulaires approuvés par le Conseil d'administration. »

Interpretation : The PRESIDENT : The first amendment of Mr. Arthur Fontaine is to read at line 24 of the Draft Resolution : " ... such additional data as may be provided for in the forms approved by the Governing Body and found desirable... "

(L'amendement est adopté.)

(The amendment is adopted.)

Le PRÉSIDENT — Je mets aux voix le deuxième amendement qui consiste à ajouter, après les mots « cette Commission devra », les mots « présenter au Conseil d'administration un rapport que le Directeur, après avis de ce Conseil... ».

Interpretation : The PRESIDENT : The second amendment of Mr. Arthur Fontaine is to read at line 26 : " ... and of reporting thereon to the Governing Body, which Report the Director, after consultation with the Governing Body, will annex to his summary... "

(L'amendement est adopté.)

(The amendment is adopted.)

Le PRÉSIDENT — Nous pouvons maintenant procéder au vote sur l'ensemble du projet de résolution.

Vingt délégués ayant demandé le vote par appel nominal, nous allons y procéder.

Interpretation : The PRESIDENT : We will now take a vote on the whole of the draft Resolution.

I have received a formal request for a record vote. The vote, therefore, will be a record one.

Vote par appel nominal sur l'ensemble de la résolution proposée par la Commission de l'article 408.

Pour (66).

Afrique du Sud:
M. Cousins.
M. Freestone.
M. Pocock.
M. Curran.

Allemagne:
M. Feig.
M. Hering.
M. Vogel.
M. Müller.

République Argentine:
M. Viola.

Australie:
Sir Joseph Cook.
M. McNeil.
M. Beasley.

Autriche:
M. Hawelka.
M. Weigl.

Belgique:
M. Mahaim.
M. Julin.
M. Mertens.

Brésil:
M. Dias.

Empire britannique:
M. Wolfe.
M. Baker.
Sir James Lithgow.
M. Pugh.

Bulgarie:
M. Nicoloff.

Canada:
M. Riddell.
M. Pacaud.
M. Robb.
M. Moore.

Cuba:
M. Domenech.

Danemark:
M. Bramsnaes.
M. Lassen.
M. Madsen.

Espagne:
M. Caballero.

Esthonie:
M. Gustavson.

Finlande:
M. Halme.

France:
M. Arthur Fontaine.
M. Jules Gautier.
M. Jouhaux.

Grèce:
M. Zakkas.
M. Agalopoulos.
M. Kalomiris.

Hongrie:
M. Jaszai.

Inde:
Sir Atul Chatterjee.
Sir Louis Kershaw.
Sir Arthur Froom.
M. Lajpat Rai.

Etat libre d'Irlande:
M. McGilligan.
M. Deegan.
M. Roycroft.
M. Duffy.

Italie:
M. Rossoni.

Japon:
M. Narasaki.

Lettonie:
M. Rubuls.
M. Duzmans.
M. Visna.

Pays-Bas:
M. Zaalberg.
M. Folmer.
M. de Beaufort.
M. Brautigam.

Pérou:
M. Paulet. [1]

Pologne:
M. Teller.

Royaume des Serbes, Croates et Slovènes:
M. Topalovitch.

Siam:
M. Sanpakitch Preecha.

Suisse:
M. Pfister.
M. Giorgio.
M. Schürch.

Tchécoslovaquie:
M. Stefka.

Contre (36).

République Argentine:
M. Pinto.
M. Dell'Oro Maini.

Autriche:
M. Schmidt.

Belgique:
M. Carlier.

Brésil:
M. de Montarroyos.
M. de Mello.

Chili:
M. Valdés-Mendeville.

Cuba:
M. de Agüero y Bethancourt.
M. Vidal Caro.

Danemark:
M. Oersted.

Espagne:
M. le Comte de Altea.
M. Gascon y Marin.
M. de Biedma.

Esthonie:
M. Masik.

Finlande:
M. Palmgren.

France:
M. Lambert-Ribot.

Hongrie:
M. de Marffy-Mantuano.
M. Nagy de Szentgericze.
M. de Tolnay.

Italie:
M. de Michelis.
M. Ingianni.
M. Olivetti.

Japon
M. Matsukata.

Lettonie:
M. Kurau.

Norvège:
M. Odfjell.

Pologne:
M. Sokal.
M. Gawronski.
M. Trepka.

Roumanie:
M. Comnène.

Royaume des Serbes, Croates et Slovènes:
M. Pétrovitch.
M. Yeremitch.
M. Tchourtchine.

Suisse:
M. Tzaut.

Tchécoslovaquie:
M. Hodac.

Uruguay:
M. Fernandez y Medina.

Venezuela:
M. Zumeta.

[1] Après l'annonce du résultat du vote, M. Paulet, délégué gouvernemental du Pérou, a informé le Greffier de la Conférence que son vote aurait dû être compté parmi les suffrages négatifs.

Record vote on the whole of the Resolution proposed by the Committee on Article 408.

For (66).

South Africa :
Mr. Cousins.
Mr. Freestone.
Mr. Pocock.
Mr. Curran.

Germany :
Mr. Feig.
Mr. Hering.
Mr. Vogel.
Mr. Müller.

Argentina :
Mr. Viola.

Australia :
Sir Joseph Cook.
Mr. McNeil.
Mr. Beasley.

Austria :
Mr. Hawelka.
Mr. Weigl.

Belgium
Mr. Mahaim.
Mr. Julin.
Mr. Mertens.

Brazil :
Mr. Dias.

British Empire :
Mr. Wolfe.
Mr. Baker.
Sir James Lithgow.
Mr. Pugh.

Bulgaria :
Mr. Nicoloff.

Canada :
Mr. Riddell.
Mr. Pacaud.
Mr. Robb.
Mr. Moore

Cuba :
Mr. Domenech.

Denmark :
Mr. Bramsnaes.
Mr. Lassen.
Mr. Madsen.

Spain :
Mr. Caballero.

Esthonia :
Mr. Gustavson.

Finland :
Mr. Halme.

France :
Mr. Arthur Fontaine.
Mr. Jules Gautier.
Mr. Jouhaux.

Greece :
Mr. Zakkas.
Mr. Agalopoulos.
Mr Kalomiris.

Hungary :
Mr. Jaszai.

India :
Sir Atul Chatterjee.
Sir Louis Kershaw.
Sir Arthur Froom.
Mr. Lajpat Rai.

Irish Free State :
Mr. McGilligan.
Mr. Deegan.
Mr. Roycroft.
Mr. Duffy.

Italy :
Mr. Rossoni.

Japan :
Mr. Narasaki.

Latvia :
Mr. Rubuls.
Mr. Duzmans
Mr. Visna.

Netherlands :
Mr. Zaalberg.
Mr. Folmer.
Mr. de Beaufort.
Mr. Brautigam.

Peru :
Mr. Paulet.[1]

Poland :
Mr. Teller.

Kingdom of the Serbs, Croats and Slovenes :
Mr. Topalovitch.

Siam :
Mr. Sanpakitch Preecha.

Switzerland :
Mr. Pfister.
Mr. Giorgio.
Mr. Schürch.

Czechoslovakia :
Mr. Stefka.

Against (36).

Argentina :
Mr. Pinto.
Mr. Dell'Oro Maini.

Austria :
Mr. Schmidt.

Belgium
Mr. Carlier.

Brazil :
Mr. de Montarroyos.
Mr. de Mello.

Chile :
Mr. Valdés-Mendeville.

Cuba :
Mr. de Agüero y Bethancourt.
Mr. Vidal Caro.

Denmark :
Mr. Oersted.

Spain :
Count de Altea.
Mr. Gascon y Marin.
Mr. de Biedma.

Esthonia :
Mr. Masik.

Finland :
Mr. Palmgren.

France :
Mr. Lambert-Ribot.

Hungary :
Mr. de Marffy-Mantuano.
Mr. Nagy de Szentgericze.
Mr. de Tolnay.

Italy :
Mr. de Michelis.
Mr. Ingianni.
Mr. Olivetti.

Japan :
Mr. Matsukata.

Latvia :
Mr. Kurau.

Norway :
Mr. Odfjell.

Poland :
Mr Sokal.
Mr Gawronski.
Mr. Trepka.

Roumania :
Mr. Comnène.

Kingdom of the Serbs, Croats and Slovenes :
Mr. Petrovitch.
Mr. Yeremitch.
Mr. Tchourtchine.

Switzerland :
Mr. Tzaut.

Czechoslovakia :
Mr. Hodac.

Uruguay :
Mr. Fernandez y Medina.

Venezuela :
Mr. Zumeta.

[1] After the declaration of the result of the vote, Mr. Paulet, Peruvian Government Delegate, informed the Clerk of the Conference that his vote should have been counted with those cast against the Resolution.

Le PRÉSIDENT — La résolution est acceptée par 66 voix contre 36.

Interpretation : The PRESIDENT : The Resolution is adopted by 66 votes to 36.

Le PRÉSIDENT — Nous abordons maintenant le point suivant de l'ordre du jour, c'est-à-dire l'examen des résolutions de la Commission de proposition.

Je prie M. le Président de cette commission de bien vouloir prendre place au Bureau.

La première résolution que nous avons à discuter se trouve au numéro 5 du *Compte rendu provisoire.* C'est le projet de résolution concernant les conditions de vie et de travail de la main-d'œuvre indigène de couleur en Afrique et en Amérique. Le projet est présenté par M. Lala Lajpat Rai, délégué ouvrier de l'Inde. Il est ainsi conçu :

« La Conférence internationale du Travail invite le Bureau international du Travail à faire une enquête sur les conditions de vie et de travail de la main-d'œuvre connue en Afrique et en Amérique sous le nom de « main-d'œuvre indigène » et « main-d'œuvre de couleur », à publier les résultats de cette enquête et à inscrire la question à l'ordre du jour d'une prochaine session de la Conférence. »

Quelqu'un demande-t-il la parole sur ce projet de résolution ?

Interpretation : The PRESIDENT : The next business before the Conference will be the consideration of the Resolutions submitted by the Selection Committee. The first of those Resolutions is contained in No. 5 of the *Provisional Record* on page I ; it stands in the name of Mr. Lajpat Rai, Indian Workers' Delegate, and it reads as follows :

" This Conference requests the International Labour Office to make an enquiry into the conditions of life and work of what it known as ' Native Labour ' and ' Coloured Labour ' in the continents of Africa and America, to publish the results of that enquiry and place that question on the Agenda of an early future Conference. "

Does anyone desire to speak on that Resolution, because, if not, I shall consider the Resolution adopted.

Mr. COUSINS (South Africa) — I should be very sorry if a Resolution of this kind went through without comment. I should very much have liked to have heard what was in the mind of the proposer when he drafted this Resolution. If the Conference passes it, I hope that the Conference will be advised as to what this Resolution actually means and what it intends to cover. The Resolution mentions two continents, the continents of Africa and America. I want to know from the mover of the Resolution exactly what he means by it and why these two continents are specified against all others. I would very much sooner that the mover of the Resolution had spoken before I had, because at present I am in the dark. As the mover of the Resolution has not spoken, I think, Mr. President, you will have to allow me to speak, because to South Africa this is a very important and a very vital question. When I return to my Government with a Resolution of this kind from the Conference, they will demand of me that I have discharged my duty in making clear to this Conference what the position of South Africa is in a matter of this kind. It is necessary, therefore, that the Conference should know what it is voting upon; for my own part I do not know. I think I can guess, but I do not know, and I think it is incumbent upon the mover of this Resolution eventually to let us know exactly what is in his mind. Will he kindly take note of the enquiries that I am going to make of him, and when his chance comes, will he enlighten this Conference as to the exact scope of the Resolution which stands in his name ?

If the enquiry is to touch native and coloured labour, as it says, why is Africa and why is America—presumably North and South America—singled out for investigation ? Why is Asia excluded when native and coloured labour is of course used in Asia as largely, if not more largely, than in any other continent in the world ? The reply of the mover will perhaps be that he refers to native and coloured labour under white control. But why does he limit his Resolution to that ? Is it a question of colour that he wishes to touch—white management of coloured labour—or is it that greatly more important question of labour of one class under the control of another class ? And if this is the case, surely there are large areas of employment in Asia—even in India—which call for as close an examination as any labour in Africa, or, to the best of my knowledge, any labour in America. A very intelligent Indian of my acquaintance in Africa once explained to me that the grievances alleged by his countrymen in South Africa were really of a political character, and that they had no actual substance in them, because, said he, "if those grievances were real, my

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ILC, 8th Session, 1926, Record of Proceedings, Appendix V: Article 408 of the Treaty of Versailles, pp. 393–408

SOCIÉTÉ DES NATIONS
LEAGUE OF NATIONS

CONFÉRENCE INTERNATIONALE DU TRAVAIL

INTERNATIONAL LABOUR CONFERENCE

HUITIÈME SESSION — EIGHTH SESSION

GENÈVE — GENEVA
1926

VOLUME I. — PREMIÈRE, DEUXIÈME ET TROISIÈME PARTIES.

VOLUME I. — FIRST, SECOND AND THIRD PARTS.

BUREAU INTERNATIONAL DU TRAVAIL
INTERNATIONAL LABOUR OFFICE
GENÈVE — GENEVA
1926

ANNEXE V. — APPENDIX V.

Article 408 du Traité de Versailles.

Article 408 of the Treaty of Versailles.

1) Suggestions présentées par le Conseil d'administration au sujet de l'institution par la Conférence d'une Commission spéciale pour l'examen des rapports présentés en exécution de l'article 408 du Traité de Versailles.

A la suite d'une proposition formulée par le Gouvernement britannique, le Conseil d'administration a adopté à sa trentième session (janvier 1926) la résolution ci-après :

« Le Conseil d'administration,

« considérant que les rapports présentés par les Etats Membres de l'Organisation, en vertu de l'article 408 du Traité de Versailles, sont de la plus haute importance,

« et qu'un examen attentif des renseignements qu'ils contiennent permet de connaître la valeur pratique des conventions et d'aider en général aux ratifications,

« suggère que la Conférence charge une Commission d'étudier les voies et moyens en vue d'utiliser ces renseignements de la façon la meilleure et la plus complète et d'obtenir telles données qui pourraient paraître nécessaires pour compléter les informations déjà fournies. »

(1) Suggestions submitted by the Governing Body regarding the appointment by the Conference of a special Committee to examine the reports rendered under Article 408 of the Treaty of Versailles.

On the motion of the British Government, the Governing Body adopted the following resolution at its Thirtieth Session in January 1926 :

"The Governing Body,

Considering that the reports rendered by States Members of the Organisation under Article 408 of the Treaty of Versailles are of the utmost importance,

And that careful examination of the information contained therein is calculated to throw light upon the practical value of the Conventions themselves and to further their general ratification,

Suggests that the Conference should appoint a Committee to consider the ways and means of making the best and fullest use of this information and of securing such additional data as may be found desirable to supplement that already available."

2) Note sur la résolution du Conseil d'administration concernant l'examen des rapports présentés par les Gouvernements en exécution de l'article 408 du Traité de Versailles, préparée par le Bureau international du Travail.

Au cours de sa trentième session, le Conseil d'administration a adopté la résolution suivante :

(2) Note on the Resolution of the Governing Body concerning the examination of the reports submitted by Governments in accordance with Article 408 of the Treaty of Versailles, prepared by the International Labour Office.

During its Thirtieth Session the Governing Body adopted the following Resolution :

Le Conseil d'administration,

considérant que les rapports présentés par les Etats Membres de l'Organisation, en vertu de l'article 408 du Traité de Versailles, sont de la plus haute importance,

et qu'un examen attentif des renseignements qu'ils contiennent permet de connaître la valeur pratique des conventions et d'aider en général aux ratifications,

suggère que la Conférence charge une Commission d'étudier les voies et moyens en vue d'utiliser ces renseignements de la façon la meilleure et la plus complète et d'obtenir telles données qui pourraient paraître nécessaires pour compléter les informations déjà fournies.

Le Conseil d'administration a estimé que cette résolution devrait être portée à la connaissance des Gouvernements et, en conséquence, il l'a incorporée dans une lettre circulaire adressée, à la date du 4 mars dernier, aux Gouvernements de tous les Etats Membres de l'Organisation [1].

La Conférence n'ignore pas que les rapports fournis en vertu de l'article 408 du Traité de Versailles par les Etats sur les mesures prises par eux afin de mettre à exécution les dispositions des conventions qu'ils ont ratifiées lui ont été présentés chaque année dans le Rapport du Directeur. Les premières années, lorsque ces rapports n'étaient pas nombreux, on les avait reproduits intégralement ; ensuite ils ont été résumés, conformément aux stipulations de l'article 408 ; dans le Rapport du Directeur à la présente session, on s'est efforcé, pour répondre à une demande présentée par certains membres du Conseil d'administration, de récapituler les informations contenues dans tous les rapports qui ont été reçus jusqu'à présent.

Ce résumé, ainsi qu'on aura pu s'en rendre compte, se présente, en dépit de tous les efforts qui ont été faits pour le maintenir dans de strictes limites, comme un très long document comportant des données complexes d'ordre technique et juridique. Même ainsi, le Bureau sait très bien que le résumé, sous la forme où il se présente, ne saurait suffire à une étude complète des mesures prises en vue de l'application des dispositions des conventions ratifiées ; il serait impossible, par exemple, sans exagérer l'étendue du document, de reproduire les textes législatifs dont il est fait mention constante dans les rapports, et cependant on ne saurait, sans un examen de ces textes, se faire une idée complète de la réalité que représente une convention dans un pays particulier, ou bien de la mesure exacte dans laquelle les conventions sont mises en vigueur.

[1] Voir *Introduction.*

The Governing Body,

Considering that the reports rendered by States Members of the Organisation under Article 408 of the Treaty of Versailles are of the utmost importance,

And that careful examination of the information contained therein is calculated to throw light upon the practical value of the Conventions themselves and to further their general ratification,

Suggests that the Conference should appoint a Committee to consider the ways and means of making the best and fullest use of this information and of securing such additional data as may be found desirable to supplement that already available.

The Governing Body considered that this Resolution should be brought to the notice of Governments, and it was accordingly comprised in a circular letter of 4 March last, addressed to the Governments of all States Members of the Organisation [1].

The Conference is aware that the reports furnished in virtue of Article 408 of the Treaty of Versailles by the States on the measures which they have taken to give effect to the provisions of Conventions which they have ratified, have been brought annually before it in the Director's Report. In the early years, when these reports were not numerous, they were reproduced in full ; later, they were summarised in accordance with the terms of Article 408, and in the Director's Report to the present Session, in response to a demand put forward by members of the Governing Body, an attempt has been made to recapitulate the information contained in all the reports received up to the present.

This summary, as will have been noted, in spite of all efforts which have been made to keep it within bounds, forms a very long document comprising complicated technical and juridical information. Even so, the Office is well aware that the summary, as it stands, is not adequate for a complete study of the measures taken to apply the provisions of ratified Conventions ; it is impossible, for example, without multiplying the size of the document, to reproduce the legislative texts to which constant reference is made; yet without examination of these texts it is not practicable to obtain a complete idea either of what a Convention really involves in a particular country or of the degree to which the Conventions are enforced.

[1] See *Introduction.*

En fait, la Conférence, prise dans son ensemble, n'a pas, jusqu'à présent, pris connaissance du résumé des rapports conformes à l'article 408 qui lui a été présenté chaque année, bien que de temps à autre des délégués aient individuellement attiré son attention sur certains points suggérés par ce résumé ; la raison principale de cette lacune apparente dans l'exécution des intentions du Traité réside probablement dans l'impossibilité d'un examen approfondi de ce résumé, et à plus forte raison des rapports eux-mêmes (on sait que le total de ces rapports pourra s'élever à bref délai à deux cents ou plus par année) sans la création d'un organisme spécialement destiné à ces fins.

Jusqu'à présent, le Bureau s'est limité strictement, dans cet ordre d'idées, aux termes du Traité ; c'est-à-dire qu'il a présenté un résumé des rapports. Le Directeur n'a pas estimé qu'il fût autorisé d'une façon quelconque à essayer d'apprécier ces rapports ni à attirer directement l'attention sur certains cas où il semblait qu'il y avait eu malentendu ou insuffisance, ou non-application des dispositions d'une convention. Mais il est évident que, pour une appréciation convenable de ces rapports, une procédure plus complète est indispensable, et la question se pose — elle est même posée directement par la résolution du Conseil d'administration — de savoir de quelle manière les informations contenues dans les rapports pourraient être utilisées au mieux ou, au besoin, complétées.

Depuis quelque temps, le Bureau a étudié cette question très attentivement ; il partage pleinement le sentiment exprimé dans la résolution sur l'importance des rapports et il a estimé qu'au moment où cette résolution doit être examinée par la Conférence, il serait désirable et opportun de formuler un certain nombre de suggestions.

En premier lieu, l'utilisation de ces rapports constitue clairement, d'après les termes de l'article 408, une question qui relève de la Conférence même. Le rôle du Directeur, tel qu'il a été fixé, se borne à la préparation du résumé de ces rapports. Il semble pourtant que la Conférence peut instituer tout organisme qu'elle jugera utile pour faciliter l'examen de ces rapports et il peut se faire que la Commission qui a été désignée à la session actuelle formule des propositions tendant à l'institution d'un tel organisme.

In point of fact, the Conference as a whole has so far not taken cognisance ot the summary of the reports under Article 408 presented to it each year, though from time to time individual Delegates have drawn attention to points arising from it, and probably the chief reason for this apparent failure to carry out the intention of the Treaty is the impossibility of a thorough examination of this summary, much less of the reports themselves (which, it may be recalled, may be expected shortly to total two hundred or more annually), without the creation of some special machinery for the purpose.

So far, the Office has limited itself strictly in this connection to the terms of the Treaty ; that is to say, it has presented a summary of the reports. The Director has not considered himself entitled in any way to attempt to evaluate them, or to call attention directly to cases of apparent misunderstanding, or insufficient or non-observance of the provisions of a Convention. But for a proper appreciation of these reports, it is obvious that more than this is required, and the question arises — it is posed directly by the Governing Body's Resolution — as to the manner in which the information contained in them can best be utilised and at need supplemented.

The Office has for some time past considered this matter very carefully ; it fully shares the opinion expressed in the Resolution regarding the importance of the reports, and it has considered that, at the moment when this Resolution is under consideration by the Conference, it is desirable and convenient to put forward a number of suggestions.

In the first place, the utilisation of these reports is clearly, under Article 408, a matter for the Conference itself. The function of the Director, as has been stated, is limited to the preparation of a summary of them. It would appear, however, that the Conference may set up any machinery it considers suitable in order that its examination may be facilitated, and it may well be that the Committee which has been set up at the present Session may put forward proposals for the establishment of such machinery.

La première suggestion que l'on pourrait présenter serait que, cette année, cette Commission même et les Commissions analogues qui pourront être instituées aux sessions ultérieures de la Conférence examinent le résumé des rapports ou les rapports eux-mêmes et présentent à la Conférence toutes observations qu'elles pourraient désirer formuler. Il reste cependant extrêmement douteux qu'une telle procédure présente pratiquement de grands avantages. Etant donné l'énorme documentation à examiner dans le court espace de temps disponible, il serait impossible à une telle Commission de remplir sa tâche d'une manière satisfaisante ; en outre, l'accomplissement de cette tâche exigerait très souvent l'intervention d'experts techniques et juristes, et si de tels experts peuvent incontestablement être recrutés parmi les diverses délégations à la Conférence, il serait d'une politique criticable de leur demander de consacrer à ce travail un temps qui serait, en réalité, la totalité du temps dont ils disposent, alors que leur rôle véritable — rôle pour l'accomplissement duquel ils ont été désignés — est d'étudier et de perfectionner les textes en cours d'adoption.

A first suggestion might be that the Committee itself this year, and similar Committees at each succeeding Session of the Conference, should examine the summary report or the reports themselves, and should bring forward to the Conference any observations which they may wish to make. It is very doubtful, however, whether such a procedure would be of great advantage in practice. The vast amount of material to be covered in the short time available renders the task impossible of satisfactory completion ; moreover, the work demands the attention very frequently of technical and juridical experts, and whilst such can no doubt be found among the various delegations to the Conference, it seems a doubtful policy to ask them to devote what must be in effect practically their whole time to this work, when their real function — the function which they have been chosen to fulfil — is that of considering and perfecting the texts in course of adoption.

D'autre part, on peut observer que la Conférence et ses Commissions sont essentiellement des corps délibérants et politiques, composés d'éléments représentant divers intérêts, nationaux ou professionnels, et que, en général, de tels corps ne sont pas les mieux adaptés à la tâche technique dont il s'agit.

Further, it may be observed that the Conference and its Committees are essentially deliberative and political bodies, composed of the representatives of various interests, national or occupational, and that in general such bodies are not the best suited for the technical work now under consideration.

Dans cet ordre d'idées, on aboutit finalement à suggérer qu'une Commission spéciale d'experts qui ne seraient pas désignés en qualité de représentants d'Etats ou d'intérêts particuliers, mais en raison de leurs connaissances et expérience en matière de législation du travail et de conditions du travail, serait peut-être l'organisme le mieux approprié à cet effet. On pourrait demander à cet organisme, en premier lieu et comme première mesure en vue de la préparation des travaux de la Conférence, d'exécuter une tâche purement technique, à savoir l'examen impartial et objectif des rapports ; pour cette raison, la Commission devrait être, de toute évidence, composée de personnes indépendantes et on peut suggérer que la liste de telles personnes, qui avait été établie en vertu de l'article 412 en vue de l'institution éventuelle de Commis-

This line of thought leads to the suggestion that what may perhaps meet the case is a special Committee of experts, chosen not as representatives of States or particular interests, but because of their expert knowledge of labour legislation and labour conditions. Such a body would be called upon to perform, as a first step in preparation for the work of the Conference, a purely technical task, namely, the impartial and objective examination of the reports. It should clearly therefore be composed of persons of independent standing, and it might be suggested that the list of such persons which has been compiled under the terms of Article 412 in view of the possible creation of Commissions of Enquiry, might be drawn upon for the formation of an expert Committee. In any case, it is certain that persons who

sions d'enquête, pourrait être utilisée pour la constitution d'une Commission d'experts. En tout état de cause, il est certain qu'il ne manque pas de personnes qui sont en même temps experts en la matière et indépendantes, et qu'elles peuvent être choisies de manière à ce que ce corps d'experts ait à sa disposition les connaissances nécessaires en ce qui concerne les différents degrés du développement industriel et les conditions diverses de travail dont il faut tenir compte.

Dans le cas où l'institution d'une telle Commission d'experts serait décidée, il reste à examiner quelles seront les relations à établir entre elle d'une part, la Conférence, le Conseil d'administration et le Directeur du Bureau international du Travail d'autre part.

L'article 408 est rédigé dans les termes suivants :

Chacun des Membres s'engage à présenter au Bureau international du Travail un rapport annuel sur les mesures prises par lui pour mettre à exécution les conventions auxquelles il a adhéré. Ces rapports seront rédigés sous la forme indiquée par le Conseil d'administration et devront contenir les précisions demandées par ce dernier. Le Directeur présentera un résumé de ces rapports à la plus prochaine session de la Conférence.

Les termes de cet article établissent très nettement les fonctions des trois organes et il paraît difficile de lui trouver quelque ambiguïté. La fonction du Conseil d'administration consiste à donner des indications en ce qui concerne la forme et le contenu du rapport annuel. Jusqu'ici, la forme et le contenu du rapport ont été suggérés aux Gouvernements au moyen de questionnaires qui avaient reçu l'approbation du Conseil d'administration avant leur envoi aux Gouvernements. Ainsi qu'il a été indiqué ci-dessus, la fonction du Directeur consiste à résumer les rapports et à soumettre ce résumé à la Conférence.

Si, pour les raisons indiquées ci-dessus, on estime désirable qu'une Commission d'experts établisse un rapport, il semble en conséquence qu'un tel rapport devrait être soumis par le Directeur à la Conférence en même temps qu'il lui fait parvenir le résumé qu'il est tenu de préparer en vertu du Traité.

Il serait difficile en effet de rattacher la Commission d'experts directement à la Conférence ou au Conseil d'administration, ceux-ci étant chargés d'autres fonctions nettement définies en vertu du Traité, et il ne semble pas opportun de leur demander un travail qui est très étroitement lié à celui qui est confié au Directeur.

are at the same time expert and independent are not lacking, and they could be chosen in such a way that the expert body would have at its disposal the necessary knowledge concerning the various degrees of industrial development and the varying conditions of labour which must be taken into account.

Should the creation of such a Committee of experts be decided upon, it remains to consider its relations to the Conference, the Governing Body and the Director of the Office.

The terms of Article 408 are as follows :

Each of the Members agrees to make an annual report to the International Labour Office on the measures 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. The Director shall lay a summary of these reports before the next meeting of the Conference.

These terms distinguish very clearly the functions of each of the three bodies, and it would seem difficult to see in them any ambiguity. The function of the Governing Body is that of indicating the form and content of the annual reports ; hitherto both the form and content desired have been suggested to the Governments through questionnaires which have received the approval of the Governing Body before being despatched. The Director's function is, as has been stated above, to summarise the reports and lay his summary before the Conference.

If for the reasons given above a report by a Committee of experts is considered desirable, it would therefore seem that such a report should be forwarded to the Conference by the Director when transmitting the summary which it is his duty under the Treaty to prepare.

It would be difficult to attach the Committee of experts directly to the Conference or to the Governing Body, as they have other and definite functions laid on them by the Treaty, and it would seem improper to ask either of them to undertake a task closely related to that which is laid on the Director.

Par conséquent, la Commission d'experts pourrait être, non pas une Commission instituée directement par la Conférence, mais une Commission instituée par le Directeur, avec l'approbation du Conseil d'administration, conformément aux instructions de la Conférence et chargée d'exécuter un travail particulier en vue de la préparation technique d'une partie du travail de la Conférence.

La Conférence elle-même conserverait ses propres fonctions politiques ; elle serait toutefois conseillée, en ce qui concerne l'état de fait, par cette Commission technique d'experts, et elle pourrait décider, soit directement, soit par l'intermédiaire d'une de ses Commissions, de l'attitude qu'elle pourrait adopter ou des mesures appropriées qui pourraient être prises ou indiquées.

On peut ajouter aussi qu'un tel rapport, établi de source indépendante, serait un élément très utile pour l'évaluation du travail accompli par l'Organisation internationale du Travail, évaluation qu'il conviendrait difficilement au Bureau, en sa qualité de secrétariat de l'Organisation, d'entreprendre lui-même.

La résolution du Conseil d'administration suggère en outre que la Commission à instituer à la présente session devrait « étudier les voies et moyens... en vue d'obtenir telles données *qui pourraient paraître nécessaires pour compléter les informations déjà fournies* ».

Il semble qu'il serait possible d'utiliser également, en vue de cette étude, la Commission d'experts proposée. Au cours de son examen des rapports annuels, elle serait inévitablement conduite à noter les cas où les informations fournies paraissent être insuffisantes pour une appréciation adéquate de la valeur des conventions. Elle pourrait en conséquence estimer, au cours de cet examen, que les questionnaires devraient être élargis ou que d'autres informations devraient être cherchées au moyen d'autres méthodes. Dans ce cas, les suggestions émises par la Commission seraient sans doute notées par le Directeur et portées à la connaissance du Conseil d'administration.

Les termes de la résolution susindiquée peuvent également avoir trait à la possibilité d'obtenir des informations supplémentaires de la part d'un Gouvernement en particulier, à côté des informations requises dans le questionnaire de la part de tous les Gouvernements ayant ratifié une certaine

The Committee of experts might therefore be, not a committee set up directly by the Conference, but a committee created by the Director, on the instructions of the Conference and with the approval of the Governing Body, to carry out a particular task in view of the technical preparation of one part of the work of the Conference.

The Conference itself would conserve its proper political functions, but it would be advised as to the facts by this technical expert Committee, and it would, either directly, or through one of its own Committees, decide upon its attitude and upon what appropriate action it might take or indicate.

It might be added also that such a report from an independent source would be a useful element in the evaluation of the work accomplished by the International Labour Organisation, an evaluation which it would hardly be proper for the Office itself, as the secretariat of the Organisation, to undertake.

The Governing Body's Resolution further suggests that the Committee to be set up at the present Session should "consider the ways and means..... of *securing such additional data as may be found desirable to supplement that already available*".

It would appear possible to utilise the suggested Committee of experts in this connection also. In its examination of the annual reports it would inevitably be led to note the cases where the information supplied appeared to be insufficient for an adequate appreciation of the value of the Conventions. It might find in the course of its examination, therefore, that the questionnaires should be extended, or that further information should be sought by some other method ; if so, its suggestions in this connection would no doubt be noted by the Director and brought to the attention of the Governing Body.

The terms of the Resolution above might also refer to the possibility of obtaining supplementary information from a particular Government, as distinct from the information asked for in the questionnaire from all Governments which have ratified a given Convention. If the report of the

convention. Dans le cas où il résulterait du rapport des experts ou du résumé du Directeur une difficulté ou une obscurité sur un point particulier, la Commission de la Conférence pourrait désirer obtenir des renseignements supplémentaires. La Commission instituée actuellement estimera peut-être qu'il est désirable d'examiner la procédure à suivre dans un cas de ce genre, et par conséquent d'étudier la possibilité de donner à des Gouvernements l'occasion de fournir à la Conférence des informations supplémentaires lorsqu'une question concernant leur pays est soulevée.

Si le principe de la création d'une Commission d'experts est admis, il reste un certain nombre de questions secondaires qu'il y a lieu de mentionner malgré qu'elles ne semblent pas devoir soulever de problèmes d'importance fondamentale.

Il est à supposer que la Commission sera d'un caractère plus ou moins permanent : il se peut que sa composition soit modifiée de temps en temps si l'occasion se fait sentir de demander des connaissances spéciales de certaines conditions de travail, mais, dans l'ensemble, il paraît préférable que le mandat des personnes qui peuvent être nommées soit d'une durée assez prolongée. La meilleure méthode à suivre pour cette désignation semble être que le Directeur, dont le choix serait guidé par la liste déjà constituée en vertu de l'article 412 et par d'autres considérations de même nature, nomme lui-même les membres avec l'approbation du Conseil d'administration.

experts or the summary of the Director indicated a difficulty or an obscurity in a given case, the Committee of the Conference might wish to have supplementary information. The Committee now set up may perhaps think it desirable to examine the procedure to be followed in such a case, and the possibility, for example, of giving Governments the opportunity of supplying supplementary information to the Conference where a question concerning their country comes up.

If the principle of the creation of a Committee of experts be admitted, there remain a number of secondary matters to which reference may be made, though they do not appear to raise questions of major importance.

The Committee would presumably be of a more or less permanent nature : it might be possible to vary its composition from time to time, if occasion appeared to demand a special knowledge of particular conditions of labour ; but on the whole the advantages appear to be on the side of a fairly long tenure of membership by the individuals who may be nominated. The best method of nominating them would appear to be that the Director, guided in his choice by the list already formed under Article 412, or by other considerations of a similar nature, should himself appoint the members, with the approval of the Governing Body.

3) Note sur la composition et les fonctions de la Commission d'experts proposée pour l'examen des rapports annuels sur l'application des conventions ratifiées, préparée par le Bureau international du Travail.

1° La Note du Bureau sur la résolution du Conseil d'administration concernant l'examen des rapports présentés par les Gouvernements en exécution de l'article 408 du Traité de Versailles, mentionnait la Commission d'experts proposée dans des termes qui laissaient supposer que cette Commission aurait un caractère plus ou moins permanent.

L'intention de ces termes quelque peu vagues était double. En premier lieu, il est

(3) Note on the composition and functions of the proposed Committee of experts to examine the annual reports on the application of ratified Conventions, prepared by the International Labour Office.

(1) The note of the Office on the Resolution of the Governing Body concerning the reports submitted by Governments in accordance with Article 408 of the Treaty of Versailles referred to the proposed Committee of experts as being one presumably of a more or less permanent character.

The intention of this somewhat vague phrase was twofold. It is possible, in the

possible que la Conférence désire autoriser la création d'une telle commission à titre d'expérience, et, dans ce cas, on pourrait suggérer provisoirement une période d'un certain nombre d'années pendant laquelle il serait possible à la Conférence d'apprécier la valeur de l'organisme créé et, si elle le juge opportun, de le modifier.

En second lieu, on a pensé qu'il ne serait pas souhaitable de changer chaque année le personnel de la Commission ; il semble préférable de permettre aux membres de la Commission, une fois désignés, d'acquérir une certaine expérience d'une tâche qui se présentera inévitablement comme difficile et complexe.

2° Les fonctions de cette Commission seraient entièrement d'ordre technique et d'aucune façon d'ordre judiciaire. Les articles 409 et suivants du Traité de Paix n'entrent en jeu, on se le rappelle, que dans les cas de plainte concernant la non-exécution de conventions ratifiées ; la procédure d'examen actuellement proposée n'aura de rapports d'aucune sorte avec le mécanisme d'enquête et de sanctions contenu dans ces articles, et son fonctionnement ne saurait reposer sur des plaintes. Il semble donc qu'il n'y a aucun risque de confusion de fonctions entre la Commission d'experts dont la création est proposée, et les Commissions d'enquête mentionnées dans le Traité de Paix.

Ces considérations paraîtront claires si l'on envisage quelle sera la tâche réelle de la Commission d'experts. Celle-ci devrait, selon le Bureau, remplir, dans son examen des rapports annuels, les fonctions suivantes

a) Elle notera les cas où les renseignements fournis semblent ne pas suffire pour l'intelligence complète de la situation, soit en général, soit dans un pays en particulier.

Pour remédier à des lacunes de ce genre, la Commission pourrait suggérer à la Conférence que le Conseil d'administration envisage la revision des questionnaires de manière à obtenir une plus grande précision dans les rapports des Gouvernements en général. Si les lacunes se rapportaient aux rapports d'un pays en particulier, la Commission pourrait suggérer que le Bureau demande par correspondance des détails complémentaires qui pourraient être réclamés sans sortir des limites des questionnaires approuvés par le Conseil d'administration.

first place, that the Conference may wish to authorise the creation of such a Committee as an experiment, in which case a period of years may be suggested provisionally, during which time it will be possible for the Conference to appreciate the value of the machinery created, and if it thinks fit, to modify it.

In the second place, it was thought undesirable to change the personnel of the Committee annually ; it seems better to allow the members, once appointed, to gain some experience of what must inevitably be a difficult and complex task.

(2) The functions of the Committee would be entirely technical and in no sense judicial. Article 409 and the following, it will be recalled, are brought into action only in cases of complaint regarding the non-observance of ratified Conventions: the system of examination now proposed is not in any way concerned with the machinery of enquiry and of sanctions contained in those Articles, and its action is not based upon complaints. There does not appear to be any danger therefore of a confusion of function between the proposed Committee of experts and the Committee of Enquiry mentioned in the Treaty of Peace.

This will be clear from a consideration of the real task of the former. In its examination of the annual reports it should, in the view of the Office, perform the following functions :

(a) It will note the cases where the information supplied appears to be inadequate for a complete understanding of the position either generally, or in a particular country.

To remedy any such deficiencies, it may suggest to the Conference that the Governing Body should take into consideration the revision of the questionnaire with a view to securing greater precision in the reports in general. If the deficiencies concern the report of a particular country, it may suggest that the Office ask by correspondence for any further details which, within the limits of the questionnaires approved by the Governing Body, may be demanded.

b) L'examen de la Commission récélera certainement des cas dans lesquels des pays différents semblent avoir adopté des interprétations divergentes des dispositions des conventions. La Commission devra attirer l'attention sur de tels cas.

c) Enfin, la Commission incorporerait les observations qu'elle aurait faites sur ces divers points dans le rapport technique qu'elle présenterait au Directeur et celui-ci communiquerait ce rapport à la Conférence en même temps que le résumé des rapports annuels qu'il a l'obligation de préparer.

On voit qu'il n'est pas et ne peut être question de convoquer les Gouvernements ou leurs représentants devant la Commission ; celle-ci devrait baser son rapport entièrement sur les informations que les Etats se sont engagés à fournir en ratifiant la convention.

3° Quant aux qualités à demander au personnel de la Commission, elles sont indiquées clairement dans la note du Bureau. On devrait choisir des membres qui possèdent une connaissance approfondie des conditions du travail et de l'application de la législation du travail. Ces membres devraient être des personnalités indépendantes et on devrait les choisir de manière à ce qu'elles représentent, dans la mesure du possible, les divers degrés du développement industriel et les formes différentes des méthodes industrielles qui se rencontrent parmi les Etats Membres de l'Organisation.

On ne pense pas que ces conditions nécessiteraient un nombre important de membres ; plusieurs raisons font croire que, pour une tâche technique de cette sorte, une Commission relativement restreinte serait plus efficace. Le nombre des membres pourrait peut-être descendre jusqu'à six, mais certainement il n'aurait pas à dépasser dix.

4° Le Secrétariat de la Commission pourrait être recruté parmi le personnel du Bureau. On espère que la Commission pourrait se réunir habituellement au mois de mars, époque à laquelle les rapports annuels ont été reçus.

Il est à présumer que le résumé des rapports annuels préparé par le Directeur aurait à être examiné, en même temps que le rapport de la Commission d'experts, par une Commission que la Conférence instituerait à cette fin chaque année.

(b) Its examination will certainly reveal cases in which different interpretations of the provisions of Conventions appear to be adopted in different countries. The Committee should call attention to such cases.

(c) Finally, it would embody its observations on these subjects in its technical report to the Director, who would communicate this report, along with the summary of the annual reports which he is called upon to make, to the Conference.

It will be seen that there is and can be no question of convoking Governments or their representatives before the proposed Committee, which would base its reports entirely upon the information which the States have undertaken, in ratifying the Convention, to supply.

(3) As to the qualities to be expected from the personnel of the Committee, they are clearly indicated in the note of the Office. Members should be chosen who possess intimate knowledge of labour conditions and of the application of labour legislation. They should be persons of independent standing, and they should be so chosen as to represent as far as possible the varying degrees of industrial development and the variations of industrial method to be found among the States Members of the Organisation.

It is not thought that this would necessitate a large Committee ; for many reasons it would appear that for technical work of this kind a relatively small Committee would be more efficient. The number of Members might be perhaps as low as six, but certainly not more than ten.

(4) The Office would furnish the Secretariat of the Committee, which, it is hoped, would be able to meet usually in the month of March at which time the annual reports will have been received.

It is assumed that the Director's summary and the annual reports, together with the report of the Committee of experts would be examined by a Committee appointed by the Conference for the purpose each year.

Les gouvernements auraient en tout cas les mêmes facilités qu'actuellement pour ajouter, par l'intermédiaire de leurs représentants à la Conférence, toutes observations qu'ils pourraient juger désirable de faire, ou pour dissiper toutes obscurités sur lesquelles la Commission d'experts aurait pu attirer leur attention.

Governments would of course have the same opportunities as at present of adding, through their representatives at the Conference itself, any information they may think desirable to make, or of clearing up any obscurities to which the Committee of experts might have drawn attention.

4) Rapport de la Commission de l'article 408 [1].

La Commission nommée le 27 mai 1926 par la huitième session de la Conférence internationale du Travail, afin d'étudier les moyens pour la Conférence d'utiliser les rapports présentés en exécution de l'article 408 du Traité de Versailles, a l'honneur de soumettre le rapport suivant.

A sa séance d'ouverture, la Commission a élu comme président M. Humbert Wolfe, délégué gouvernemental de la Grande-Bretagne, et, comme vice-présidents, M. Vogel, délégué patronal de l'Allemagne, et M. Pugh, délégué ouvrier de la Grande-Bretagne.

L'objet des travaux de la Commission se trouvait formulé dans une résolution que le Conseil d'administration du Bureau international du Travail avait adoptée, sur la proposition du représentant gouvernemental de la Grande-Bretagne, au cours de sa trentième session tenue en janvier 1926, et dont le texte avait été communiqué par le Bureau aux gouvernements des Etats Membres par une lettre-circulaire en date du 4 mars 1926.

Le texte de cette résolution était conçu comme suit:

Le Conseil d'administration,
considérant que les rapports présentés par les Etats Membres de l'Organisation, en vertu de l'article 408 du Traité de Versailles, sont de la plus haute importance,

et qu'un examen attentif des renseignements qu'ils contiennent permet de connaître la valeur pratique des conventions et d'aider en général aux ratifications,

suggère que la Conférence charge une Commission d'étudier les voies et moyens en vue d'utiliser ces renseignements de la façon la meilleure et la plus complète et d'obtenir telles données qui pourraient paraître nécessaires pour compléter les informations déjà fournies.

La Commission était également saisie : 1° d'une Note sur la résolution précédente, préparée par le Bureau international du

[1] Voir *Compte rendu*, pp. 238-244 et 247-260.

(4) Report of the Committee on Article 408 [1].

The Committee appointed by the Eighth Session of the International Labour Conference on 27 May 1926 to examine the methods by which the Conference can make use of the reports submitted under Article 408 of the Treaty of Versailles has the honour to present the following report.

At its opening sitting the Committee elected Mr. Humbert Wolfe, British Government Delegate, to be its Chairman, and Mr. Vogel, German Employers' Delegate, and Mr. Pugh, British Workers' Delegate, to be its Vice-Chairmen.

The terms of reference of the Committee were contained in a Resolution which the Governing Body of the International Labour Office had adopted, on the motion of the British Government Representative, at its Thirtieth Session in January 1926, and the text of which had been communicated by the Office to the Governments of the Members by circular letter of 4 March 1926.

The Resolution is as follows :

The Governing Body,
Considering that the reports rendered by States Members of the Organisation under Article 408 of the Treaty of Versailles are of the utmost importance,

And that careful examination of the information contained therein is calculated to throw light upon the practical value of the Conventions themselves and to further their general ratification,

Suggests that the Conference should appoint a Committee to consider the ways and means of making the best and fullest use of this information and of securing such additional data as may be found desirable to supplement that already available.

The Committee had also before it (1) a Note on this Resolution prepared by the International Labour Office the text of

[1] See *Proceedings*, pp. 238-244 and 247-260.

Travail et dont le texte a été reproduit dans le *Compte rendu provisoire* N° 3, pages II-VII ; 2° d'une seconde Note, que l'on trouvera annexée au présent rapport, sur la composition et les fonctions de la Commission d'experts dont la création avait été suggérée par le Bureau ; cette seconde note avait été préparée pour répondre à des demandes présentées par les membres de la Commission au cours de sa première séance [1]. Enfin, la Commission eut l'opportunité d'entendre les explications verbales données par le Secrétaire général et le Secrétaire général adjoint de la Conférence sur la façon dont ils concevaient les meilleurs moyens de réaliser les desiderata exprimés dans la résolution du Conseil d'administration.

Au cours des discussions préliminaires de la Commission, la situation actuelle concernant l'utilisation des rapports annuels soumis en vertu de l'article 408 fut exposée comme étant la suivante :

L'article 408 du Traité de Versailles stipule : *a)* que les Etats Membres devront présenter au Bureau international du Travail un rapport annuel sur les mesures prises par eux pour mettre à exécution les conventions auxquelles ils ont adhéré ; *b)* que ces rapports seront rédigés sous la forme indiquée par le Conseil d'administration et devront contenir les précisions demandées par ce dernier ; *c)* que le Directeur du Bureau international du Travail présentera un résumé de ces rapports à la Conférence.

En exécution de ces dispositions, les Etats Membres transmettent annuellement au Bureau, suivant les formulaires approuvés par le Conseil d'administration, des rapports dont le nombre s'accroît sans cesse, au fur et à mesure que celui des ratifications augmente, et, depuis plusieurs années, le Directeur a présenté à la Conférence, dans la seconde partie de son Rapport, des résumés de ces rapports annuels. Cependant les rapports n'ont pas été examinés par la Conférence, ou tout au plus ont-ils été mentionnés au passage dans les discours individuels de certains délégués. Les discussions dont le Rapport du Directeur a été l'occasion ont porté presque exclusivement sur la question de la ratification des conventions, sans toucher à la question de l'application des conventions par les pays qui les ont ratifiées.

[1] Pour le texte de ces deux notes, voir sous le numéro 2) et 3) de la présente annexe.

which was printed in the *Provisional Record* No. 3, pp. II-VII; and (2) a further Note, attached to this report, on the composition and functions of the Committee of experts suggested by the Office which was prepared in response to requests made by the members of the Committee during the first sitting [1]. Finally, the Committee had the advantage of hearing verbal explanations by the Secretary-General and the Deputy-Secretary-General of the Conference of their views on the best manner of realising the desiderata expressed in the Governing Body's Resolution.

In the course of the Committee's preliminary discussions the existing situation with regard to the utilisation of the annual reports under Article 408 was shown to be as follows :

Article 408 of the Treaty of Versailles provides *(a)* that the Member States shall make an annual report to the International Labour Office on the measures they have taken to give effect to the provisions of Conventions to which they are parties; *(b)* that these reports shall be made in such form and shall contain such particulars as the Governing Body may request; and *(c)* that the Director of the International Labour Office shall lay a summary of these reports before the Conference.

In pursuance of these provisions, the Member States are forwarding annually to the Office, in the form approved by the Governing Body, reports the numbers of which constantly increase as the number of ratifications increases, and for several years the Director has submitted summaries of these reports to the Conference in the Second Part of his Report. Nevertheless, the reports have not been considered by the Conference, or at the best have only been given passing reference in the speeches of individual Delegates. The discussions of the Director's Report have turned almost exclusively on the question of ratifications of Conventions, leaving untouched the question of the application of Conventions by the countries which have ratified them.

[1] For the text of these two Notes, see under (2) and (3) of this Appendix.

Or la question de l'application des conventions est au moins aussi importante que celle des ratifications, et si l'on veut que les discussions dont le Rapport du Directeur fournit l'occasion aux sessions successives de la Conférence remplissent réellement un rôle efficace dans cet ordre d'idées, on doit trouver des moyens de concentrer plus intensément l'attention sur ce côté de l'activité de l'Organisation.

Il n'est pas difficile d'apercevoir pourquoi la question de l'application des conventions, dont l'importance est reconnue unanimement, n'a pas jusqu'à présent réussi à retenir l'attention de la Conférence. La raison doit en être cherchée plus particulièrement dans l'étendue et dans la complexité technique du résumé des rapports annuels, qui constitue la seconde partie du Rapport du Directeur. Si l'on veut que les informations sur l'application des conventions qui sont données dans ce résumé puissent fournir la base d'une discussion par la Conférence, elles devraient être préparées sous une forme plus assimilable et de façon à concentrer l'attention sur les points qui peuvent être discutés de la manière la plus utile et la plus profitable.

Sur ces constatations, votre Commission a été en somme unanime. A sa seconde séance, la Commission fut donc en mesure d'adopter une résolution présentée par M. Cousins, délégué gouvernemental de l'Afrique du Sud, qui acceptait provisoirement le principe de l'institution d'une commission spéciale, sous la réserve que les fonctions du nouvel organisme proposé seraient définies subséquemment à la satisfaction de la Commission. Les seules divergences d'opinion qui se manifestèrent sur ce point au sein de la Commission portaient sur la question de savoir s'il n'eût pas été préférable d'examiner en premier lieu les fonctions de l'organisme proposé. Mais une proposition présentée en ce sens par M. Cort van der Linden (délégué patronal des Pays-Bas) fut rejetée, et la résolution de M. Cousins fut alors adoptée dans les termes suivants:

La Commission accepte provisoirement le principe de la nomination d'une commission chargée d'examiner l'application des conventions ratifiées par les Etats Membres ; mais elle ne confirmera cette résolution et ne recommandera définitivement la nomination d'une telle commission que lorsque les fonctions de celle-ci auront été définies à la satisfaction de la Commission et de manière à éviter toute infraction aux droits reconnus dans le Traité de Paix.

But the question of the application of Conventions is at least as important as that of ratifications, and if the discussions of the Director's Report at the Sessions of the Conference are really to fulfil a useful purpose in this connection some means must be found of focussing more attention upon this aspect of the work of the Organisation.

It is not difficult to perceive why the question of the application of Conventions, the importance of which is after all universally recognised, has hitherto failed to arrest the attention of the Conference. The reason is to be found more particularly in the extent and technical complexity of the summary of the annual reports which constitutes the Second Part of the Director's Report. If the information concerning the application of Conventions given in the summary is to form the basis of discussion by the Conference, it must be prepared in a more digested form, a form which will concentrate attention upon those points which can most usefully and profitably be discussed.

Upon these findings your Committee was practically unanimous. At its second sitting, therefore, the Committee was able to adopt a resolution, submitted by Mr. Cousins, South African Government Delegate, agreeing provisionally to the appointment of a special Committee, subject to the functions of the proposed new body being subsequently defined to the satisfaction of the Committee. The only differences of opinion within the Committee on this point related to the question whether it would not have been better to consider the functions of the proposed body first. A motion by Mr. Cort van der Linden (Netherlands Employers' Delegate) to this effect was, however, defeated, and Mr. Cousins' resolution was then adopted in the following terms :

That this Committee agrees provisionally to the principle of the appointment of a Commission to examine the application of the ratification of Conventions by Member nations, but will only confirm this resolution and recommend the appointment of such a Commission when its functions have been defined to the satisfaction of the Committee and are found not to infringe any Treaty rights.

Les deux Notes présentées par le Bureau international du Travail et commentées par

The two Notes submitted by the International Labour Office and elaborated by the

les discours du Secrétaire général et du Secrétaire général adjoint concluaient : *a)* en faveur de la désignation par le Directeur, à titre d'expérience pour une période de plusieurs années et avec l'approbation du Conseil d'administration, d'une Commission technique composée de six experts au moins ou de dix au plus ; *b)* que le rôle de cette Commission serait d'examiner les rapports annuels en vue de noter les lacunes et les obscurités des rapports ainsi que les divergences constatées dans l'application par les différents pays des dispositions des conventions ; et *c)* de fournir au Directeur un rapport sur ces sujets. Il était suggéré en outre que le Directeur devrait présenter à la Conférence le rapport de cette Commission d'experts en même temps que le résumé qu'il doit faire lui-même des rapports annuels, et qu'une Commission de la Conférence serait instituée chaque année pour examiner ce rapport technique et le résumé des rapports des Etats.

Certaines appréhensions furent manifestées par plusieurs membres de la Commission sur le point de savoir si les fonctions ainsi déterminées ne pourraient pas être de nature à porter atteinte à la souveraineté des Etats Membres ou aux droits des autres organes prévus dans le Traité. Mais il fut reconnu que la Commission d'experts ne devrait pas assumer de fonctions d'ordre judiciaire et qu'elle ne serait pas compétente pour donner des interprétations des dispositions des conventions ni pour se prononcer en faveur d'une interprétation plutôt que d'une autre. Elle ne pourrait donc empiéter sur les fonctions des Commissions d'enquête et de la Cour permanente de Justice internationale en ce qui concerne les réclamations présentées sur la non-exécution des conventions ratifiées ou en ce qui concerne l'interprétation de celles-ci. Le sentiment de la Commission fut que les fonctions positives de la Commission d'experts pourraient être définies conformément aux termes du paragraphe 2 de la seconde Note présentée par le Bureau; ce paragraphe, après un amendement apporté par la Commission à l'alinéa *c)*, se lisait comme suit :

(2) Les fonctions de cette commission seraient entièrement d'ordre technique et d'aucune façon d'ordre judiciaire. Les article 409 et suivants du Traité de Paix n'entrent en jeu, on se le rappelle, qu'en cas de plainte concernant la non-exécution des conventions ratifiées ; la procédure d'examen actuellement proposée n'aura de rapports d'aucune sorte avec le mécanisme d'enquête et de sanctions contenu dans ces articles, et son fonctionnemen ne saurait reposer sur des plaintes. Il sembl pone qu'il n'y a aucun risque de confusion d

speeches of the Secretary-General and the Assistant Secretary-General concluded in favour of *(a)* the appointment by the Director, as an experiment for a period of several years and with the approval of the Governing Body, of a technical Committee of not less than six or more than ten experts; *(b)* that its function would be to examine the annual reports with a view to noting deficiencies and obscurities in the reports and differences in the application of the provisions of Conventions by different countries ; and *(c)* to report upon these matters to the Director. It was further suggested that the Director should submit the report of this Committee of experts to the Conference together with his summary of the annual reports, and that a Committee of the Conference should be appointed each year to consider this technical report and the summary.

Some fear was expressed by certain members of the Committee as to whether the functions thus outlined might not be such as to trespass upon the sovereign rights of the States Members, or upon the powers of the other organs provided for in the Treaty. It was agreed however that the Committee of experts would have no judicial capacity nor would it be competent to give interpretations of the provisions of the Conventions nor to decide in favour of one interpretation rather than of another. It could not therefore encroach upon the functions of the Commissions of Enquiry and of the Permanent Court of International Justice in regard to complaints regarding the non-observance of ratified Conventions or in regard to their interpretation. In the Committee's view, the functions of the Committee of experts could be defined positively in the terms of paragraph 2 of the second Note submitted by the Office, which, with an amendment made by the Committee to sub-paragraph *(c)*, reads as follows :

(2) The functions of the Committee would be entirely technical and in no sense judicial. Article 409 and the following, it will be recalled, are brought into action only in cases of complaint regarding the non-observance of ratified Conventions: the system of examination now proposed is not in any way concerned with the machinery of enquiry and of sanctions contained in these Articles, and its action is not based upon complaints. There does not appear to be any danger therefore of a confusion of function between the

fonctions entre la Commission d'experts dont la création est proposée et les Commissions d'enquête mentionnées dans le Traité de Paix.

Ces considérations paraîtront claires si l'on envisage quelle sera la tâche réelle de la Commission d'experts. Celle-ci devrait, selon le Bureau, remplir, dans son examen des rapports annuels, les fonctions suivantes :

a) Elle notera les cas où les renseignements fournis semblent ne pas suffire pour l'intelligence complète de la situation, soit en général, soit dans un pays en particulier.

Pour remédier à des lacunes de ce genre, la Commission pourrait suggérer à la Conférence que le Conseil d'administration envisage la revision des questionnaires de manière à obtenir une plus grande précision dans les rapports des gouvernements en général. Si les lacunes se rapportaient aux rapports d'un pays en particulier, la Commission pourrait suggérer que le Bureau demande par correspondance des détails complémentaires qui pourraient être réclamés sans sortir des limites des questionnaires approuvés par le Conseil d'administration.

b) L'examen de la Commission révélera certainement des cas dans lesquels des pays différents semblent avoir adopté des interprétations divergentes des dispositions des conventions. La Commission devra attirer l'attention sur de tels cas.

c) Enfin, la Commission présenterait un rapport technique au Directeur et celui-ci communiquerait ce rapport à la Conférence en même temps que le résumé des rapports annuels qu'il a l'obligation de préparer.

On voit qu'il n'est pas et ne peut être question de convoquer les gouvernements ou leurs représentants devant la Commission ; celle-ci devrait baser son rapport entièrement sur les informations que les Etats se sont engagés à fournir en ratifiant la convention.

Ayant ainsi défini les fonctions du nouvel organisme, la Commission procéda ensuite à l'examen de la nature de cet organisme et de la question de savoir s'il faudrait nommer une ou deux commissions. Certains membres estimèrent qu'une résolution demandant qu'une commission spéciale de la Conférence soit nommée chaque année pour examiner le résumé des rapports annuels présentés par le Directeur, pourrait suffire ; ils faisaient ressortir que le travail d'analyse préliminaire que l'on proposait de confier à un corps d'experts pourrait être exécuté par le Directeur et son personnel. En réponse à cet argument, on fit remarquer que les fonctions du Directeur étaient strictement limitées par le Traité de paix et que l'on s'exposait au risque de voir accuser le Directeur et le Bureau de dépasser leurs pouvoirs ; en outre, il semblait désirable que le Directeur fût aidé dans une tâche qui doit évidemment se révéler parfois difficile et délicate, par un organisme complètement impartial qui échapperait à tout soupçon de se laisser conduire par des considérations autres que celles d'une nature purement technique.

A ce stade de la discussion, les points de vue des membres de la commission trouvèrent leur formule précise dans plusieurs résolutions : 1° une résolution de M. Pfister,

proposed Committee of experts and the Committees of Enquiry mentioned in the Treaty of Peace.

This will be clear from a consideration of the real task of the former. In its examination of the annual reports it should, in the view of the Office, perform the following functions :

(a) It will note the cases where the information supplied appears to be inadequate for a complete understanding of the position either generally, or in a particular country.

To remedy any such deficiencies, it may suggest to the Conference that the Governing Body should take into consideration the revision of the questionnaires with a view to securing greater precision in the reports in general. If the deficiencies concern the report of a particular country, it may suggest that the Office ask by correspondence for any further details, which, within the limits of the questionnaires approved by the Governing Body, may be demanded.

(b) Its examination will certainly reveal cases in which different interpretations of the provisions of Conventions appear to be adopted in different countries. The Committee should call attention to such cases.

(c) Finally, it would present a technical report to the Director, who would communicate this report, along with the summary of the annual reports which he is called upon to make, to the Conference.

It will be seen that there is and can be no question of convoking Governments or their representatives before the proposed Committee, which would base its reports entirely upon the information which the States have undertaken, in ratifying the Convention, to supply.

Having thus defined the functions of the new body, the Committee proceeded to consider what its nature should be, and whether one or two Committees should be appointed. It was held by some members that a resolution calling for the appointment each year of a special Committee of the Conference to consider the Director's summary of the Article 408 Reports should suffice ; the preliminary work of analysis which it was proposed to confide to a Committee of experts could, it was urged, be carried out by the Director and his staff. In reply to this argument it was pointed out that the function of the Director was strictly limited by the Treaty of Peace and that there might be a danger of the Director and the Office being accused of exceeding that function; moreover it seemed desirable that the Director should be aided in a task which must inevitably be at times difficult and delicate, by a completely impartial body which could not be subject to the suggestion that it might be affected by considerations other than those of a technical nature.

At this stage the views of the members of the Committee were put into definite form by resolutions submitted by (1) Mr. Pfister, Swiss Government Delegate, sug-

délégué gouvernemental de la Suisse, qui suggérait la nomination par le Directeur, avec l'approbation du Conseil d'administration, d'une commission technique de six membres désignés provisoirement pour une période de trois années ; 2° une résolution de M. Cort van der Linden, délégué patronal des Pays-Bas, qui recommandait la nomination annuelle d'une commission de la Conférence chargée d'examiner les résumés des rapports soumis en vertu de l'article 408, demandait au Conseil d'administration d'examiner l'opportunité d'instituer, sous sa responsabilité, une commission d'experts dans le but de faciliter les travaux de la commission de la Conférence, et priait enfin le Conseil, s'il était d'avis que la création d'une telle commission n'était pas opportune, d'exposer ses raisons dans un rapport à la dixième Conférence ; 3° une résolution de M. Gérard, conseiller technique du délégué patronal de Belgique, qui recommandait la nomination annuelle d'une commission de la Conférence chargée d'examiner la partie du Rapport du Directeur relative aux rapports des Etats et d'attirer l'attention de la Conférence sur l'importance de cette partie ainsi que sur les améliorations qui pourraient être apportées à la forme des rapports annuels ; enfin, 4° une résolution de M. Waline, conseiller technique du délégué patronal français, qui recommandait aussi la nomination, à chaque session de la Conférence, d'une commission spéciale de la Conférence, invitait le Directeur à fournir à cette commission toutes explications utiles et priait le Conseil d'administration d'examiner par quels moyens le travail de cette commission pourrait être utilement préparé, dans les limites prévues par le Traité, soit par le Bureau lui-même, soit, suivant les circonstances, par les experts qui paraîtraient qualifiés.

Les résolutions présentées par M. Gérard et par M. Waline furent retirées en faveur de celle de M. Cort van der Linden et, en conséquence, le Président invita la commission à se prononcer sur les résolutions de M. Pfister et de M. Cort van der Linden, dans l'ordre suivant :

1° La première partie de la résolution de M. Cort van der Linden, qui était le seul texte dont la Commission fût actuellement saisie et où fût posée la question de la nomination annuelle d'une commission de la Conférence chargée d'examiner les rapports présentés en vertu de l'article 408. Cette proposition fut adoptée par 28 voix contre 3,

gesting the appointment by the Director with the approval of the Governing Body of a technical Committee of six experts for a provisional period of three years; (2) by Mr. Cort van der Linden, Netherlands Employers' Delegate, recommending the appointment each year of a Committee of the Conference to examine the summaries of the reports rendered under Article 408 and asking the Governing Body to consider the expediency of setting up under its responsibility a Committee of experts to facilitate the work of the Committee of the Conference—the Governing Body to report to the Tenth Session of the Conference if it did not consider the appointment of such a Committee expedient and to give its reasons for this opinion; (3) by Mr. Gerard, Belgian Employers' Adviser, recommending the appointment each year of a Committee of the Conference to examine the part of the Director's Report relating to the annual reports and to call the attention of the Conference to the importance of this part and to the improvements which might be made in the form of the annual reports; and (4) by Mr. Waline, French Employers' Adviser, also recommending the appointment each year of a special Committee of the Conference, inviting the Director to furnish the Committee with all necessary assistance, and requesting the Governing Body to consider the manner in which the work of the Committee could be adequately prepared within the limits of the provisions of the Treaty, either by the Office itself, or, if necessary, by properly qualified experts.

The resolutions proposed by Mr. Gerard and Mr. Waline were, however, withdrawn in favour of that presented by Mr. Cort van der Linden, and the Chairman therefore invited the Committee to vote on Mr. Pfister's and Mr. Cort van der Linden's resolutions in the following order :

(1) The first part of Mr. Cort van der Linden's resolution, as this was the only proposal before the meeting relating to the appointment each year of a Committee of the Conference to examine the reports under Article 408—this was adopted by 28 votes to 3;

2° La deuxième partie de la proposition de M. Cort van der Linden, qui constituait un amendement à la proposition de M. Pfister. Cette partie fut rejetée par 18 voix contre 13.

3° Enfin, après le rejet de la seconde partie de la résolution de M. Cort van der Linden, la résolution de M. Pfister, amendée de manière à préciser que la Commission d'experts proposée devrait être nommée par le Conseil d'administration et à rendre la rédaction plus élastique en ce qui concerne le nombre des membres et la durée de l'essai. Cette résolution fut adoptée par 23 voix contre 6.

En conséquence, la Commission a l'honneur de soumettre à l'examen de la Conférence le projet de résolution qui suit :

PROJET DE RÉSOLUTION.

La huitième session de la Conférence internationale du Travail,

considérant que les rapports présentés par les Etats Membres de l'Organisation en vertu de l'article 408 du Traité de Versailles sont de la plus haute importance,

et qu'un examen attentif des renseignements qu'ils contiennent permet de connaître la valeur pratique des conventions et d'aider en général aux ratifications,

recommande d'instituer chaque année une commission de la Conférence chargée d'examiner les résumés des rapports présentés à la Conférence en vertu de l'article 408,

et charge le Conseil d'administration du Bureau international du Travail de nommer, à titre d'essai pour une période de deux ou trois ans, une commission technique de six à huit membres ayant pour mission d'utiliser ces renseignements de la façon la meilleure et la plus complète et d'obtenir telles données qui pourraient paraître nécessaires pour compléter les informations déjà fournies ; cette Commission devra également présenter au Directeur un rapport qu'il annexera à son résumé des rapports annuels soumis à la Conférence en vertu de l'article 408.

Genève, le 1er juin 1926.

(Signé) Humbert WOLFE, *Président.*

(2) The second part of Mr. Cort van der Linden's resolution as an amendment to Mr. Pfister's resolution—this was rejected by 18 votes to 13;

(3) Finally, as the second part of Mr. Cort van der Linden's resolution was not adopted, Mr. Pfister's resolution, amended to make it clear that the proposed Committee of Experts should be appointed by the Governing Body, and to make the wording more elastic as regards the number of members of the Committee and the duration of the experiment, was adopted by 23 votes to 6.

The Committee has, therefore, the honour to submit the following draft Resolution for the consideration of the Conference :

DRAFT RESOLUTION.

The Eighth Session of the International Labour Conference,

Considering that the reports rendered by the States Members of the Organisation under Article 408 of the Treaty of Versailles are of the utmost importance,

And that careful examination of the information contained therein is calculated to throw light upon the practical value of the Conventions themselves and to further their general ratification,

Recommends that a Committee of the Conference should be set up each year to examine the summaries of the reports submitted to the Conference in accordance with Article 408,

And requests the Governing Body of the International Labour Office to appoint, as an experiment and for a period of two or three years, a technical Committee of experts, consisting of six or eight members, for the purpose of making the best and fullest use of this information and of securing such additional data as may be found desirable to supplement that already available, and of reporting thereon to the Director who will annex this report to his summary of the annual reports presented to the Conference under Article 408.

Geneva, 1 June 1926.

(Signed) Humbert WOLFE, *Chairman.*

Document No. 73

ILC, 8th Session, 1926, Record of Proceedings, Appendix VII: Resolution concerning the methods by which the Conference can make use of the reports submitted under Article 408 of the Treaty of Versailles, p. 429

SOCIÉTÉ DES NATIONS
LEAGUE OF NATIONS

CONFÉRENCE INTERNATIONALE DU TRAVAIL

INTERNATIONAL LABOUR CONFERENCE

HUITIÈME SESSION — EIGHTH SESSION

GENÈVE — GENEVA
1926

VOLUME I. — PREMIÈRE, DEUXIÈME ET TROISIÈME PARTIES.

VOLUME I. — FIRST, SECOND AND THIRD PARTS.

BUREAU INTERNATIONAL DU TRAVAIL
INTERNATIONAL LABOUR OFFICE
GENÈVE — GENEVA
1926

ANNEXE VII. — APPENDIX VII.

Résolutions adoptées par la Conférence.

Resolutions adopted by the Conference.

1) Résolution concernant les moyens pour la Conférence d'utiliser les rapports présentés en exécution de l'article 408 du Traité de Versailles, soumise par la Commission de l'article 408 [1].

La huitième session de la Conférence internationale du Travail,

considérant que les rapports présentés par les Etats Membres de l'Organisation en vertu de l'article 408 du Traité de Versailles sont de la plus haute importance,

et qu'un examen attentif des renseignements qu'ils contiennent permet de connaître la valeur pratique des conventions et d'aider en général aux ratifications,

recommande d'instituer chaque année une commission de la Conférence chargée d'examiner les résumés des rapports présentés à la Conférence en vertu de l'article 408,

et charge le Conseil d'administration du Bureau international du Travail de nommer, à titre d'essai pour une période de un, deux ou trois ans, une commission technique de six à huit membres ayant pour mission d'utiliser ces renseignements de la façon la meilleure et la plus complète et d'obtenir telles données prévues dans les formulaires approuvés par le Conseil d'administration et qui pourraient paraître nécessaires pour compléter les informations déjà fournies ; cette Commission devra présenter au Conseil d'administration un rapport que le Directeur, après avis de ce Conseil, annexera à son résumé des rapports annuels soumis à la Conférence en vertu de l'article 408.

[1] Voir *Compte rendu*, pp. 238-244, 247-260 et Annexe V.

(1) Resolution concerning the methods by which the Conference can make use of the reports submitted under Article 408 of the Treaty of Versailles, submitted by the Committee on Article 408 [1].

The Eighth Session of the International Labour Conference,

Considering that the reports rendered by the State Members of the Organisation under Article 408 of the Treaty of Versailles are of the utmost importance,

And that careful examination of the information contained therein is calculated to throw light upon the practical value of the Conventions themselves and to further their general ratification,

Recommends that a Committee of the Conference should be set up each year to examine the summaries of the reports submitted to the Conference in accordance with Article 408,

And requests the Governing Body of the International Labour Office to appoint, as an experiment and for a period of one, two or three years, a technical Committee of experts, consisting of six or eight members, for the purpose of making the best and fullest use of this information and of securing such additional data as may be provided for in the forms approved by the Governing Body and found desirable to supplement that already available, and of reporting thereon to the Governing Body, which report the Director, after consultation with the Governing Body, will annex to his summary of the annual reports presented to the Conference under Article 408.

[1] See *Proceedings*, pp. 238-244, 247-260 and Appendix V.

Document No. 74

Minutes of the 103rd Session of the Governing Body, December 1947, Questions Arising out of the Examination of the Annual Reports on the Application of Conventions and Extension of Terms of Reference of the Committee of Experts, pp. 56–59

INTERNATIONAL LABOUR OFFICE

MINUTES

OF THE

103RD SESSION

OF

THE GOVERNING BODY

GENEVA — 12-15 DECEMBER 1947

in force and until the proposed regulations had been approved by the Governing Body, the Director-General would have the constitutional power to appoint staff at all because so far as he knew the present staff regulations had never received the approval of the Governing Body. It was important that the decisions called for under the revised Constitution should be taken without delay and that the matter should not be postponed from one session to another.

The Governing Body approved the report of the Staff Questions Committee.

Declaration of Loyalty by Assistant Directors-General Mr. Johnston and Mr. Viple

The Director-General said that certain parts of the Staff Regulations had been approved not only by the Governing Body but by the Conference. One of those regulations provided that Assistant Directors-General must make before the Governing Body in prescribed terms a declaration of loyalty. Mr. Johnston and Mr. Viple had not yet had the opportunity of making that declaration.

Mr. G. A. Johnston and Mr. M. Viple each made the following declaration :

I solemnly undertake to exercise in all loyalty, discretion and conscience the functions that have been entrusted to me as Assistant Director-General of the International Labour Office, to discharge my functions and regulate my conduct with the interests of the International Labour Organisation alone in view, and not to seek or receive instructions from any Government or other authority external to the International Labour Office.

THIRD ITEM ON THE AGENDA

Industrial Committees (continued)

Appointment of Members of the Committee on Industrial Committees.

The Governing Body approved the following nominations submitted by the three groups :

Government group :	Belgium.	
	United Kingdom.	
	United States.	
Employers group :	Sir John FORBES WATSON.	
	Mr. WALINE.	
	Mr. ZELLERBACH.	
Substitutes :		Mr. ERULKAR.
		Mr. FENNEMA.
Workers' group :	Mr. FENTON.	
	Sir Joseph HALLSWORTH.	
	Mr. JOUHAUX.	
Substitutes :		Mr. FINET.
		Mr. JOSHI.
		Mr. NORDAHL.

TWELFTH ITEM ON THE AGENDA

Questions Arising out of the Examination of the Annual Reports on the Application of Conventions and Extension of Terms of Reference of the Committee of Experts

Mr. G. A. Johnston (Assistant Director-General) reminded the Governing Body that this question had come before it as a result of decisions taken by the Conference at its 30th Session. The Conference Committee on the Application of Conventions had devoted special attention to the situation in regard to the application of

Conventions, and had made certain suggestions with a view to improving the conditions under which the work of the Committee of Experts might be carried out. Secondly, the Conference had adopted an amendment to Article 7 of its Standing Orders in order to make it possible for the Conference Committee on the Application of Conventions to take cognisance of additional information and reports submitted under Articles 19 and 35 of the amended Constitution.

The question now arose of broadening correspondingly the terms of reference of the Committee of Experts. He would confine himself to drawing attention to the points on which the Governing Body was asked to take a decision.

It had been suggested in the Conference Committee in 1947 that, in view of the special conditions under which the work of the Committee of Experts took place, it might be desirable to consider providing for the suitable remuneration of its members. It was suggested in the Office note that consideration of this question might be postponed until the Office was in a position to submit a more detailed note to the Governing Body.

It had also been suggested that the Committee of Experts should be allowed more time to carry out its duties. At its 102nd Session, the Governing Body had already agreed that the Committee of Experts should be allowed more than a week for its work and it was now proposed that the duration of the session of the Committee of Experts should be nine working days.

The Office note also directed attention to the suggestion which had been raised, even before the war, that Governments which wished to do so should be given the opportunity of supplying directly to the Committee of Experts additional information on the application of Conventions. The Office note suggested that the possibility of availing themselves of this facility should be drawn to the attention of Governments.

A further suggestion made in the Office note was that the Governing Body should make an annual review of the conclusions reached by the Committee of Experts and the Conference Committee. For this purpose, the report normally prepared by the Office after every general session of the Conference on the application of the decisions of the Conference might be formally communicated to the Governing Body at its autumn session.

With regard to the terms of reference of the Committee of Experts, it was suggested in the Office note that, in order to take account of the amendments to Article 7 of the Standing Orders of the Conference and of the consequent broadening of the functions both of the Conference Committee on the Application of Conventions and of the Committee of Experts, the latter should, in future, be known as the " Committee of Experts on the Application of Conventions and Recommendations ". The functions of the Committee would include an examination of the annual reports made under Article 22 of the Constitution, the information concerning Conventions and Recommendations communicated in accordance with Article 19 of the Constitution, and the information and reports on the measures taken by States Members in accordance with Article 35 of the Constitution. The Committee of Experts would make a report which, as at present, would be communicated to the Governing Body and the Conference.

Certain other suggestions had been made with a view to strengthening the Committee of Experts. The Office suggested that proposals to this effect should be submitted to the Governing Body when decisions had been taken concerning the periodicity of the reports to be furnished by Governments on unratified Conventions and on Recommendations, and when the Committee of Experts itself had had the opportunity of discussing its methods of work.

Mr. Burton asked for more information in regard to the reports which Governments were required to submit in accordance with Article 22 of the Constitution. At present, the Office asked Governments to furnish these reports not later than 30 November. He would be glad to know what the position was for 1947. Furthermore, he suggested that the Governing Body point out to Governments the importance of supplying these reports in time for their proper consideration by the

Committee of Experts and thus facilitating the work of the Conference Committee. The position in this respect had been very unsatisfactory in the past.

Paragraph 11 of the Office note referred to the difficulties which had been experienced by some Governments in furnishing their reports. These difficulties, however, affected only a limited number of countries. It was a fact that certain States which had not suffered from the war did not supply their reports in time. He thought that the employers and workers of the countries concerned might exercise some pressure in this respect, because it was important that all the reports should be examined by the Committee of Experts and by the Conference Committee.

With regard to the proposal for the remuneration of the experts, he pointed out that the experts were appointed in the capacity of private individuals, and that the service they provided was comparable to the service provided by auditors. This consideration should be borne in mind when taking a decision on the question of remuneration. The position was quite different in the case of other committees of experts, the members of which were very often Government representatives who continued to receive their salary while attending meetings of the committees in question.

He stressed the necessity of allowing the experts sufficient time to examine the many documents laid before them and to hold a full discussion. The note submitted by the Office conveyed the impression that the Office did the main part of the work and that the Committee of Experts met for a brief session merely to clear up a few general points. In his view the Committee of Experts ought to be analogous to a board of auditors. The Office should, of course, provide the Committee of Experts with every necessary facility, but it was the Committee itself which bore the responsibility for the work entrusted to it.

He did not think that it would be enough to provide that the sessions of the Committee of Experts in future should last for nine working days. This period was inadequate, having regard to the fact that the Committee would in future have to consider the position not only in regard to ratified Conventions but also in regard to non-ratified Conventions and Recommendations.

He proposed that the note prepared by the Office and the observations made in the course of the debate in the Governing Body should be brought to the attention of the Committee of Experts at its next session. The experts should be asked to express their views as to how they could best perform their work. The Governing Body would then be in a position, at a later date, to take such decisions as would enable the Committee to carry out its work in a fully satisfactory manner.

Mr. G. A. Johnston (Assistant Director-General) said that the Office had already received 200 reports, this being the highest proportion of reports received at the same time of the year since the beginning of the war. A reminder would be sent out to Governments which had not yet sent in their reports.

With regard to the procedure for the examination of reports, the experts agreed among themselves on the division of responsibility for particular groups of questions, each expert being specially responsible for examining the reports on a particular group of Conventions. The expert concerned acted as reporter for that group of questions. Reports received from Governments were communicated three or four months beforehand to each of the experts so that they had time to examine them thoroughly before the Committee meeting. When they came to the meeting, the members of the Committee had all the reports at their disposal and each member could examine those for which he was not reporter. During the session, the experts held an exchange of views on the reports on the basis of the observations and suggestions made by the reporters who had examined each group of reports. The Committee of Experts itself had expressed the view that nine working days would be sufficient for its next meeting, but it had contemplated the possibility of providing for a longer session when the Committee took up its new functions under the amended Constitution.

The Office would not fail to communicate to the Committee of Experts the note which was before the Governing Body, together with the minutes of the present discussion, in accordance with Mr. Burton's suggestion.

In reply to a question put by *Mr. Burton*, *Mr. G. A. Johnston* said that the total number of reports due from Governments for 1947 was 765.

The Governing Body approved the suggestions contained in the Office note and adopted the proposal made by Mr. Burton.

Nineteenth Item on the Agenda

Composition of Committees

Committee of Experts on the Application of Conventions.

The Director-General said that the Governing Body was asked to renew the appointment of five members of this Committee. As Dr. Tan had not been able to attend any of the sessions of the Committee, it was not proposed to renew his appointment. After consultation with the Chinese Government, the Office suggested the appointment of a Chinese member in the person of Dr. Chen Ta.

Mr. Joshi wished to urge the Office to pursue its efforts to secure the appointment of an expert from a non-metropolitan territory on the Committee of Experts for the Application of Conventions.

The Director-General said that the Office had found a most suitable candidate who had, however, unfortunately taken on other functions which made it difficult for him to serve on the Committee of Experts. He hoped to be able to submit a name to the Governing Body at its next session.

The Governing Body approved the following appointments to this Committee:

(a) *Renewal of Appointments:*

Sir Atul Chatterjee (Indian).
Mr. William Rappard (Swiss).
Mr. Georges Scelle (French).
Mr. Paul Tschoffen (Belgian).
Hon. Charles E. Wyzanski, Jr. (United States).

Mr. Tan (Chinese) was not reappointed.

(b) *New Appointments:*

Dr. Chen Ta (Chinese), Professor and Head of the Department of Sociology, National Tsing Hua University; Member of the Committee on Labour Policy, Ministry of Social Affairs; former Director of the Department of the Census, Ministry of the Interior.

Mr. Tommaso Perassi (Italian), Professor of Law at the University of Rome, Head of the Diplomatic Legal Questions Department in the Ministry of Foreign Affairs, Member of the Constituent National Assembly, President of the Italian Section of the International Association of Democratic Jurists. (Professor Perassi was a member of the Committee of Experts from 1936 to 1937.)

Correspondence Committee on Accident Prevention.

Mr. Waline asked whether, although the Correspondence Committee on Accident Prevention was composed mainly of representatives of Government departments or special accident prevention organisations, nominations would also be acceptable in respect of experts belonging to employers' or workers' organisations.

The Director-General said that it would be most useful for employers' and workers' experts to co-operate in the work of this Committee; he was therefore prepared to consider any nomination which Mr. Waline might wish to make.

Document No. 75

Minutes of the 103rd Session of the Governing Body, December 1947, Questions Arising out of the Examination of the Annual Reports on the Application of Conventions and Extension of Terms of Reference of the Committee of Experts, pp. 167–173

INTERNATIONAL LABOUR OFFICE

MINUTES

OF THE

103RD SESSION

OF

THE GOVERNING BODY

GENEVA — 12-15 DECEMBER 1947

APPENDIX XII

TWELFTH ITEM ON THE AGENDA

Questions arising out of the Examination of the Annual Reports on the Application of Conventions and Extension of Terms of Reference of the Committee of Experts

1. In accordance with the procedure followed before the war, the Governing Body at its present session is called upon to deal with a number of questions arising out of the examination of the annual reports on the application of Conventions (Article 22 of the Constitution) by the Committee of Experts, which held its 17th Session in March 1947, and by the Committee set up for the purpose by the Conference at its 30th Session (Geneva, June-July 1947). The Committee of the Conference devoted special attention to the general situation as regards the supervision of application of Conventions, and made various suggestions designed in particular to secure an improvement in the conditions under which the work of the Committee of Experts is carried out.

2. In view of the adoption by the Conference at the same session of a revision of Article 7 of its Standing Orders, to enable the Conference Committee on the Application of Conventions to take cognisance of the additional information and reports submitted under Articles 19 and 35 of the amended Constitution (submission of Conference decisions to the " competent authorities ", reports on unratified Conventions and on Recommendations), the question of a corresponding widening of the terms of reference of the Committee of Experts has also to be considered by the Governing Body at this session.

3. The present note deals with these two questions as follows:

Part I: Situation as regards the supervision of application of Conventions (with particular reference to the work of the Committee of Experts).

Part II: Extension of the terms of reference of the Committee of Experts.

PART I

Situation as regards the Supervision of Application of Conventions (with particular reference to the Work of the Committee of Experts)

Introduction

4. The Committee on the Application of Conventions set up by the 30th Session of the Conference devoted considerable attention to the problem of ensuring strict application by States Members of the provisions of Conventions which they have ratified, and to the practical measures which could be taken to remedy any defects in the existing machinery of supervision of application which experience has revealed. The Committee recognised the key role played by the Committee of Experts in the examination of annual reports, but considered that the conditions under which the Experts perform their task called for amelioration if their indispensable preliminary work was to yield the most effective results. The opinion was expressed that the existing procedure for the examination of measures taken to implement Conventions was little more than a succession of acts of confidence based upon documentary information supplied by Governments, and did not throw sufficient light upon the day-to-day practical application of the national measures of implementation. It was readily admitted that a system of international labour inspection in present circumstances was out of the question but the Conference Committee devoted a number of sittings to discussion of a proposal put forward by the French Government member of the Committee that the International Labour Office should have at its disposal in the various States or groups of States " observers " who could keep in permanent touch with the national labour inspectorates and could keep the Office informed of their findings regarding the application of Conventions. Although this proposal was not accepted by the Committee, the prolonged consideration given to it provided an unmistakable indication of the Committee's preoccupation with the problem of enforcement. During the discussion a number of suggestions were put forward with a view to securing a reinforcement of the personnel of the Committee of Experts, the prolongation of the duration of its sessions, an increase in the Office's facilities for the

translation of reports, laws, regulations, etc., as well as an immediate strengthening of the central Section of the Office dealing with Conventions and Recommendations and of the technical Sections concerned. The Experts themselves at their sessions in Montreal (1946) and Geneva (1947) had also indicated various lines along which improvement in the organisation of their work could be secured, as, for example, by the appointment of a member qualified to specialise on application in non-metropolitan territories and by the addition of at least one woman member to the Committee.

5. It was made clear in both Committees that these improvements were primarily designed to meet the immediate situation regarding the application of ratified Conventions, but that such reinforcement had become all the more necessary in view of the considerable additional work on unratified Conventions, Recommendations, etc., which the coming into force of the amended Constitution (Montreal, 1946) would involve. The Conference Committee asked that the Governing Body should review the position at its autumn session with a view to prompt measures being taken to remedy any defects in the existing situation.

Present Procedure

6. Under Article 19 (7) of the Constitution, each Member which has ratified a Convention is under obligation to take " such action as may be necessary to make effective the provisions of such Convention ". Under Article 22 it also " 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 ". The form and content of these reports are prescribed by the Governing Body.

7. Reports from the Governments under Article 22 of the Constitution are now due for the period 1 October of one year to 30 September of the following year, or for a part of that period, in respect of Conventions in force for the countries concerned on 30 June of the latter year. The forms for annual reports are sent to the Governments concerned by the end of July or the beginning of August each year, and the Governments are requested to supply these reports not later than 30 November.

8. Until 1924, the reports submitted by Governments were communicated to the Conference, first of all in full and later in a summarised form, in the Report which the Director submitted to the Conference. The Conference examined them in the course of the general discussion on the Director's Report. It was soon found that it was not possible by this method to make the maximum use of the means of mutual supervision of the application of Conventions afforded by Article 22. In pursuance of a decision of the Conference at its Eighth (1926) Session, special machinery was set up in 1927 to ensure the fullest possible use being made of the Governments' annual reports. The machinery in question consists of a Committee of Experts appointed by the Governing Body for the purpose of carrying out a preliminary examination of the annual reports, and of a special committee of delegates which the Conference sets up at each ordinary session to review the application of Conventions from a wider angle, with the assistance of the three groups.

9. The members of the Committee of Experts who are chosen for their experience of social administration or their knowledge of the working of international institutions, as well as for their independent standing, are appointed by the Governing Body for a period of three years, but are eligible for reappointment. They act in a personal capacity and do not represent their Governments. They receive no remuneration but their expenses are met out of the funds of the Organisation. The task of the Committee may be summarised as follows:

(a) It notes the cases where the information supplied appears to be inadequate for a complete understanding of the position, either generally or in a particular country. To remedy any such deficiencies, it would suggest that the Governing Body should take into consideration the revision of the questionnaire with a view to securing greater precision in the reports in general. If the deficiencies concern the report of a particular country, it would suggest that the Office ask by correspondence for any further details which, within the limits of the questionnaire approved by the Governing Body, may be demanded.

(b) The Committee calls attention to cases in which different interpretations of the provisions of Conventions appear to be adopted in different countries, without, however, pronouncing in favour of one interpretation as against another.

(c) It presents a technical report which the Director-General, subject to the approval of the Governing Body, communicates to the Governments and to the Conference.

10. The procedure adopted to enable the Committee of Experts to carry out this task has been to assign specific Conventions to the individual members of the Committee and to forward the reports on these Conventions to each Expert as soon as possible after they have been received in the Office. The draft observations prepared by members of the Committee in their individual capacity are then considered by the Committee as a whole when it meets in the spring each year

and, with the approval of the Governing Body, its report and observations are submitted to Governments and subsequently to the Conference. The duration of these meetings has generally been one week.

11. This machinery, coupled with the sessions of the Conference Committee, functioned regularly until 1940, when it was interrupted by the war. It was partially restored in 1945 and has now been re-established almost in its entirety. Full resumption has, however, not yet been possible, mainly because of difficulties still experienced by certain Governments in the preparation and submission of annual reports on account of the destruction of archives, shortage of staff, etc., and also because of the unusually short interval between the 29th and 30th Sessions of the Conference necessitated by the decision to resume the practice of convoking the Conference in June, which considerably reduced the time available to Governments for the preparation of their reports.

12. It would appear that a part at least of the uneasiness felt by the Conference Committee this year in regard to the working of the supervision machinery was due to the exceptional circumstances just mentioned, which should not recur. Nevertheless, the Committee considered that the mere coming to an end of these abnormal difficulties would not automatically bring about the improvements desired, and that the system of supervision as a whole appeared to require re-examination in the light of experience. Such re-examination would seem particularly appropriate at the present time when the Organisation is entering fully upon the post-war phase of its activities, with its Constitution amended for the purpose.

13. It would seem desirable that the object of the various improvements to be made in the procedure should be to ensure that the reports received are properly sieved so as to permit of the intensive examination of those which reveal disregard of the obligations assumed by Governments, and to encourage Governments to assume the rights and responsibilities in connection with the international supervision of Conventions which are entrusted to them by the Constitution of the Organisation.

Suggested Improvements in the Procedure

14. The proposed " reform " of the machinery of supervision may be considered at five different stages: *(a)* supply of annual reports by Governments; *(b)* Committee of Experts; *(c)* Office; *(d)* Conference Committee; and *(e)* Governing Body.

(a) *Supply of Reports.*

15. The punctual supply by Governments of complete reports, *i.e.*, reports drawn up in the form prescribed by the Governing Body, constitutes the foundation of the system of mutual supervision provided by Article 22 and is therefore the indispensable basis of the work of the Committee of Experts. For example, out of a total of 735 annual reports requested for the period 1945-1946, although nearly 600 reports were received by the time the 30th Session of the Conference met in June last, only some 50 per cent. of the total requested had been received in time for examination by the Committee of Experts which met in the preceding March. The result was that 217 reports had to be submitted to the Conference Committee without having been previously scrutinised by the Experts. A total of 153 reports from 11 countries were not rendered at all. While recognising that this situation was due in part at least to the exceptional circumstances referred to above (the short interval between the Montreal and Geneva Sessions, etc.), the Conference Committee recommended " an urgent appeal to the Governments, calling their attention to the fundamental importance which the Conference attaches to the punctual submission of annual reports ".

16. Supply on time is, however, only one aspect of this question. No less vital is the necessity for complete reports submitted in accordance with the detailed forms approved by the Governing Body, which at an early stage inserted in them special questions regarding practical application, decisions by courts of law, organisation of the inspection services, number of workers covered, breaches reported, etc. Since 1934 an additional question has been inserted, requiring Governments to include in their reports a summary of any observations they might have received from employers' and workers' organisations on the application of the Conventions concerned. Replies to these various questions regarding the practical aspects of application have contributed much towards providing a fuller and more realistic picture of enforcement methods and difficulties.

17. It seems relevant to point out in this connection that, with the coming into force of the amended Constitution, the supply of full and accurate information will be further facilitated through the provisions of the new Article 23. Under paragraph 2 of this Article, Governments are required to communicate to the representative organisations of employers and workers copies of the information and reports submitted to the Office in pursuance of Articles 19 and 22. Reports which are automatically and continuously subjected to control by the groups most directly concerned should gain greatly both in scope and realism.

(b) *Committee of Experts.*

18. *Composition, attendance, remuneration.* It has been recognised from the beginning that the Committee of Experts by the very nature of its functions should not be a numerous committee but a compact body. In fact, the Resolution which the Conference adopted in 1926 recommending the setting up of the Committee of Experts proposed a body of 6 or 8 members for a start. By 1940 the Governing Body in the light of experience had raised this number to 13, in particular because of the necessity to secure in the membership of the Committee as wide a representation of experience in the different countries as possible, and in order to ensure a working minimum of attendance at each session. The question of attendance has proved a matter of some difficulty in practice, due in part, at any rate, to the fact that the members of the Committee serve in their personal capacity and are therefore unable to appoint substitutes. In this connection, it was suggested in the Conference Committee of 1947 that the Governing Body should consider the possibility of providing an adequate remuneration for the services rendered by the members of the Committee.

19. While, therefore, adhering to the principle of maintaining the Committee as an organ of limited size, it has become necessary to reinforce its present membership of 10 in order to enable the Committee to cope with the steadily increasing volume and variety of the problems submitted to it. In response to a suggestion made by the Committee of Experts in 1946, the Governing Body has already appointed in the person of Professor van Asbeck (Netherlands) an authority of high standing to specialise in questions of application in non-metropolitan territories. The Committee of Experts in 1947 requested the Governing Body " to consider as a matter of urgency the enlargement of the Committee at least to its pre-war size, and in doing so to appoint to the Committee, which has hitherto consisted entirely of men, one or more women ". In making this request, the Committee called attention to the advantage of keeping its size within reasonable limits so as to retain its character of an informal working party, as well as to the particular assistance to be expected from a woman member with specialised knowledge in the field of protective legislation for women and children. At the 101st Session of the Governing Body, the Chinese and Indian Government representatives suggested that an expert belonging to a non-metropolitan territory should be appointed to the Committee. Recommendations covering these suggestions are contained in the Office's note on item 19 of the Governing Body's agenda, " Composition of Committees ".[1]

20. As regards the question of remuneration, it should be noted that the principle involved would apply not only to the Committee of Experts on the Application of Conventions but possibly to other committees of experts set up by the Governing Body. It has also to be borne in mind that the terms of reference of the Conference Committee on the Application of Conventions have been widened, that proposals for a corresponding extension of the terms of reference of the Committee of Experts have been submitted to the Governing Body (see Part II below), and that the method of work of the Committee of Experts in particular may be expected to undergo important changes as a result of these modifications. Unless more detailed consideration could be given to the implications of these changes in terms of the size of the Committee, the periodicity and duration of its sessions, etc., it would be impossible for adequate attention to be given to the question of remuneration with a full knowledge of all the relevant facts. *It is therefore suggested that examination of this important question should be postponed until the Office is in a position to submit to the Governing Body a detailed note on the subject.*

21. *Duration of sessions.* The yearly session of the Committee of Experts has hitherto been limited to a working week of six days. However, the Governing Body has already agreed (101st Session) that the Committee might hold sessions of more than one week. *It is suggested therefore that the Committee might meet on a Thursday and conclude its session on the Saturday of the following week, i.e.,* nine working days. This experimental arrangement, which might be adopted to meet the immediate situation, should offer sufficient time to the members of the Committee for comparing notes, examining files, etc., with the Office's experts, and for holding subsequently a detailed general discussion.

22. *Direct supply of information to the Committee of Experts by Governments.* In addition to the above suggestions, attention may be called to a procedural practice which before the war had contributed to supplementing and rendering more precise the information at the disposal of the Committee of Experts. In 1929 the Committee had indicated its willingness to receive additional information or explanations which might be supplied to it direct by representatives of Governments. One instance of this kind of first-hand submission of information occurred during the 11th Session of the Committee (1937), when the French Government delegated a high official of the Ministry of Colonies to supply the Committee orally with certain facts in amplification of its annual reports in regard to the application of Conventions to the French colonies. *The attention of the Governments might be called to this possibility of availing themselves of such an opportunity* to submit to the Committee of Experts and through it to the Governing Body and the

[1] See below, Appendix XIX, p. 198.

Conference, any additional data which in their view could contribute to a clearer understanding of the content of their reports. There is, of course, no suggestion of convoking representatives of Governments to appear before the Committee of Experts.

(c) *Role of the Office.*

23. The reports of the Experts, as well as of the Conference Committee, have emphasised the importance of the part played by the Office in preparing the ground for the work of these Committees. The Conference Committee in particular recommended the Conference this year to " ask the Governing Body to consider the reinforcement of the services of the Office which are responsible for dealing with the ratification and application of Conventions ". The Committee also expressed the opinion that the Office's *Legislative Series*, which reproduces translations of the more important laws and regulations, " is far from being complete or up to date ".

24. In order to meet this request, every effort is being made to have reports translated and placed at the disposal of the Experts, starting as early as Christmas. Steps have already been taken to strengthen the Legislative Series Service in order to ensure prompt translation of the most recent legislation mentioned in the annual reports.

25. Apart from the question of reinforcing the staff in order to ensure speedier execution of the necessary preparatory administrative work for the Committee of Experts and the Conference Committee, a more effective examination of the substance of these reports would call for a strengthening of the technical personnel of the Office.

26. Specific proposals for reinforcing the staff to meet these needs will be included in the budget estimates for 1949. These proposals will also take account of the additional staff required to cope with the considerable extra work concerning competent authorities, unratified Conventions and Recommendations which the coming into force of the 1946 Instrument of Amendment of the Constitution would necessitate.

(d) *Conference Committee on the Application of Conventions.*

27. So far as the Conference Committee is concerned, the main problem has been to ensure adequate attendance of representatives of the three groups at its sittings. This has been due primarily not to any lack of appreciation on the part of the Conference of the essential importance of the work of the Committee, but rather to the fact that the national delegations had seldom a sufficient number of technical advisers available to take a regular part in the work of the Committee. During the last three years, however, the Governing Body had decided that the anuual reports on the application of Conventions should be treated as a separate item on the agenda of the Conference in order to enable Governments under Article 3, paragraph 2, of the Constitution to include qualified advisers in the national delegations for the purpose. This has insured full attendance, particularly at this year's session of the Committee.

28. At its 102nd Session the Governing Body decided, on the recommendation of its Standing Orders Committee, to continue this practice of treating the question of the application of Conventions as a separate item on the agenda of the Conference.

(e) *Role of the Governing Body.*

29. Although the Committee of Experts was set up by and is responsible to the Governing Body, the latter has so far never proceeded to an actual discussion of the content of the Experts' report. The Governing Body's right to hold such a discussion is undisputed and has been affirmed on numerous occasions. For example, at the 66th Session of the Governing Body (April 1934), the Director pointed out that the reason why the Governing Body had refrained from examining the substance of the Experts' findings was due primarily to " reasons of convenience ", since the Committee of Experts' report represented only an intermediate stage in the supervision procedure, prior to examination of the application of Conventions by the Conference Committee. In the past, therefore, the Governing Body at its spring session merely took note of the Experts' report, while at its autumn session it considered only the administrative questions arising out of the examination of annual reports which called for its decision.

30. It is suggested that from now on the Governing Body should devote closer attention to the question of application of Conventions by holding an annual review of the conclusions reached by the Committee of Experts and by the Conference Committee. After each general session of the Conference, the Office prepares a document containing the texts of the reports both of the Committee of Experts and of the Conference Committee, together with relevant appendices containing statistics about reports received, etc., and detailed observations on individual Conventions as well as replies by Members to these observations. This document is placed at the disposal of Governments in order to afford them a complete over-all picture of the situation as regards application of Conventions. *The Office ventures to suggest that this document might also be laid formally before the Governing Body at its autumn session each year*, so as to enable the Governing Body to gain a comprehensive idea of the position in respect of the application of Conventions.

General

31. In view of the cardinal importance of the strict application of Conventions as a means of achieving the aims and purposes of the International Labour Organisation, the necessity for a periodical review and possible overhauling of the machinery for ensuring such application hardly needs emphasising. In the foregoing pages an attempt has been made to provide the Governing Body with a brief account of the working of the existing machinery of supervision, together with a number of suggestions designed to secure practical improvements in that machinery.

32. A few years will, of course, have to elapse before the improvements sketched out in the present note can produce their full effect. A reinforced Office would be in a position to prepare material for the Committee of Experts and the Conference Committee more expeditiously and with even greater thoroughness than in the past. The report of the Experts should afford a firmer basis for the comprehensive survey by the three groups carried out by a Conference Committee which would include advisers specially appointed for the purpose. The suggested annual review by the Governing Body at its autumn session should be of the utmost practical value as it would afford an opportunity for the consideration of any further possible measures necessary to achieve the maximum degree of enforcement. These successive stages in the procedure would, however, be of little value if they were not preceded by their indispensable preliminary—the punctual supply by Governments of complete reports. If this basic condition is not fulfilled, neither the Committee of Experts nor the Conference Committee on the Application of Conventions, nor even the Governing Body itself, would be able to discharge its functions adequately. Further, the Conference Committee this year was unanimous in recognising the essential role that organisations of employers and workers have to play in securing proper application of ratified Conventions and the increased responsibilities that Article 23 of the amended Constitution would place upon such organisations.

33. As was pointed out by Sir Joseph Hallsworth during the discussion of the Committee's report in plenary sitting, the wholehearted and continuous support of Governments, employers and workers is essential for securing an effective check on application. In view of the greatly increased recognition of the importance of Conventions as the vital instruments of the International Labour Organisation, now evident on all sides, it may confidently be hoped that this support will be forthcoming in ample measure. The Office accordingly ventures to suggest that such co-operation from the constituent parts of the Organisation, coupled with the various procedural improvements outlined above, should provide all the elements necessary to ensure in present circumstances that the work of supervision is carried out in practice with the thoroughness which its importance demands.

PART II

Terms of Reference of the Committee of Experts

34. On the basis of a text proposed by the Governing Body at its 102nd Session, the Conference at its 30th Session revised Article 7 of its Standing Orders with a view to enabling the Conference Committee on the Application of Conventions to take cognisance of the additional information and reports on unratified Conventions, Recommendations, etc., to be submitted by States Members under Articles 19 and 35 of the amended Constitution, including information supplied by Governments on the results of inspections.[1] In adopting the report of its Standing Orders Committee submitting the text of the proposed Article 7 of the Standing Orders of the Conference, the Governing Body agreed that " the approval by the Conference of the proposed extension of the terms of reference of the Conference Committee on the Application of Conventions will render necessary a corresponding extension of the terms of reference of the Committee of Experts on the Application of Conventions which prepares the ground for the work of the Conference Committee ". The Governing Body requested the Office to submit proposals on this question as soon as possible after the Conference had taken a decision on the revision of its own Standing Orders.

35. It may be recalled that the amended Article 19 of the Constitution provides for an enlargement of the scope of reporting to include, as the Governing Body may request, information on the submission of Conventions and Recommendations to the " competent authorities " (with particulars of the nature of these authorities and the action taken by them), on the

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[1] The revised Article 7 of the Standing Orders of the Conference is as follows :

Committee on the Application of Conventions and Recommendations

1. The Conference shall as soon as possible appoint a Committee to consider:
   (a) the measures taken by Members to give effect to the provisions of Conventions to which they are parties and the information furnished by Members concerning the results of inspections;
   (b) the information and reports concerning Conventions and Recommendations communicated by Members in accordance with Article 19 of the Constitution;
   (c) the measures taken by Members in accordance with Article 35 of the Constitution.
2. The Committee shall submit a report to the Conference.

difficulties encountered in obtaining ratifications, on the state of the national legislation in relation to the subject matter of unratified Conventions, and on the extent to which effect has been given or is proposed to be given to Recommendations. The revised Article 35 creates certain additional obligations for States Members as regards the application of Conventions in non-metropolitan territories, including the supply of information and reports on various matters connected therewith.

36. It was in pursuance of a Resolution adopted by the Conference in 1926 that the Committee of Experts was set up by the Governing Body in the following year, as part of the mechanism of supervision of the application of Conventions, to carry out an examination of the annual reports submitted by Governments under Article 22 of the Constitution in preparation for the examination of these reports from a wider angle by the Conference, with the assistance of the three groups represented at the Conference. It has been recognised from the outset that the technical examination of the annual reports carried out by the Experts is an indispensable preliminary to the over-all survey of application conducted by the Conference through its Committee on the Application of Conventions. With the approval of the Governing Body, the report of the Committee of Experts is communicated to Governments and to the Conference.

37. It is accordingly suggested that, as from the coming into force of the amendments to the Constitution adopted by the Conference at its Montreal Session, 1946, *the Committee of Experts on the Application of Conventions should be known as the " Committee of Experts on the Application of Conventions and Recommendations ", and that the Committee should be called upon to examine :*

(a) the annual reports under Article 22 of the Constitution on the measures taken by Members to give effect to the provisions of Conventions to which they are parties, and the information furnished by Members concerning the results of inspections;

(b) the information and reports concerning Conventions and Recommendations communicated by Members in accordance with Article 19 of the Constitution;

(c) information and reports on the measures taken by Members in accordance with Article 35 of the Constitution.

The Committee of Experts would make a report which the Director-General would submit in due course to the Governing Body and to the Conference.

38. As was pointed out by the Standing Orders Committee when submitting to the Governing Body the proposed text for a revised Article 7 of the Standing Orders of the Conference, the extension of the terms of reference of the Committee of Experts would throw a considerable amount of additional work upon that Committee, and practical steps would have to be taken to equip the Committee adequately to deal with the extra work involved.

39. A number of proposals for strengthening the Committee are contained in the first part of the present note. Before formulating proposals with regard to any further measures which may be required, the Office would have to make as accurate an estimate as possible of the volume and character of the new material likely to be received from Governments. This would to a large extent depend upon decisions as to the periodicity (annual, biennial, triennial) of the information to be supplied and the form in which it should be supplied, as well as whether information and reports should be furnished on all or only on a selected number of Conventions and Recommendations in the first instance. A note on these latter questions has been prepared for consideration by the Standing Orders Committee of the Governing Body at its present session. It might further be of advantage if the members of the Committee of Experts at their next session were to hold a preliminary exchange of views as to how they would wish their work in this connection to be organised in order to obtain the best results. *It is accordingly suggested that the Office should submit proposals concerning such further measures as may be required to the Governing Body as soon as possible after decisions have been taken on the periodicity of the reports to be furnished by Governments on unratified Conventions and on Recommendations and the Committee of Experts has had an opportunity of discussing its methods of work.*

Document No. 76

ILC, 73rd Session, 1987, Report III (Part 4A), Report of the Committee of Experts on the Application of Conventions and Recommendations, paras 37-49

International Labour Conference
73rd Session 1987

Report III
(Part 4A)

Third Item on the Agenda:
Information and Reports on the Application
of Conventions and Recommendations

Report of the Committee of Experts on the Application of Conventions and Recommendations

(Articles 19, 22 and 35 of the Constitution)

General Report
and Observations concerning Particular Countries

International Labour Office Geneva

35. Examples of such promotional Conventions are those concerning employment policy (No. 122), human resources development (No. 142), vocational rehabilitation and employment of disabled persons (No. 159), and occupational health services (No. 161). In such Conventions the ratifying State binds itself to achieve set objectives, which can be elusive, by a continuing programme of action. Various other Conventions lay down certain requirements of a clearly defined nature while also calling for promotional measures of a more general character. Examples of this type of instrument are the Conventions relating to equal remuneration (No. 100), discrimination in respect of employment and occupation (No. 111) and rural workers' organisations (No. 141).

36. The nature of the questions which the Committee has to consider in supervising the implementation of standards of a promotional nature may be illustrated by reference to a particularly obvious example, Convention No. 122. Its aim is to achieve "full, productive and freely chosen employment", requiring a co-ordinated policy in a wide range of economic spheres (investment policy, fiscal and monetary policies, trade policy, policies concerning prices, incomes and wages, etc.) and social spheres. These will require continual adjustment to meet changing national and international conditions. The reports received by the Committee in respect of Convention No. 122 will disclose changes, some of them unfortunately adverse. How has the Committee dealt with them? It recognises that there will be areas in which a variety of options may be open to the governments concerned. It feels, however, that it can properly monitor progress in these respects. The evolving pattern in the State itself can be considered and questions raised to clarify the causes of the changes (whether for better or worse) and the actions taken by the State to continue the trends (where there is improvement) or to reverse them (where the case is otherwise). It is equally important to look at the changes in the wider context of States of similar nature. No two States are alike but divergent trends can be a useful indicator and differing action can be a helpful guide to future policy. Although the Committee may indicate whether the objectives of the Convention have been partly achieved and may find it necessary to draw the State's attention to a failure, the aim of its comments will more often be to clarify problems and to assist with comments of a constructive nature.

Organisation of the work of the Committee

37. Dates of the annnual session. The Committee holds its annual session at a date and for a period determined by the Governing Body.

38. Chairman and Reporter of the Committee. At every session the Committee elects a chairman and a reporter for the duration of the session.

39. Participation of other organisations. The United Nations is invited to appoint a representative to attend the sessions of the Committee. When the Committee examines instruments or questions that also come within the competence of other intergovernmental organisations, whether belonging to the United Nations system or of a regional character, representatives of those organisations are invited to take part in the sittings of the Committee.

40. Confidentiality. The Committee meets in private. Its discussions and preparatory documents are confidential.

41. Examination of questions before the Committee. The Committee assigns to each of its members the initial responsibility for a group of Conventions or a given subject. The number of reports and of subjects requiring study makes it essential for a preliminary analysis to be carried out before the Committee as a whole examines the questions to be dealt with. Information and reports received by the Office sufficiently early are transmitted to the experts concerned before the meeting of the Committee. Each expert submits to the Committee in plenary sitting conclusions in the form of draft observations or direct requests for examination and approval by it.

42. The Committee establishes working parties to consider two types of questions. Certain working parties are set up regularly to deal with matters of a general and recurring nature. One example relates to the preparation of the general surveys based on the reports submitted under articles 19 and 22 of the Constitution that are devoted each year to a particular subject chosen by the Governing Body. Another has concerned the preparation of reports on the progress made in achieving the observance of the International Covenant on Economic, Social and Cultural Rights. Other working parties are set up occasionally on an ad hoc basis to deal with specific questions. For example, in 1978 the Committee set up a working party on the submission of Conventions and Recomendations to the competent authorities. Other working parties have been set up occasionally to examine questions of interpretation and principle relating to particular Conventions or the relations between several Conventions. The conclusions of all working parties are submitted to the whole Committee for consideration and adoption.

43. Furthermore, the Committee decided in 1977 that members should be able to consult one another at the preliminary stage in the examination of reports. Accordingly, any member may ask to be consulted by the expert responsible for a given Convention before the completion of the draft findings, and the responsible expert himself may consult other members of the Committee where he considers this desirable. The final wording of the drafts to be submitted to the Committee, however, remains the responsibility of the expert entrusted with the examination of the reports or information concerned. All drafts are examined and approved by the Committee in plenary sitting, and each member is naturally free to make comments and proposals at that stage.

44. Available information. The Committee has requested the Office, in the case of first reports received from governments after ratification of a Convention and also after major changes in legislation, to prepare a comparative analysis of the situation of law and practice in the country concerned in relation to the Convention; the analysis is submitted to the expert responsible for the Convention. The Committee has also asked the Office to prepare for the responsible expert notes on legal questions which may prove to be necessary on a given file. It has further asked the Office to ascertain, on receipt of a report, whether the report takes account of any earlier comments by the Committee. If it does not, the Office is requested, without going into the substance of the matter, to call the

attention of the Government to the need for a reply. The Office is also requested, where reports are not accompanied by copies of the relevant legislation, statistical data or other documentation necessary for a full examination of the situation and this material is not otherwise available, to write to the governments concerned requesting them to supply such documents.

45. In general, the documentation available to the Committee includes the information supplied by governments in their reports or to the Conference Committee on the Application of Conventions and Recommendations, legislative texts, collective agreements and relevant court decisions, information on the results of inspections furnished by member States, information and comments from employers' and workers' organisations, conclusions of other ILO bodies (such as commissions of inquiry and the Committee on Freedom of Association)[1] and the results of technical co-operation.

46. The problem of securing sufficient information on the practical application of Conventions remains one of the most difficult facing the Committee, leaving much uncertainty as to the way in which States give effect in practice to ILO instruments of the ILO.[2] Measures permitting increased dialogue with governments and occupational organisations, including wider use of direct contacts and other advisory missions, should lead to a better understanding of the difficulties met with in giving effect to ILO standards.

47. Forms of the Committee's conclusions. The Committee presents its conclusions in the form of observations, comments and surveys set out in its report or of requests that, for practical reasons, are communicated directly to the governments concerned by the Director-General on behalf of the Committee. Direct requests may be made available to any person or organisation having a justifiable interest to consult them.

48. Although the conclusions of the Committee have traditionally represented unanimous agreement among its members, decisions can be taken by a majority. Where that happens, it is the established practice of the Committee to include in its report the opinion of the dissenting members, if they so request, together with any response which the Committee may deem appropriate.

49. Submission of the report. The Committee's report is submitted to the Governing Body and published as a report to the next general session of the International Labour Conference.

* *

50. A member of the Committee, Mr. A. Gubinski, while noting that the point of departure for the Committee's work was the text of the international instruments, stated that, in evaluating their implementation, one could not avoid taking into account differences in

[1] See paras. 32 and 33 above.

[2] These questions were last reviewed by the Committee in 1978; see Report III (Part 4A), International Labour Conference, 64th Session, 1978, General Report, paras. 40 ff.

Document No. 77

ILC, 77th Session, 1990, Report of the Committee on the Application of Standards, paras 20–35

International Labour Conference

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the field of human rights were really being neglected in this case.

Standard-setting and supervisory activities

16. The principal ideas and general concerns expressed during the discussion in the Committee on the ILO's standard-setting and supervisory activities recalled previous important discussions: that of the 70th Session of the Conference (1984) on the Director-General's report on standards; and that of the Governing Body from 1984 to 1987 concerning the report of the Working Party on International Labour Standards. As was said in the Ventejol report, which remains entirely appropriate to the present situation, the discussion confirmed that the members of the Committee agreed on the values and the principles of standards, and on the importance of standards in promoting balanced development with justice and freedom, and as a source of inspiration for social policies. The exchange of views noted in previous paragraphs of this report on the changes which have occurred in some countries confirms this notion. Several Government members (Belgium, Netherlands, Portugal, USSR) felt that the universally recognised priority given to standards should result in the allocation within the current budget of the ILO of adequate or increased financial and human resources for this activity in the Standards Department in the Office.

17. Two of the major questions which fuelled the earlier discussions mentioned above concerned the universality and the flexibility of standards. Previous discussions have shown that there is general agreement on several principles. The adoption of standards should continue to take place on a basis of universality, in a spirit of realism and effectiveness, so as to respond to the needs of all member States. As is provided in the Constitution, standards should be so drafted as to have due regard to differences in levels and conditions of development, in order to allow the greatest number of countries to implement progressively the protection envisaged in them.

18. The discussion in the Committee again showed that these principles are still of the highest importance. While the aim of adopting flexible standards is not contested, differing views are expressed, in this Committee and elsewhere, on the desirable degree of flexibility. The Committee of Experts' report refers to the report on this question examined by the Governing Body at its 244th Session (November 1989). It recalls (paragraph 48 of its report) the essential purpose of flexibility and its usefulness in taking account of different levels and conditions of development, without altering the universal perspective in which standards must be adopted. It noted (paragraph 49) that flexibility clauses are rarely used by governments, and felt that it should draw governments' attention to the meaning of these clauses. The difficulty lies, as stated in the Governing Body study, in the choice between the need for realism and the need for dynamic standards. Several members of the Committee expressed similar ideas and supported the comments made by the Committee of Experts in paragraphs 48 and 49 of its report, in particular the suggestions for making the study examined by the Governing Body more widely available, and the promotional activities which the Office should carry out. These feelings were expressed principally by the Government members of Australia, Egypt, Finland, Indonesia, Netherlands, Spain, Syria and the United Kingdom, and by the Workers' members of Japan and Tunisia.

19. A question closely linked to the universality and flexibility of standards is that of the interpretation of their provisions. As noted by the Worker member of Finland, Conventions often contain general and flexible clauses and were naturally capable of being interpreted in different ways. The Employers' members felt that it was useful that the Committee of Experts had pointed out the possibilities of flexibility in different ILO standards, but that this was overcompensated by what they felt was sometimes a real overinterpretation of standards by the experts. This question of interpretation, on which it was already evident in the discussions at the last session of the Conference that there were serious differences of opinion, gave rise to a wide, frank and calm discussion this year, on the basis of the Committee of Experts' comments.

Relationship between supervisory bodies and interpretation of Conventions

20. It is necessary to be aware of the position taken by the Committee of Experts to understand the discussion fully. Paragraph 7 of its report reads as follows:

"The Committee has examined the views expressed in the Conference Committee on the Application of Standards, at its 76th Session (1989), by the Employer members and certain Government members as regards the interpretation of Conventions and the role of the International Court of Justice in this connection. The Committee has already had occasion to point out that its terms of reference do not require it to give definitive interpretations of Conventions, competence to do so being vested in the International Court of Justice by article 37 of the Constitution of the ILO. Nevertheless, in order to carry out its function of determining whether the requirements of Conventions are being respected, the Committee has to consider and express its views on the content and meaning of the provisions of Conventions and to determine their legal scope, where appropriate. It therefore appears to the Committee that, in so far as its views are not contradicted by the International Court of Justice, they are to be considered as valid and generally recognised. The situation is identical as regards the conclusions or recommendations of commissions of inquiry which, by virtue of article 32 of the Constitution, may be affirmed, varied or reversed by the International Court of Justice, and the parties can only duly contest the validity of such conclusions and recommendations by availing themselves of the provisions of article 29, paragraph 2, of the Constitution. The Committee considers that the acceptance of the above considerations is indispensable to maintenance of the principle of legality and, consequently, for the certainty of law required for the proper functioning of the International Labour Organisation."

21. The Employers' members welcomed the prompt reaction of the Experts to comments they had made repeatedly over several years, and had examined with great care the comments made by the Committee of Experts in paragraph 7 of its report. This paragraph addressed the fundamental question of who interprets the contents and meaning of provisions binding member States. As a matter of law, the response is given in article 37, paragraph 1, of the ILO Constitution, under which any question or dispute relating to the interpretation of Conventions is to be referred for decision to the International Court of Justice. In practice, the real question was who has competence to interpret Conventions when the question is not submitted to the Court, because this is normally the situation except in historically rare cases.

22. The Employers' members considered that the Committee of Experts' response was to say, in substance, that such competence rested solely with either the International Court of Justice or itself, and no one else. While they did not take a position here with respect to the outcome of the representation or commission of inquiry procedures, they did feel that the opinion of the Committee of Experts that its evaluations are binding unless corrected by the International Court of Justice, could not be correct. One obvious reason was that, if this were the case, the present Committee would lose its fundamental purpose, and so would the Conference. A legal reason was that this was contradicted by the ILO Constitution and by the Standing Orders of the Conference concerning the submission of governments' reports and the terms of reference of the Conference Committee, which had an independent competence to examine reports. The Employers' members had generally followed the Experts' views in the past and would continue to do so in the future, because there was good reason for doing so. However, they felt entitled to depart from this practice in particular cases.

23. In this connection, the Employers' members recalled that they had a different interpretation from the Experts, for instance on the question of the right to strike. Although this question was not expressly settled by any Convention or Recommendation (except the very special case dealt with in the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92)), the Experts had progressively deduced from Convention No. 87 a right to strike which was hardly limited. The Employers' members could not accept this, not only because they considered the Experts' opinion questionable in law but also because the issue touched directly on employers' interests.

24. Paragraph 7 of the Committee of Experts' report posed a second question, which was the methods and criteria used by the Experts to determine the content and meaning of standards. Only the principles of interpretation laid down in Articles 31 *et seq.* of the Vienna Convention on the Law of Treaties could be taken into consideration here. The general rules of interpretation which must be applied in the first place included, besides the ordinary meaning of the terms used, the object and intent of a provision, and any subsequent practice in the application of the Convention by the parties (Article 31, paragraph 3 *(b)*, of the Convention). As concerned the right to strike, the Employers' members found that the Committee of Experts had taken a position under which this right was almost unlimited, though this was not the practice followed by any State. The annual reports of the Committee of Experts showed clearly that the bases and substantive regulations of the right to strike, and in particular its limitations, differed in virtually all countries. Nevertheless, the Committee of Experts had given a very narrow interpretation of the acceptable legal limits on this right, which had resulted in an enormous gap between the practical application of Convention No. 87 by member States and its interpretation by the Committee of Experts. This interpretation could not be correct according to the above-mentioned rule of Article 31 of the Vienna Convention, which refers to the practice followed in the application of a treaty which establishes the agreement of the parties regarding its interpretation. Such a common conviction had not become known, however; in reality it did not exist. The Employers' members would await with interest the reply of the Committee of Experts to their arguments.

25. Two other Employer members (Sweden and Turkey) intervened along the same lines. The Employer member of Sweden took the occasion to dispel some misunderstandings over his intervention at the previous session of the Conference. His reference to a few cases in which the Committee of Experts had, in his opinion, overinterpreted Conventions had been meant to be constructive, and not to call into question the independence, objectivity and impartiality of the Experts. He could not, however, bestow on the Experts a certificate of infallibility, as they had requested. The Committee of Experts had likened itself to a Commission of Inquiry established by the Governing Body under article 26 of the Constitution, whose interpretation of an individual case would stand unless appealed to the International Court of Justice. The Employer member of Sweden considered this analogy to be false. The Constitution provided for an annual review by the Conference itself of reports due from governments concerning the application of ratified Conventions. It further permitted complaints and representations concerning the non-observance by a particular government of a Convention which it had ratified to be submitted to the Governing Body. The Governing Body could appoint a Commission of Inquiry, but was not required to do so. Article 37 of the Constitution, conferring on the International Court of Justice the exclusive competence for giving definitive interpretations of Conventions, should be read in conjunction with article IX of the agreement between the United Nations and the ILO, under which only the Conference or the Governing Body was allowed to request such interpretations. The only exception to this rule related to the Commission of Inquiry procedure and to the right of governments to lodge an appeal with the Court. The Constitution did not mention the Committee of Experts. That Committee, which had been established by the Governing Body in 1926 to assist the Conference in the annual review of application reports, did not take precedence over the Conference nor over the Governing Body. However, the reports of the Committee of Experts had acquired a great moral authority over the years, and the Conference relied mainly on them to carry out its own work. It had happened and would continue to happen – but not often – that a member of the present Committee would consider that the Committee of Experts had overinterpreted a Convention. Such observations should be accepted in good faith by the Experts. Like the International Court of Justice and all the ILO bodies which interpret Conventions, the Experts should abide by the general principles of the Vienna Convention, since the objective of these principles was to ensure uniform interpretation of international treaties whatever the economic and social conditions existing in a given country. The Employers' member of Turkey stated that granting definitive authority to the views of the Committee of Experts would be contrary to the Standing Orders of the Conference which provided for the Committee on the Application of Standards under article 7. The Committee of Experts was a consultative body which assisted the present Committee without binding it.

26. For the Workers' members, on the other hand, the role of the Committee of Experts could not be questioned. Everyone was in agreement in stressing that the function and work of the Committee of Experts was of paramount importance. It consists of determining whether the requirements of a given Convention are met, whatever might be the practices and social or economic conditions of a given country: this was the fundamental principle of the universality of standards. An Article of a Convention cannot be interpreted in several different ways. The Committee of Experts must therefore examine the meaning of provisions of Conventions and express their views on the subject. The Workers' members, for their part, entirely supported the position adopted by the Committee of Experts according to which the Experts' views should be deemed to be "valid and generally recognised" unless contradicted by the International Court of Justice. This was the only possible avenue, just as in cases where the conclusions or recommendations of other bodies of the ILO involved in the supervision of the application of standards were challenged. For many years this had been said and repeatedly emphasised by the Workers' members; in the past the Employers' members had also demanded this, with a view to ensuring observance of the universality of standards. At present, in view of the unanimous opinion of the Committee of Experts, the situation was clear, and other views would be strongly fought, as in the past, by the Workers' members. As concerned the right to strike, they noted that the Committee of Experts had consistently agreed with the conclusions of the Committee on Freedom of Association, a tripartite body which always made unanimous decisions, in particular on general principles relative to acceptable limits on strike activity.

27. This general statement was supplemented by several other Workers' members. The Worker member of the United States, in particular, stated that the issue of whether certain views of the Committee of Experts on strikes were within its jurisdiction or terms of reference should be resolved by the International Court of Justice and not by this Committee, and other challenges to the Experts' jurisdiction or competence in other types of cases would have to be similarly resolved. The present Committee lacked the authority to resolve such issues, and there was also a grave danger that any debate in the Committee on such contentions by the Employers' members would precipitate other contentions by any government seeking a way out of its difficulties. The result would be a serious impairment of the Committee's efficient conduct of its business. His primary aim was thus to recall the fundamental practice and commonly accepted understandings which had traditionally characterised the relationship between the Conference Committee and the Committee of Experts. The Committee of Experts, after evaluation of reports and other information received, stated its views on the extent to which a State appeared to be in conformity with the terms of Conventions which it had voluntarily ratified. In carrying out that responsibility, the Committee of Experts on a number of occasions had expressly disclaimed authority to give definitive interpretations of Conventions, recognising that the competence to do so was vested in the International Court of Justice. Within that limitation, however, in order to fulfil its obligations, the Experts had to consider and express their views on the content and meaning of provisions of Conventions and, where appropriate, determine their legal scope. It was well recognised that the views of the Experts were not legally enforceable or legally binding. The views or observations of the Experts had been considered as valid and generally recognised, except where contradicted by the International Court of Justice. The Conference Committee had worked within the framework of that system for many years. Efforts made from time to time by a minority of the Committee to dismantle or severely weaken the supervisory authority had been successfully resisted by a preponderance of the Committee. As stated in paragraph 6 of the Experts' report, that had primarily been achieved because of the spirit of mutual respect, cooperation and responsibility which had consistently prevailed in the relations between the Committee of Experts and the Conference Committee, whose proceedings the Experts took fully into consideration, in formulating their views and reaching their decisions observing the fundamental principles of independence, objectivity and impartiality. The independence of the Experts was a particularly potent reason for common acceptance by the Conference Committee of the validity of the Experts' views, especially when they spoke with one voice as in paragraph 7 of their report. The principles of objectivity were equally compelling reasons for common acceptance of the validity of the views of the Experts. In 1989 the Committee had unanimously pledged allegiance to these fundamental principles. Regrettably, however, their adoption had not been matched by their application in certain individual cases, resulting in strained relations with the Employers' group. Without a harmonious and co-operative relationship between Employers and Workers, the effective operation of the Committee would be irreparably impaired. This did not imply that in all cases the views of the Experts should be rubber-stamped and that no disagreement should be expressed. The wrong way of dealing with differences of views was to attack the supervisory system of the Experts. The right way, if differences were of such a magnitude as to require it, was to appeal to the International Court of Justice. An easier and more practical route to the possible resolution of differences was offered by the Experts' practice of consulting regularly and taking fully into consideration the proceedings of the Conference Committee. That channel of communication deserved further consideration. This Committee should be as circumspect in applying the fundamental principles of objectivity and impartiality as were the members of the Committee of Experts.

28. Among the other members of the Workers' group who spoke (Botswana, Chile, Federal Republic of Germany, Finland, Netherlands, Norway, Spain, Tunisia, United Kingdom and Venezuela), those of the Federal Republic of Germany, Finland and the United Kingdom drew attention to the cases of governments which did not recognise the views of the regular supervisory bodies or of a specially-established Commission of Inquiry, but which did not appeal to the International Court of Justice, or which did not appear to understand the relationship between the Committee of Experts and the conclusions of the Conference Committee and did not take the required measures. Such attitudes obstructed the

work of the supervisory machinery. Coming from democratic industrialised countries of Western Europe, this set a bad example for the countries of Central and Eastern Europe which were striving to promote procedures which conformed to the rule of law. It also gave a bad example to less economically developed countries which were being asked to apply ratified standards. This was also pointed out by the Worker member of Botswana.

29. In conclusion, taking up the call issued by the Worker member of the United States, the Workers' members invited the Committee on the Application of Standards to return to its traditional practices and principles and to keep alive the spirit of co-operation which is so vital to its work. While waiting for the Committee of Experts to take note of the discussions of the Conference Committee and to make any comments they might deem appropriate, they remained convinced that the report of the Committee of Experts will continue to be a valuable guide for the debates of the Conference Committee with respect both to its general discussion and to its examination of individual cases.

30. The Employers' members agreed with the Workers' members on the last point. In addition, after recalling that they continued to support the principle of universality without reservations, they stated that they dissociated themselves from the attacks made in the past by some member States upon the supervisory machinery. They concluded from the general discussion that no speaker had disputed their view that the Vienna Convention on the Law of Treaties was the appropriate – in fact the only – yardstick to be used in interpreting ILO Conventions. It was this yardstick that they invited the Committee of Experts to use in their interpretation of international labour standards. It was their desire to arrive at a proper and accurate interpretation of Conventions that prompted them to make this request. They cited two examples in this connection, concerning the limits of the right to strike in cases in which the life, personal safety or health of the whole or part of the population was endangered, and in cases of political strikes. The Employers' members awaited the reply of the Committee of Experts to their comments and pledged in the meantime to continue to co-operate pragmatically with the Committee of Experts.

31. Several Government members (Australia and Belgium) intervened during the discussion on the interpretation of Conventions to support the position taken by the Experts in paragraph 7 of their report, and the arguments put forward by the Workers' members. The Government member of Finland (speaking in the name of the Nordic governments) emphasised the importance of the Committee of Experts as a forum for dialogue with the Conference Committee and member States. According to the ILO Constitution the competence for giving definitive interpretations of Conventions, however, was vested in the International Court of Justice. This fact did not mean though that the Committee of Experts should not have competence to express its views on the content and meaning of the provisions of Conventions. The Government member of the Netherlands, stated that what the Committee of Experts said in paragraph 7 of its report on the possibility of referring matters to the International Court of Justice was legally and procedurally correct.

32. The Government member of France stated that he was inclined to read paragraph 7 together with paragraph 6, which stated that the Committee of Experts takes fully into consideration the discussions in the Conference Committee. It was up to the latter to pursue this dialogue. The Government members of the USSR and of the Ukrainian SSR also welcomed what paragraph 6 said about co-operation between the two committees. This co-operation, which already existed – and proof could be found in paragraphs 43 and 61 of the Committee of Experts' report concerning the application of Conventions Nos. 122 and 100 – could in their opinion be strengthened even further. They also noted that the Experts had again stated that they were dedicated to the principles of independence, objectivity and impartiality. In this connection, the Government member of Argentina stressed that members of the Conference Committee, a political body, were not independent in the way that the members of the Committee of Experts are, and that thus they could not be expected to make an impartial interpretation of the provisions of Conventions.

33. The Government member of the United States returned to the notions of complementarity, co-operation and dialogue between the Committee of Experts and the Conference Committee, which were the two key components of the regular supervisory machinery. While the views of the former are not legally binding, they had withstood the test of time and were very widely respected. As recourse to the International Court of Justice is unrealistic in practice, it was desirable to keep the supervision of standards within the structure of the ILO. Dialogue between the two supervisory bodies was as important as dialogue among members of the Conference Committee. The Government member of France was seeking an alternative to the apparently badly adapted procedure of recourse to the International Court of Justice, and asked for the Office's opinion in this connection. He drew attention to article 37, paragraph 2, of the Constitution which provides for the possibility of establishing a tribunal for the expeditious determination of any dispute or question relating to the interpretation of a Convention. The Government member of the Netherlands also asked the Office for information on the procedures for bringing a case before the International Court of Justice. The Workers' members of Finland, Norway and the United Kingdom suggested that the Office should prepare a manual of procedures relating to article 37 of the ILO Constitution.

34. The Government member of Cuba also referred to the positive results obtained by dialogue between the Committee of Experts, governments and the Conference Committee, and to the faithfulness of the Committee of Experts to its principles and methods of work. She noted that the Committee of Experts obviously had to study the provisions of Conventions and express its views on their application, but that did not mean adding new elements or situations not covered by the Convention in question, which would entail too broad an interpretation and might exceed the objectives of the Convention. The Government member of the Federal Republic of Germany stated that the supervisory procedure was

based on a dynamic tripartite dialogue, which should not give way to legal proceedings. He referred to the 1987 report of the Committee of Experts, where the Committee itself had said that its terms of reference did not include making definitive interpretations of Conventions. Thus, he felt that it was difficult to accept that the conclusions of the Committee of Experts were valid or binding as long as they were not challenged by a higher body, in this case the International Court of Justice. Finally, the Government member of the German Democratic Republic recalled that the Constitution accorded the first priority to the Conference, which drew up standards, adopted them and supervised their application. Thus it was only the Conference which could interpret Conventions. It was thus the responsibility of its Committee on the Application of Standards to discuss all aspects of the correct understanding of the letter and spirit of the texts, and to draw the attention of the Conference to the respective points.

35. At the close of the general discussion, the representative of the Secretary-General made the following statement as concerned the part of the discussion relating to the question of the interpretation of Conventions. As concerns paragraph 7 of the report of the Committee of Experts concerning the interpretation of Conventions, he stated that the Committee of Experts no doubt would carefully take into consideration the contrasting views which were expressed in the debate of the Conference Committee, where the thorough discussion had permitted clarification of certain positions. This was a sensitive issue affecting the future of the supervisory mechanism, and false debates should be avoided. In the first place, it was useful to recall that neither the Committee of Experts nor the Conference Committee is a court. The mandate of the Committee of Experts is to carry out a preliminary technical and legal examination of reports periodically submitted by member States on measures taken by them to implement Conventions they have ratified. The opinions of the Committee of Experts merit careful attention and great respect; as emphasised by a number of speakers, these opinions are accepted by member States in the vast majority of cases. But these opinions are not authoritative as concerns interpretations to which they may give rise. This authority attaches exclusively to the International Court of Justice, as recalled by the Committee of Experts in paragraph 7 of its general report. A second point on which misunderstanding must be avoided is the relationship between the Committee of Experts on the Application of Conventions and Recommendations, and the Conference Committee on the Application of Standards. The deliberations of the latter offer to the ILO constituents the possibility of participating democratically in the examination of how ratified Conventions are followed up. The Conference Committee is not an appellate tribunal called upon to examine the opinion of the Committee of Experts, and its evaluations are not judgements. They arise instead from a spirit of dialogue with the ILO's constituents, based on the prior technical and legal advice given by the Committee of Experts, to achieve a better application of international labour standards. In addition, as stressed by several members of the Committee, it would be unsatisfactory to leave pending important problems affecting the application of Conventions, where a government rejects or refuses to consider the conclusions formulated by the Committee of Experts or the Conference Committee, if that government considers that these bodies have not respected the meaning of a Convention. The Constitution of the ILO offers the means to resolve this situation, by recourse to interpretation. All parties concerned should therefore consider whether to have recourse to these mechanisms when important problems relating to the application of Conventions remain unresolved. Finally, replying to a question put by the Government member of France, the representative of the Secretary-General recalled that article 37 (2) of the Constitution was adopted immediately after the Second World War, in order to remedy uncertainties about the conditions under which the specialised agencies could obtain an opinion from the International Court of Justice, and to supplement this mechanism by a more easily accessible and technically specialised system of review. The procedure established under this provision had never been used, but this could change if the Governing Body and the Conference so decided. The suggestion made by the Workers' member of Norway that the Office prepare a procedural manual on recourse to the International Court of Justice had been duly noted, and would be examined closely in consultation with the Legal Adviser of the Office.

Obligations binding member States

36. As it did each year, the report of the Committee of Experts made an evaluation of the obligations binding member States under the instruments adopted by the Conference.

37. On the positive side was the number of ratifications. During 1989, 63 ratifications by 19 member States had been registered, making a total of 5,463 ratifications as at 31 December 1989. By 21 March 1990, this total had increased by 15 new ratifications deposited by five member States.

38. The Committee as a whole welcomed the progress achieved in adhering to ILO instruments, thus verifying the conclusions, mentioned above, of the discussions on standards during the years 1984 to 1987 on the importance of standard-setting activity as a means of promoting balanced development in conditions of justice and freedom, and as a source of inspiration for social policies. The Workers' members, among others, noted that the total of ratifications in 1989 reaffirmed the will of States to support the ILO's activities. Of course, ratification and application did not always go hand in hand, either in time or in space. As they had last year, the Employers' members recalled that the essential thing was the step following ratification, that is application in law and practice. As was noted in particular by the Worker member of Greece, reading the comments on the application of Convention No. 87 sufficed to show that a great deal of progress still had to be made to give full effect to its provisions.

39. The overall statistics on ratifications masked less positive, and even disturbing aspects, which were stressed by the Workers' members in particular. They noted that the number of ratifications of important Conventions, such as those concerning social security and safety and health, remained low. In addition, some States had not yet ratified fundamental Conventions such as those on freedom of association,

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International Labour Conference
78th Session 1991

Report III
(Part 4A)

Third item on the agenda:
Information and reports on the application
of Conventions and Recommendations

Report of the Committee of Experts on the Application of Conventions and Recommendations

(Articles 19, 22 and 35 of the Constitution)

General report
and observations concerning particular countries

International Labour Office Geneva

Faculty of Law and Economics; Director of the Institute for Research on Undertakings and Industrial Relations of the University of Paris X (associate of the National Centre for Scientific Research); Vice-President of Libre Justice, the French section of the International Commission of Jurists; former Professor of the Faculties of Law and Economics at Tunis (1956-61) and Algiers (1965-68); former President and Honorary President of the International Society of Labour Law and Social Security; former President and Honorary President of the French Association of Labour and Social Security Law;

Mr. Budislav VUKAS (Yugoslavia),
Professor of Public International Law and Director of the Institute of International and Comparative Law of the University of Zagreb, Faculty of Law; member of the Permanent Court of Arbitration;

Sir John WOOD (United Kingdom),
CBE, LLM; Barrister; Edward Bramley Professor of Law at the University of Sheffield; Chairman of the Central Arbitration Committee.

Mr. Toshio YAMAGUCHI (Japan),
Doctor of Law, Honorary Professor of Law at the University of Tokyo, Professor of Law at the University of Chiba, Member of the Japanese Central Committee of Labour Relations, Former Member of the Executive Committee of the International Society of Labour Law and Social Security, Full Member of the International Academy of Comparative Law;

5. The Committee notes with regret that Mrs. Badria AL-AWADHI has been unable to attend the present session owing to the circumstances prevailing in Kuwait.

6. The Committee elected Mr. J.M. RUDA as Chairman and Mr. E. RAZAFINDRALAMBO as Reporter of the Committee.

7. In pursuance of its terms of reference, as revised by the Governing Body at its 103rd Session (Geneva, 1947), the Committee was called upon to examine:

(i) the annual reports under article 22 of the Constitution on the measures taken by Members to give effect to the provisions of the Conventions to which they are parties, and the information furnished by Members concerning the results of inspection;

(ii) the information and reports concerning Conventions and Recommendations, communicated by Members in accordance with article 19 of the Constitution;

(iii) the information and reports on measures taken by Members in accordance with article 35 of the Constitution.

8. The Committee, after an examination and evaluation of the above-mentioned reports and information, drew up its present report, consisting essentially of the following three parts: Part One is the General Report in which the Committee reviews general questions concerning international labour standards and other instruments and

their implementation. Part Two contains observations concerning particular countries on the application of ratified Conventions (see section I and paragraphs 77 to 107 below), on the application of Conventions in non-metropolitan territories (see section II and paragraphs 77 to 107 below), and on the obligation to submit instruments to the competent authorities (see section III and paragraphs 108 to 118 below). Part Three, which is published in a separate volume (Report III (Part 4B)) reviews the reports supplied by governments under article 19 of the Constitution on the Paid Educational Leave Convention (No. 140) and Recommendation (No. 148), 1974, and the Human Resources Development Convention (No. 142) and Recommendation (No. 150), 1975 (see paragraphs 119 to 123 below).

9. In carrying out its task, which consists in indicating the extent to which the situation in each State appears to be in conformity with the terms of the Conventions and the obligations undertaken by that State by virtue of the ILO Constitution, the Committee has followed the principles of independence, objectivity and impartiality set forth in its previous reports. It has continued to apply the working methods recalled in its 1987 report. One such method is the spirit of mutual respect, co-operation and responsibility which has consistently prevailed in the Committee's relations with the International Labour Conference and its Committee on the Application of Standards, whose proceedings the Committee takes fully into consideration, not only in respect of general matters concerning standard-setting activities and supervisory procedures, but also in respect of specific matters concerning the way in which States fulfil their standard-setting obligations.

10. The Committee has examined thoroughly the views expressed by the Employer members and certain Government members at the examination of its report, particularly paragraph 7, by the Committee on the Application of Standards of the International Labour Conference, at its 77th Session (1990). The Committee has a number of observations to make in this connection.

11. In stating that in so far as its views are not contradicted by the International Court of Justice, they are to be considered as valid and generally recognised, the Committee of Experts does not regard those views as decisions having the authority of res judicata, as the Committee is not a court of law. Furthermore, as it has already pointed out on more than one occasion, it has never regarded its views as binding decisions based on a definitive interpretation of the Conventions of which it examines the application by member States. However, it considers that the proper functioning of the standard-setting system of the International Labour Organisation requires that a State should not contest the views expressed by the Committee of Experts on the application of a provision of a Convention that it has ratified and at the same time refrain from making use of the established procedure for obtaining a definitive interpretation of the Convention in question. In such a situation, a doubt would remain as to the obligation to apply the provisions in question and every State would have a power conferred on it which is not conferred by international law. The result would be legal uncertainty as to the meaning and scope of the provisions concerned as long as the question is not settled by a decision of the International Court of Justice;

such a situation would be prejudicial to the certainty of law required for the proper functioning of the standard-setting system of the ILO.

12. The views of the Committee of Experts are generally accepted, amongst other reasons, because the Committee is composed of independent persons with direct experience of the different legal systems and because of its tradition of objectivity and impartiality and the careful attention it pays to the work of the other supervisory bodies of the ILO. The Committee of Experts is not the only body to deal with the problem of the application of Conventions and its evaluations do not prevail erga omnes. Its functions require it to determine whether the provisions of a given Convention are observed and hence to examine their content and meaning, and determine their legal scope. It is essential for the ILO system that the views that the Committee is called upon to express in carrying out its functions, in the conditions recalled above, should be considered as valid and generally recognised, subject to any decisions of the International Court of Justice which is the only body empowered to give definitive interpretations of Conventions. The Employer members of the Conference Committee themselves stated that as a general rule they observe the views of the Committee of Experts, though they reserve the right to depart from them. The Committee observes that this statement is not incompatible with the assertions in paragraph 7 of its 1990 report.

13. Furthermore, the Committee of Experts feels that it should stress the fact that its task, which is to ascertain whether national law and practice are consistent with the provisions of a Convention, is essentially specific and pragmatic, and is carried out in the context of an ongoing dialogue with governments. The Committee none the less bears in mind constantly all the different methods of interpreting treaties. In this connection, it must point out that, on examining the right to strike in connection with the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), it took account of the indications and unanimous recommendations of the Committee on Freedom of Association on the subject, approved by the Governing Body of the International Labour Office.

II. GENERAL

Membership of the Organisation

14. Since the Committee's last session the number of member States of the ILO has dropped from 150 to 148, since the Yemen Arab Republic and the People's Democratic Republic of Yemen united on 22 May 1990 to become the Republic of Yemen, and the German Democratic Republic joined the Federal Republic of Germany on 3 October 1990.

New standards adopted by the Conference in 1990

15. The Committee notes that at its 77th Session (June 1990), the International Labour Conference adopted the Chemicals Convention

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Provisional Record

Seventy-eighth Session, Geneva, 1991

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Report of the Committee on the Application of Standards

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perts' observations on cases concerning the application of Conventions on freedom of association which had previously been the object of special paragraphs or which were very serious had not been accompanied by footnotes. He stressed that the absence of a footnote did not prevent the Committee from examining the case, and recalled the need to ensure continuity and greater consistency in following up the examination of cases. The representative of the Secretary-General recalled that the Conference Committee had been obliged, because of the increase in the number of member States, Conventions and ratifications, and in the comments made by the Committee of Experts, to examine only a limited number of the cases included in the Committee of Experts' report. The Committee of Experts felt that it was its duty to draw the attention of the Conference Committee through footnotes to certain cases which it considered important. By these footnotes, the Committee of Experts could point out cases in which there had been remarkable progress or, more frequently, those which raised serious problems of application. It could also point out cases in which it felt that the Conference was an occasion for governments to communicate the necessary information, or cases in which interesting developments might occur between the session of the Committee of Experts and the Conference. This choice of cases had never constituted an obligation for the Conference Committee which could add other cases or decide not to examine cases to which the Committee of Experts had drawn attention.

B. General questions relating to international labour standards

Supervisory system

8. The Committee recognised generally the remarkable quality of the Committee of Experts' report, and paid tribute to the principles of independence, objectivity and impartiality which continued to guide that Committee's work. The Employers' and Workers' members agreed that the supervisory system had to be strengthened, and that it was important that standards be correctly applied. Several Government members (Australia, Benin, Bulgaria, Cuba, Czechoslovakia, Denmark (speaking on behalf of the Nordic governments), France, Kenya, Spain, Ukrainian SSR, USSR, United Kingdom, United States and Uruguay) also made statements to this effect.

9. Referring to the reservations which they had expressed on some elements of the report, the Employers' members stated that a critical dialogue in a spirit of cooperation was the essence of the work of the Conference Committee and the basis on which they would cooperate with all the Committee's members. The Employers' member of the United States stressed that the Employers' group firmly supported the supervisory machinery, and that their comments should be seen as a positive attempt to reinforce the system and to increase the standing of its conclusions. The Government members of the United Kingdom and of the USSR considered that criticisms and occasional disagreements were the sign of a fruitful dialogue.

10. The Employers' member of Sweden stated that he agreed with other members of the Committee concerning the need to provide the supervisory machinery with all the resources necessary to allow it to function perfectly. He was convinced that this supervisory mechanism was the best which existed in any universal international organisation, and wanted it to be respected while being as efficient as possible.

11. The Government member of China stated that his Government attached considerable importance to the role of international labour standards. Their application in law and in practice strengthened the protection of workers, improved their working conditions and eliminated inequality. He was pleased that the Government members of the present Committee shared this view of the importance of the role of the Conference Committee as an instrument for positive dialogue.

12. The Government member of Germany referred to the supervisory system of the European Social Charter and compared it with that of the ILO. Considering the volume of work facing the ILO Committee of Experts, it needed considerable support and therefore the staff should not be reduced. The Workers' member of Germany recalled the differences between the supervisory systems of the European Social Charter and of the ILO, and pointed out in particular that the Governmental Committee of the Charter did not have a tripartite structure as did the Conference Committee. He did not feel that the systems could be compared.

Respective roles and terms of reference of the supervisory bodies

13. The Employers' members recalled that for several years, they had been insisting that the Committee of Experts and the Conference Committee were part of the several branches of the ILO's supervisory system. The specific terms of reference of the Committee of Experts had been laid down in 1927 and had not changed in substance, while the Conference Committee's own competence was defined in article 7 of the Standing Orders of the Conference. The negative statement that neither the Committee of Experts nor the Conference Committee was a court of law was not sufficient for understanding the positive functions of these supervisory bodies. The report of the Committee of Experts was an important starting-point for the work of the Conference Committee, but the Employers' members did not consider that the Conference Committee was bound by the Experts' opinions. They referred to the statement made by the Committee of Experts in paragraph 7 of the report it had submitted to the Conference in 1990, in which it had said that its views were to be considered as valid and generally recognised so far as they are not contradicted by the International Court of Justice. The Employers' members felt that this amounted to a statement that their interpretation was binding so long as the International Court of Justice had not decided otherwise, and that this was and continued to be unacceptable because it had no juridical support. They considered that the comments made by the Experts in paragraphs 10 to 13 of their report this year showed a significant movement in their position. They noted in particular that the Committee of Experts had themselves stated, in paragraphs 11 and 12

of its report, that it was not the only body to deal with the problem of application of Conventions, and that its evaluations did not prevail *erga omnes*, and that the Employers' members of the Conference Committee could reserve the right to depart from these evaluations. The Employers' members considered that logically, and even more emphatically, the Conference Committee had the same right. They considered that the fact that the Conference Committee could have an opinion different from that expressed by the Committee of Experts did not decide the question of the degree to which member States were bound by the evaluations of the Committee of Experts or of the Conference Committee.

14. The Employers' member of the United States, associating himself with the remarks made by the spokesman for the Employers' members concerning paragraphs 9 to 13 of the general report of the Committee of Experts, recalled the terms of reference and evolution of the role of the Committee of Experts since 1927; the Committee's authority had increased, and this had been generally accepted because of its independence, impartiality and objectivity; and as a result its conclusions and interpretations as to the meaning and scope of Conventions had acquired substantial credibility which, from the viewpoint of the Employers' members, were generally accepted. They did not, however, consider that the Committee of Experts was infallible even if it was composed of eminent jurists. He suggested that, in order to improve the working relationship between the Conference Committee and the Committee of Experts, the Experts should consider fully the questions of method and substance raised by the members of the Conference Committee and respond to them. Part of the dialogue between the two committees implied that differences of view be re-examined in order to decide whether the views expressed originally were correct or should be modified. He recalled that dialogue was not a one-way process and the Experts should not expect that their views would be adopted automatically in all cases by the Conference Committee. He suggested that the Committee of Experts highlight cases in which it adopted a new opinion or developed an earlier one; and that it refer to the basis of the conclusion drawn, as was sometimes done in general surveys, so that its interpretations would be readily evident to all. This was particularly important because the Conference Committee was able to examine only a part of the comments made by the Committee of Experts. The Employers' member of the United States concluded by saying that, in a democratic institution, dialogue includes criticism as well as praise.

15. The Employers' member of Turkey recalled that although the report of the Committee of Experts was the basis of the work of the Conference Committee, the latter could nevertheless express and support opinions divergent from those of the Experts. He considered that if a member of the Conference Committee convinced a majority of members to accept a position different from that of the Experts, there would be no use in bringing a case before the International Court of Justice. He recalled that the Committee of Experts had stated that the position of the Employers' members was not incompatible with the principles set out in paragraph 7 of its 1990 report. He also referred to paragraph 13 of the 1991 report of the Committee of Experts in which it said that, in examining the application of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), it had taken into consideration the indications and recommendations of the Committee on Freedom of Association. He stressed that the members of that Committee were not lawyers and that by accepting interpretations given by non-lawyers the Committee of Experts had agreed that political protest and sympathy strikes were legitimate, although this had produced unfair results. In this connection, the representative of the Secretary-General provided information on the composition of the Committee on Freedom of Association, the members of which were appointed in their own names, and the chairman of which was presently an independent person who was also a member of the International Court of Justice.

16. The Workers' members fully supported the comments made by the Committee of Experts in paragraphs 10 to 13 of its report this year. They recalled that the role of the Committee of Experts was essentially to verify whether the national law and practice were compatible with ratified Conventions, which implied that it had to examine the scope of the provisions of Conventions and express its views in relation to them. The role of the Conference Committee, which was composed of representatives of each of the parties directly concerned by the application of Conventions and not of independent experts, was to conduct in the most democratic manner possible a full examination of the Committee of Experts' report in order to analyse the implementation of standards at the national level in selected cases and to consider how their observance could be improved. The Workers' members considered that neither the assessments of the present Committee nor the views expressed by the Committee of Experts had the force of law, although the opinion of the Committee of Experts was generally accepted in view of the Committee's composition and working methods, subject to a definitive interpretation by the International Court of Justice. They agreed with the Experts that the proper functioning of the standards system required that a State, which was responsible under the ILO Constitution for the application of Conventions it had ratified, should not contest the views expressed by the Committee of Experts regarding the application of Convention which the State had ratified, and at the same time refrain from appealing to the International Court of Justice. As concerned the right to hold an opinion different from that of the Experts, the Workers' members considered that the scope of this right was not very clear. It was not correct to question the unanimous jurisprudence of the Committee on Freedom of Association or the point of view of the Experts on the established interpretation of a Convention, during the discussion of individual cases. In any case, the Workers' members felt that the right to hold a different opinion did not extend to States bound by Conventions.

17. The Workers' member of Pakistan recalled that in many countries, the opinions of the supervisory bodies had finally prevailed when there had been differences of opinion between them and governments. The Workers' members of Finland (speaking also in the name of the Workers' member of Norway), Ja-

pan, the Netherlands, Pakistan, Peru, Sri Lanka and the United Kingdom emphasised the risk to the supervisory system imposed by the attitude of governments which, when they disagreed with the Committee of Experts, then refused to modify their law and practice and refrained from appealing to the International Court of Justice to obtain a definitive interpretation of the Convention concerned. The Workers' member of Sri Lanka considered that, if the members of the Conference Committee could comment on the views expressed by the Committee of Experts, it did not mean that they could superimpose their judgement on that of the Committee of Experts, because the objective should be to strengthen the supervisory mechanism of the ILO and to ensure that the views of the Experts were followed by governments. The Workers' member of the United States recalled the statement he had made before the Committee in 1990 on the need for cooperation and harmony with the Employers' members on the views of the Committee of Experts, and for general respect for its views.

18. The Workers' member of the United Kingdom stated that the Employers' members' right to a different opinion from that expressed by the Committee of Experts, admitted by that Committee in paragraph 12 of its report, did not mean that the Conference as a whole had the right to disagree. He felt that the Employers' and Workers' members' right to disagree could not be applied to governments. Workers and employers had no international legal responsibility to uphold a Convention ratified by their government. Governments, however, were answerable to the Committee of Experts and to the present Committee. He stated that governments therefore had to accept the view of the Committee of Experts or appeal to the International Court of Justice for a definitive opinion. He felt that no in-between position was possible and that there should be no equivocation on this point.

19. Referring to paragraphs 10 to 13 of the report of the Committee of Experts, the Government member of Saudi Arabia (speaking also in the name of Bahrain, Kuwait, Qatar and the United Arab Emirates) evoked the right of all countries to contest the opinions of the Committee of Experts concerning the implementation of the provisions of a ratified Convention, as the views of the Committee of Experts were neither definitive nor binding. The Government member of the United Kingdom expressed the hope that acceptance by the Committee of Experts of the employers' right to depart from its views concerning the interpretation of Conventions would also extend to governments. It was for the Conference Committee to debate in detail the different opinions expressed concerning the interpretation of Conventions, and this dialogue provided the raison d'être for the present Committee's existence.

20. The Government member of Uruguay stated that he fully supported paragraphs 10 to 13 of the Committee of Experts' report. The Government member of Australia expressed his appreciation for the additional considerations expressed by the Committee of Experts in paragraphs 10 to 13 of its report, especially as concerned the relationship between the two committees, and stated that his Government agreed with the statements in those paragraphs. The Government member of Belgium stated that it was essential for the ILO supervisory system that the opinions expressed by the Committee of Experts, as described in paragraphs 10 to 13 of its report, be considered valid and generally admitted.

21. The Government member of France stated that the report of the Committee of Experts and the discussion in the Conference Committee clarified the place in the supervisory system of the different bodies, which had different and complementary roles. The Committee of Experts had explained at length in its report the significance of its role as a body for technical and legal instruction; the Conference Committee symbolised tripartite dialogue; the Conference plenary provided political approval for its report and eventually, as the key link in the system, the International Court of Justice provided the final recourse for the interpretation of the Constitution and of Conventions.

22. The Government member of the USSR recalled that no other ILO body had been the subject of as much criticism as the Committee of Experts in relation to its working methods and procedures, at different periods of its history, which indicated the difficulty of its task. Its mandate is to give a formal and juridical evaluation of the application of Conventions ratified by States, without giving too much significance to the economic and social characteristics of each State, as this would be prevent it from doing its job properly. He felt that a future development of the ILO supervisory machinery might place the Committee of Experts on an equal footing with the Conference Committee, in order to enhance and develop the cooperation between these two bodies.

23. The Government member of the United States noted with satisfaction the remarks in paragraphs 10 to 13 of the report of the Committee of Experts. She felt that the efficiency of the ILO supervisory system could be significantly enhanced by the responsible participation of all the members of the present Committee, including governments, in the broad spectrum of issues before it. Recalling that the Committee had been established in 1927 in order to carry out a tripartite dialogue on the application of Conventions and Recommendations, she stressed that more active participation of all members would provide better feedback to the Committee of Experts of the views of the Conference Committee.

24. The Government member of Denmark, speaking in the name of the Nordic governments, recalled that these countries considered that the function of the Committee of Experts was to give independent legal opinions, which was responsible for the wide respect accorded it in the international community for its independence, objectivity and impartiality. Along with the Government members of Portugal, the United Kingdom and the United States, she stressed that the general acceptance of the views of the Committee of Experts also relied on a formal dialogue between that Committee and governments, and considered that dialogue with governments would continue to be the most important instrument for the application of standards.

25. The Government member of Cuba stated that in paragraphs 10 to 13 of its report, the Committee of Experts had described in a well-balanced and acceptable manner the ways in which it had to carry out its

tasks. She recalled the principles of objectivity, independence and impartiality which guided the work of the Committee of Experts, and stressed the need to bring together the experience and knowledge of legal systems in member States with the knowledge of their social and economic realities. Without questioning the universality of standards, she recalled that the particular conditions and levels of economic and social development in each country should not be ignored by the Committee of Experts.

26. As concerns the question of interpretation of ILO Conventions more specifically, the Employers' members stated that the possibility of holding an opinion divergent from the Experts' legal evaluations was not excluded, in particular on points where it is clear that it is very important that appropriate legal criteria be applied in the interpretation of obligations under a Convention. While the principles of independence, objectivity and impartiality are indispensable in the work of the Experts, they felt that the Experts were required to follow the criteria of interpretation laid down in the 1969 Vienna Convention on the Law of Treaties. The criteria of interpretation contained in this instrument cannot be set aside by simply recognising that there is a similarity of opinion between different ILO bodies, as is done for instance with the Committee on Freedom of Association, which examines whether member States respect freedom of association principles, and not on the basis of reports submitted under article 22 of the Constitution. The application of the Vienna Convention was uncontested in international law. The Experts themselves had specifically referred to that Convention in paragraphs 54 and 244 of the 1990 General Survey on Convention No. 147. Another uncontested principle of international law was *in dubio mitius* (i.e. if the wording of a treaty provision is not clear, in choosing between several admissible interpretations, the one which involves the minimum of obligations for the Parties should be adopted). The Employers' members did not insist on this principle for its own sake, but because of its concrete bearing on the manner in which important issues are interpreted and applied in practice, such as the right to strike, which was not even written into the relevant Convention but had become the subject of minutely elaborated principles derived by way of interpretation.

27. The Employers' members further denied assertions that had been made suggesting that they had, by their interventions, behaved like the previously socialist countries by attacking the foundations of the supervisory machinery, or by challenging the behaviour of communist countries but not similar behaviour by Western countries. Nothing could be further from the truth. The Employers' members were glad that they had then succeeded, together with many other members of the Committee, in defending the supervisory system against these attacks. The former communist countries had challenged comments on legal systems which, at the level of the national Constitution, excluded the existence of free trade unions and employers' organisations outside the State Party. The present dissent concerned questions of detail regarding the right to strike, which was not even written into the relevant Convention but had become the subject of minutely-elaborated principles derived by way of interpretation. This being said, the Employers' members massively supported the ILO supervisory system, of which the present Committee was an integral part.

28. In support of the statement of the Employers' members, the Employers' member of the United States recalled that over the last few years the Employers' members had raised a few problems which they attributed to the misinterpretation of a few Conventions, such as those concerning labour inspection, fee-charging employment agencies, maritime questions and freedom of association. ILO Conventions were frequently drafted in general terms, or with flexibility clauses which allowed a certain latitude in their implementation. No matter how desirable the expansion of social policy which the Experts might deem to be in conformity with the spirit of a particular Convention, it was inappropriate for the Experts to function as a supranational legislature if their interpretation was not within the contemplation of the tripartite Committee which drafted the Convention. It was in acting without restraint that the Committee of Experts might introduce the very legal uncertainty which it considered as undermining the "proper functioning of the standard-setting system of the ILO". He indicated that the Committee of Experts should be guided in interpretations by the principles laid down in the Vienna Convention, as he considered that it had recognised in its General Survey on the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147). It was inappropriate for the Committee of Experts to adopt in full the decisions of the Committee on Freedom of Association, which were founded on general principles and were not limited to the terms of 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), thus extending the scope of these Conventions beyond what was intended by their drafters, as reflected in their texts and legislative history.

29. The representative of the Secretary-General recalled in this connection that it was essential for the Committee on Freedom of Association and the Committee of Experts to keep each other informed on how they had dealt with situations submitted to them for examination. The Committee on Freedom of Association thus took account of the conclusions and comments of the Committee of Experts, and the Committee of Experts sometimes dealt with cases dealt with by the Committee on Freedom of Association when those cases had a legal aspect and raised questions of principle affecting the application of Conventions.

30. The Employers' member of Sweden wished to provide information to the Committee concerning the possibility of requesting a definitive interpretation of Conventions from the International Court of Justice. In the first place, paragraph 3 of Article IX of the Agreement between the United Nations and the ILO provided that a request for an advisory opinion could be addressed to the Court by the Conference or by the Governing Body acting in pursuance of an authorisation by the Conference. Under a resolution adopted by the Conference in 1949, the Governing Body had a general authorisation in this respect. It was in this framework that the application of article 37, paragraph 1, of the Constitution should be seen. Under this provision, any question or dispute

relating to the interpretation of the Constitution or a Convention shall be referred for decision to the Court. Secondly, under the complaints procedure laid down in articles 26 to 34 of the Constitution, a government which does not accept the recommendations of a Commission of Inquiry may appeal to the Court within three months. He noted that these procedures had barely been used in the past, which showed that access to the International Court of Justice was not easy. He also recalled the statement made by the Government member of France to the Conference Committee in 1990 drawing attention to the possibilities offered by article 37, paragraph 2, of the Constitution providing for the establishment of a special tribunal for deciding on disputes concerning the application of a Convention.

31. The Workers' members questioned the arguments made by the Employers' members concerning the use by the Committee of Experts of the method of interpretation provided for at Article 31 of the Vienna Convention. They believed that ILO Conventions were not comparable to traditional treaties between States as the parties concerned were not only States but also organisations of employers and workers, who participated in their elaboration. In addition, Article 31(3)*(b)* of the Vienna Convention provides that practice may be used to identify the intention of the parties in a given interpretation. The Workers' members considered that the fact that the parties are not States alone, meant that nonconforming practice by one or several States should not reflect upon the intention of the parties. Moreover, the tripartite preparatory work for the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), proved that this Convention had to be interpreted very broadly, particularly as concerns the right to join organisations of one's choice, which was recognised for all workers without distinction of any kind. They recalled the proposal made by one of their members in 1990 that the Office prepare a manual of procedures concerning article 37 of the Constitution. As concerned the creation of a tribunal as provided for in article 37, paragraph 2, of the Constitution, to which they were not opposed, the Workers' members asked how such a tribunal would differ from the Committee of Experts, in particular as concerns its composition.

32. The Workers' member of Norway, speaking also on behalf of the Workers' members of Denmark and Finland, proposed the establishment of an independent tribunal, to be called the International Court of Social Justice, which would be competent to resolve difficulties on the interpretation of Conventions and would improve the functioning of the supervisory system. This Court would have a tripartite composition. It would be able to revise interpretations given by the Committee of Experts, as well as the conclusions and recommendations of the committees and commissions provided for in articles 24 and 26 of the ILO Constitution. The Court's legal competence could limited, in the first instance, to the most fundamental ILO Conventions such as the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Abolition of Forced Labour Convention, 1957 (No. 105) and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). He suggested that these proposals, which would certainly involve fundamental changes including amendments to the ILO Constitution, be discussed in more depth. The Government member of Romania supported this proposal which he felt might involve lower costs to the ILO than Commissions of Inquiry.

33. Referring to the Committee of Experts' opinion that, in order to implement its mandate, it has the right to express its opinions on the contents of provisions of international labour Conventions, the Government member of the USSR felt that this should be discussed separately in order to find an adequate solution to the problem. The Government member of Denmark, speaking on behalf of the Nordic governments, felt that perhaps the Committee of Experts went too far when it suggested that a government which did not agree with its interpretation would have to obtain a legally binding opinion from the International Court of Justice. She considered that this obligation was not within the spirit of article 37 of the ILO Constitution. She recalled that no request for an advisory opinion on the interpretation of an international labour Convention had been submitted to the Court since the Second World War.

34. The Government member of Cuba, while not doubting the possibility of continuous improvement in the whole supervisory machinery which had given proof of its capacity to adapt, advocated caution against the proposal to create new bodies or procedures which differed from those in existence, since this would add new difficulties for some developing countries in complying with their obligations towards the ILO.

35. The Workers' member of Spain stated that at no time should the right of appeal to the International Court of Justice be placed in doubt, because the right to turn to a legal entity different from the one which produced a standard was a democratic requirement that could not be questioned.

36. The Government member of France recalled that Conventions are composite texts resulting from a tripartite compromise, which governments must ratify without reservations if they wished to adhere to them. It would therefore be important to have a competent authority for the interpretation of international labour Conventions, which are not classical treaties negotiated by diplomats. Referring to the statement of the Employers' member of Sweden concerning the absence of recourse to the procedure provided for in article 37 of the ILO Constitution, he suggested the creation of a supplementary level in the system of supervising the application of standards, under article 37(2) of the Constitution. He considered that nothing in this provision would preclude adding a dose of tripartism, which would respond to the concerns expressed by the Workers' member of Norway. The Government member of the United Kingdom supported this proposal and suggested that the Office consider what was needed to put article 37(2) of the Constitution into effect.

37. The representative of the Secretary-General noted the proposals, which would be duly examined.

Composition of the Committee of Experts

38. The Government member of Germany, comparing the Committee of Independent Experts for

Document No. 80

ILC, 90th Session, 2002, Report III (Part 1A), Report of the Committee of Experts on the Application of Conventions and Recommendations, paras 21-26

International Labour Conference
90th Session 2002

Report III
(Part 1A)

Third item on the agenda:
Information and reports on the application
of Conventions and Recommendations

Report of the Committee of Experts on the Application of Conventions and Recommendations

(articles 19, 22 and 35 of the Constitution)

General Report
and observations concerning particular countries

International Labour Office Geneva

Working methods

21. In pursuance of its terms of reference, as revised by the Governing Body at its 103rd Session (Geneva, 1947), the Committee was called upon to examine:

(i) the annual reports under article 22 of the Constitution on the measures taken by Members to give effect to the provisions of the Conventions to which they are parties, and the information furnished by Members concerning the results of inspections;

(ii) the information and reports concerning Conventions and Recommendations communicated by Members in accordance with article 19 of the Constitution;

(iii) information and reports on the measures taken by Members in accordance with article 35 of the Constitution.

22. The Committee, after an examination and evaluation of the above reports and information, drew up its present report, consisting of the following three parts:

(a) Part One is the General Report in which the Committee reviews general questions concerning international labour standards and related international instruments and their implementation;

(b) Part Two contains observations concerning particular countries on the application of ratified Conventions (see section I and paragraphs 84 to 123 below), on the application of Conventions in non-metropolitan territories (see section II and paragraphs 84 to 123 below), and on the obligation to submit instruments to the competent authorities (see section III and paragraphs 124 to 138 below); and

(c) Part Three, which is published in a separate volume (Report III (Part 1B)), consists of a General Survey on the Dock Work Convention, 1973 (No. 137), and Recommendation, 1973 (No. 145), on which governments were requested to submit reports under article 19 of the ILO Constitution.

23. The Committee's task consists of indicating the extent to which the law and practice in each State appears to be in conformity with ratified Conventions and the obligations undertaken by that State by virtue of the ILO Constitution. To accomplish this task, the Committee follows the principles cited above in paragraph 9, and in continuing to apply the working methods recalled in its 1987 report.[3]

24. Furthermore, since 1999 the Committee has undertaken an examination of its working methods. Last year, the Committee paid particular attention to drafting its report in a manner to make it more accessible and to draw the attention of a larger readership to the importance of the provisions of Conventions and their practical application. This year, in order to guide its reflections on this matter in both an efficient and thorough manner, the Committee decided to create a subcommittee. This subcommittee has as a mandate to examine not only the working methods of the Committee as strictly defined

[3] International Labour Conference, 73rd Session, 1987, Report III(4A), pp. 17-19, paras. 37-49.

but also any related subjects, and to make appropriate recommendations to the Committee. [4]

25. A spirit of mutual respect, cooperation and responsibility has consistently prevailed in the Committee's relations with the International Labour Conference and its Committee on the Application of Standards. The Committee of Experts takes the proceedings of the Conference Committee into full consideration, not only in respect of general matters concerning standard-setting activities and supervisory procedures, but also in respect of specific matters concerning the way in which States fulfil their standards-related obligations. In this context, the Committee again welcomed the participation of the Chairperson of its 71st Session as an observer in the general discussion of the Committee on the Application of Standards of the 89th Session of the International Labour Conference (June 2001). It noted the request by the abovementioned Committee for the Director-General to repeat this invitation for the 90th Session of the International Labour Conference (June 2002). The Committee accepted the invitation.

26. The Chairperson of the Committee of Experts invited the Employer and Worker Vice-Chairpersons of the Committee on the Application of Standards of the 89th Session of the International Labour Conference to pay a joint visit to this Committee at its present session. Both accepted this invitation and discussed various matters with the Committee in a special session.

II. General information on international labour standards

Recent developments

A. Membership of the Organization

27. Since the Committee's last session, the number of member States of the ILO has remained unchanged at 175.

B. New standards adopted by the Conference in 2001 and the coming into force of Conventions

28. The Committee notes that at its 89th Session (June 2001) the International Labour Conference adopted the Safety and Health in Agriculture Convention (No. 184), and Recommendation (No. 192), 2001.

29. No Conventions entered into force in 2001.

C. Policy on standards

30. The Committee notes the continued discussions in the Governing Body on possible improvements in ILO standards-related activities. The object of these

[4] Ms. Laura COX was charged by the Committee to preside over the discussions of this subcommittee which will be composed of a core group and will be open to any member of the Committee wishing to participate in it.

Document No. 81

ILC, 91st Session, 2003, Report III (Part 1A), Report of the Committee of Experts on the Application of Conventions and Recommendations, paras 4-6

International Labour Conference
91st Session 2003

Report III
(Part 1A)

Third item on the agenda:
Information and reports on the application
of Conventions and Recommendations

Report of the Committee of Experts on the Application of Conventions and Recommendations

(articles 19, 22 and 35 of the Constitution)

General Report
and observations concerning particular countries

International Labour Office Geneva

Vice-President (Asia) of the International Society of Labour Law and Social Security.

Mr. Budislav VUKAS (Croatia),

Professor of Public International Law at the University of Zagreb, Faculty of Law; Vice-President of the International Tribunal for the Law of the Sea; member of the Institute of International Law; member of the Permanent Court of Arbitration; member of the OSCE Court of Conciliation and Arbitration; member of the International Council of Environmental Law; member of the Commission on Environmental Law of the International Union for Conservation of Nature and Natural Resources.

Mr. Toshio YAMAGUCHI (Japan),

Honorary Professor of Law at the University of Tokyo; former Chairman of the Central Labour Relations Commission of Japan; former member of the Executive Committee of the International Society of Labour Law and Social Security; full member of the International Academy of Comparative Law.

3. The Committee elected Ms. Robyn Layton, QC, as Chairperson and Mr. Edilbert Razafindralambo as Reporter.[1]

Working methods

4. In pursuance of its terms of reference, as revised by the Governing Body at its 103rd Session (Geneva, 1947), the Committee was called upon to examine:

(a) the annual reports under article 22 of the Constitution on the measures taken by Members to give effect to the provisions of the Conventions to which they are parties, and the information furnished by Members concerning the results of inspections;

(b) the information and reports concerning Conventions and Recommendations communicated by Members in accordance with article 19 of the Constitution;

(c) the information and reports on the measures taken by Members in accordance with article 35 of the Constitution.

5. The Committee, after an examination and evaluation of the above reports and information, drew up its present report, consisting of the following three parts:

(a) Part One is the General Report in which the Committee reviews general questions concerning international labour standards and related international instruments and their implementation;

(b) Part Two contains observations concerning particular countries on the application of ratified Conventions (see section I and paragraphs 83 to 118 below), on the application of Conventions in non-metropolitan territories (see section II and

[1] Erratum: In paragraph 9 of last year's report, the Committee drew up an alphabetical list of all of its members on the occasion of the 75th anniversary since its establishment. It was indicated that Mr. José Maria Ruda (Argentina), former President of the International Court of Justice, had been a member of the Committee. He was also the Chairperson of the Committee.

paragraphs 83 to 118 below), and on the obligation to submit instruments to the competent authorities (see section III and paragraphs 119 to 133 below);

(c) Part Three, which is published in a separate volume (Report III (Part 1B)), consists of a General Survey on the Protection of Wages Convention, 1949 (No. 95) and Recommendation (No. 85), on which governments were requested to submit reports under article 19 of the ILO Constitution.

6. The Committee's task consists of indicating the extent to which the law and practice in each State appears to be in conformity with ratified Conventions and the obligations undertaken by that State by virtue of the ILO Constitution. To accomplish this task, the Committee follows the principles of independence, objectivity and impartiality as described in its previous reports. It also continues to apply the working methods recalled in its 1987 report.[2]

Subcommittee on working methods

7. Furthermore, since 1999, the Committee has undertaken a thorough examination of its working methods. In 2001, the Committee paid particular attention to drafting its report in a manner to make it more accessible and to draw the attention of a larger readership to the importance of the provisions of Conventions and their practical application. Last year, in order to guide its reflections on this matter in both an efficient and thorough manner, the Committee decided to create a subcommittee. This subcommittee has as a mandate to examine not only the working methods of the Committee as strictly defined but also any related subjects, and to make appropriate recommendations to the Committee.[3]

8. At this session, the Committee of Experts considered the recommendations of its subcommittee, prepared after a wide-ranging review of the Committee's work, to which all members of the Committee had had an opportunity to contribute during the year. There was, firstly, unanimous endorsement of the need for the Committee to maintain its independence, impartiality and objectivity in carrying out its work, and of the overall importance of these features of the ILO supervisory mechanisms. Secondly, with a view to promoting the visibility and influence of the Committee and its work, members expressed an interest, where appropriate, in participating in field missions and in contributing to international conferences or to seminars providing training in areas relevant to their work. Thirdly, the Committee agreed on a number of significant changes relating to its working methods, all of which have the following aims:

(a) furthering the Committee's diversity;

(b) increasing the synergy between experts and in particular between those experts working on linked groups of Convention;

(c) ensuring the most effective working methods during particular high-pressure periods of work;

[2] International Labour Conference, 73rd Session, 1987, Report III(4A), pp. 17-19, paras. 37-49.

[3] This subcommittee is composed of a core group and is open to any member of the Committee wishing to participate in it.

(d) implementing further changes to its annual report, making it more accessible to those who read it; and

(e) continuing to foster cooperation and good relations between the Committee of Experts and the Committee on the Application of Standards.

It was further agreed that, from now on, the subcommittee should continue to meet annually, as and when necessary, to monitor these reforms, to report to the Committee on their implementation and to recommend any further changes which may be necessary in the future.

9. A spirit of mutual respect, cooperation and responsibility has consistently prevailed in the Committee's relations with the International Labour Conference and its Committee on the Application of Standards. The Committee of Experts takes the proceedings of the Conference Committee into full consideration, not only in respect of general matters concerning standard-setting activities and supervisory procedures, but also in respect of specific matters concerning the way in which States fulfil their standards-related obligations. In this context, the Committee again welcomed the participation of the Chairperson of its 72nd Session as an observer in the general discussion of the Committee on the Application of Standards of the 90th Session of the International Labour Conference (June 2002). It noted the request by the abovementioned Committee for the Director-General to renew this invitation for the 91st Session of the International Labour Conference (June 2003). The Committee accepted the invitation.

10. The Chairperson of the Committee of Experts invited the Employer and Worker Vice-Chairpersons of the Committee on the Application of Standards of the 90th Session of the International Labour Conference to pay a joint visit to this Committee at its present session. Both accepted this invitation and discussed various matters with the Committee in a special session.

II. General information on international labour standards

Recent developments

A. Membership of the Organization

11. Since the Committee's last session, the number of member States of the ILO has remained unchanged at 175.

B. New standards adopted by the Conference at its 90th Session and the coming into force of Conventions

12. The Committee notes that, at its 90th Session (June 2002), the International Labour Conference adopted the Promotion of Cooperatives Recommendation (No. 193), the List of Occupational Diseases Recommendation (No. 194), and the Protocol of 2002 to the Occupational Safety and Health Convention, 1981.

13. No Conventions entered into force in 2002.

Document No. 82

ILC, 102nd Session, 2013, Report of the Committee on the Application of Standards, pp. 59–72

International Labour Conference

Record of Proceedings **16**

102nd Session, Geneva, June 2013 **PART ONE**

Third item on the agenda: Information and reports on the application of Conventions and Recommendations

Report of the Committee on the Application of Standards

PART ONE

GENERAL REPORT

Contents

Annex 1

INTERNATIONAL LABOUR CONFERENCE C. App./D.1

102nd Session, Geneva, June 2013

Committee on the Application of Standards

Work of the Committee

I. Introduction

This document sets out the manner in which the work of the Committee on the Application of Standards is carried out. It is submitted to the Committee for adoption when it begins its work at each session of the Conference, in particular to enable the Committee to approve the latest adjustments made in its work. The work undertaken by the Committee is reflected in a report. Since 2007, in response to the wishes expressed by ILO constituents, the report has been published both in the *Record of Proceedings* of the Conference and as a separate publication, to improve the visibility of the Committee's work. [1]

Since 2002, ongoing discussions and informal consultations have taken place concerning the working methods of the Committee. In particular, following the Governing Body's adoption of a new strategic orientation for the ILO standards system in November 2005, [2] consultations began in March 2006 regarding numerous aspects of this system, [3] including the question of the publication of the list of individual cases discussed by the Committee. A tripartite Working Group on the Working Methods of the Committee was set up in June 2006 and has met 11 times since then. The last meeting took place on 12 November 2011. On the basis of these consultations, and the recommendations of the Working Group, the Committee has made certain adjustments to its working methods. An overview of these adjustments is detailed below.

Since 2006, an early communication to governments (at least two weeks before the opening of the Conference) of a preliminary list of individual cases for possible discussion by the Committee concerning the application of ratified Conventions has been instituted. Since 2007, it has been the practice to follow the adoption of the list of individual cases with an informal information session for Governments, hosted by the Employer and Worker Vice-Chairpersons, to explain the criteria used for the selection of individual

[1] The reports thus published can be found at: http://www.ilo.org/global/standards/WCMS_183447/lang--en/index.htm.

[2] See documents GB.294/LILS/4 and GB.294/9.

[3] See para. 22 of document GB.294/LILS/4.

cases. [4] Changes have been made to the organization of work so that the discussion of individual cases could begin on the Monday morning of the second week, and improvements have been introduced in the preparation and adoption of the conclusions relating to cases. In June 2008, measures were adopted to address those cases in which Governments were registered and present at the Conference, but chose not to appear before the Committee; the Committee now has the ability to discuss the substance of such cases. [5] Specific provisions have also been adopted concerning the respect of parliamentary rules of decorum. [6]

In November 2010, the Working Group discussed the possibility for the Committee to discuss a case of a government which is not accredited or registered to the Conference.

Since June 2010, important arrangements have been implemented to improve time management. [7] In addition, modalities have been established for discussion of the General Survey of the Committee of Experts on the Application of Conventions and Recommendations, in light of the parallel discussion of the recurrent report on the same subject under the follow-up to the ILO Declaration on Social Justice for a Fair Globalization.

At its last meeting in November 2011, the tripartite Working Group reached the following main conclusions:

(i) Adoption of the list of individual cases: at the time, it was agreed that the Employer and Worker spokespersons would meet informally before the 101st Session (2012) of the Conference to elaborate a process to improve the adoption of the list and would report on the outcome of their consultations. [8]

(ii) Balance in the types of Conventions among the individual cases selected by the Conference Committee: the importance of this issue was reaffirmed, notwithstanding the difficulties in achieving diversity in the types of Conventions selected for discussion. The issue would be kept under review, including by exploring the option of establishing a quota system which could mandate the selection of cases per each type of Conventions.

(iii) Possibility for the Conference Committee to discuss cases of progress: it was recalled that there had been long-standing consensus on the inclusion of a case of progress in the Conference Committee's report, but that the practice had been temporarily suspended in 2008 due to concerns about time management. The issue would be kept under review.

[4] See below Part V, B.

[5] See below, Part V, D, footnote 20.

[6] See below, Part V, F.

[7] See Part V, B – Supply of information and automatic registration – and E.

[8] For the 102nd Session (June 2013), discussions have taken place between the Employers' group and the Workers' group in the context of the follow-up to the decision adopted by the International Labour Conference, at its 101st Session (2012), on certain matters arising out of the report of the Committee on the Application of Standards; see *Provisional Record* No. 19, Part 1 (Rev.), International Labour Conference, 101st Session, Geneva, 2012, para. 208.

(iv) Possible improvements in the interaction between the discussion on the General Survey by the Committee on the Application of Standards and the discussion on the recurrent item report by the Committee for the Recurrent Discussion: it was recognized that until the new discussion modalities which had been agreed upon took effect in 2014, [9] the process followed during the 100th Session (June 2011) should be continued during the 101st Session (May–June 2012). This process had proved to be satisfactory.

(v) Automatic registration of individual cases: Modalities for selecting the starting letter for the registration of cases: There was consensus to continue the experiment begun in June 2011 when the Committee had used the A + 5 model to undertake the automatic registration of individual cases based on a rotating alphabetical system, to ensure a genuine rotation of countries on the list.

(vi) Other questions: The question of the impact of the deliberations of the Working Party on the Functioning of the Governing Body and the International Labour Conference on the work of the tripartite Working Group: It was recalled that the tripartite Working Group reported to the Conference Committee on the Application of Standards. However, the work of the Conference Committee could also be influenced by the Working Party on the Functioning of the Governing Body and the International Labour Conference. In such circumstances, it was decided that, although there was no need for the tripartite Working Group to meet in March 2012, it might be useful to retain the option for it to meet in the future, to follow-up as necessary upon questions raised by the Working Party. [10]

II. Terms of reference of the Committee

Under its terms of reference as defined in article 7 of the Standing Orders of the Conference, the Committee is called upon to consider:

(a) the measures taken by Members to give effect to the provisions of Conventions to which they are parties and the information furnished by Members concerning the results of inspections;

[9] At the 309th Session of the Governing Body (November 2010), the Steering Group on the Follow-up to the Social Justice Declaration took the view that the review of the General Survey by the Conference Committee on the Application of Standards should take place one year in advance of the recurrent discussion by the Conference. This required a shift from the existing arrangement under which the General Survey and the recurrent discussion report on the same theme were submitted to the Conference in the same year. As a transition measure, the Governing Body decided in March 2011 that no General Survey on instruments related to employment should be undertaken for the purposes of the next recurrent discussion on employment that will take place in 2014.

[10] At the meeting of the Working Party on the Functioning of the Governing Body and the International Labour Conference during the 316th Session (November 2012) of the Governing Body, Governments reiterated that the findings of the informal Working Group on the Working Methods of the Committee on the Application of Conventions and Recommendations should be fed into the discussions of the Working Party. At the meeting of the Working Party during the 317th Session (March 2013) of the Governing Body, the Group of Latin American and Caribbean Countries recalled its proposal for the question of improving the working methods of the Committee to be discussed by the Working Party, but the Employers' group, the Workers' group and a number of other Government groups did not agree with that proposal, stating that, at that stage, the question should be discussed in a different context; see GB.316/INS/12, para. 12, and GB.317/INS/10, para. 8.

(b) the information and reports concerning Conventions and Recommendations communicated by Members in accordance with article 19 of the Constitution;

(c) the measures taken by Members in accordance with article 35 of the Constitution.

III. Working documents

A. Report of the Committee of Experts

The basic working document of the Committee is the report of the Committee of Experts on the Application of Conventions and Recommendations (Report III (Parts 1A and B)), printed in two volumes.

Volume A of this report contains, in Part One, the General Report of the Committee of Experts (pages 5–44) and, in Part Two, the observations of the Committee concerning the sending of reports, the application of ratified Conventions and the obligation to submit the Conventions and Recommendations to the competent authorities in member States (pages 45–857). At the beginning of the report there is a list of Conventions by subject (pages v–x), an index of comments by Convention (pages xi-xviii), and by country (pages xix–xxvii).

It will be recalled that, as regards ratified Conventions, the work of the Committee of Experts is based on reports sent by the governments. [11]

Certain observations carry footnotes asking the government concerned to report in detail, or earlier than the year in which a report on the Convention in question would normally be due, and/or to supply full particulars to the Conference. [12] The Conference may also, in accordance with its usual practice, wish to receive information from governments on other observations that the Committee of Experts has made.

In addition to the observations contained in its report, the Committee of Experts has, as in previous years, made direct requests which are communicated to governments by the Office on the Committee's behalf. [13] A list of these direct requests can be found at the end of Volume A (see Appendix VII, pages 905–917).

The Committee of Experts refers in its comments to cases in which it expresses its satisfaction or interest at the progress achieved in the application of the respective Conventions. In 2009, 2010 and again in 2011, the Committee clarified the general approach in this respect that has been developed over the years. [14]

In accordance with the decision taken in 2007, the Committee of Experts may also decide to highlight cases of good practices to serve as a model for other countries to assist

[11] See paras 42–46 of the General Report of the Committee of Experts.

[12] See paras 72–74 of the General Report of the Committee of Experts.

[13] See para. 64 of the General Report of the Committee of Experts.

[14] See paras 79 and 83 of the General Report of the Committee of Experts. See also Annex II of the present document.

them in the implementation of ratified Conventions and furtherance of social progress. [15] At its session of November–December 2009, the Committee of Experts has provided further explanations on the criteria to be followed in identifying cases of good practices by clarifying the distinction between these cases and cases of progress. No specific cases of good practices have been identified by the Committee of Experts this year.

Furthermore, the Committee of Experts has continued to highlight the cases for which, in its view, technical assistance would be particularly useful in helping member States to address gaps in law and in practice in the implementation of ratified Conventions, following-up on the practice established by the Conference Committee in this regard since 2005. [16]

Volume B of the report contains the General Survey by the Committee of Experts, which this year concerns the Labour Relations (Public Service) Convention, 1978 (No. 151), the Collective Bargaining Convention, 1981 (No. 154), the Labour Relations (Public Service) Recommendation, 1978 (No. 159), and the Collective Bargaining Recommendation, 1981 (No. 163).

B. Summaries of reports

At its 267th Session (November 1996), the Governing Body approved new measures for rationalization and simplification of reporting. In this connection, it adopted changes along the following lines:

(i) information concerning reports supplied by governments on ratified Conventions (articles 22 and 35 of the Constitution), which now appears in simplified form in two tables annexed to the report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A) (Appendices I and II, pages 861–875);

(ii) information concerning reports supplied by governments as concerns General Surveys under article 19 of the Constitution (this year concerning labour relations and collective bargaining in the public service) appears in simplified form in a table annexed to the report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B) (Appendix IV, pages 239–244);

(iii) summary of information supplied by governments on the submission to the competent authorities of Conventions and Recommendations adopted by the Conference (article 19 of the Constitution), which now appears as Appendices IV, V and VI to the report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A) (pages 886–904).

Requests for consultation or copies of reports may be addressed to the secretariat of the Committee on the Application of Standards.

[15] See paras 85–87 of the General Report of the Committee of Experts.

[16] See paras 88–89 of the General Report of the Committee of Experts.

C. Other information

In addition, as and when relevant information is received by the secretariat, documents are prepared and distributed containing the substance of:

(i) supplementary reports and information which reached the International Labour Office between the meetings of the Committee of Experts and the Conference Committee;

(ii) written information supplied by governments to the Conference Committee in reply to the observations made by the Committee of Experts, when these governments are on the list of individual cases adopted by the Conference Committee.

IV. Composition of the Committee, right to participate in its work and voting procedure

These questions are regulated by the Standing Orders concerning committees of the Conference, which may be found in section H of Part II of the Standing Orders of the International Labour Conference.

Each year, the Committee elects its Chairperson and Vice-Chairpersons as well as its Reporter.

V. Schedule of work

A. General discussion

1. *General Survey.* In accordance with its usual practice, the Committee will discuss the General Survey of the Committee of Experts, Report III (Part 1B). This year, for the fourth time, the subject of the General Survey has been aligned with the strategic objective that will be discussed in the context of the recurrent report under the follow-up to the 2008 Social Justice Declaration. As a result, the General Survey concerns labour relations and collective bargaining in the public service, while the recurrent report on social dialogue will be discussed by the Committee for the Recurrent Discussion on the strategic objective of social dialogue. In order to ensure the best interaction between the two discussions, it is proposed to maintain the adjustments in place since 2011 to the working schedule for the discussion of the General Survey – they are reflected in the document C.App/D.0. As was the case during the last two sessions of the Conference, the Selection Committee is expected to take a decision to allow the official transmission of the possible output of the discussion of the Committee on the Application of Standards to the Committee for the Recurrent Discussion. In addition, the Officers of the Committee on the Application of Standards could present information regarding their discussion of the General Survey to the Committee for the Recurrent Discussion.

2. *General questions.* The Committee will also hold a brief general discussion which is primarily based on the General Report of the Committee of Experts, Report III (Part 1A) (pages 5–44).

B. Discussion of observations

In Part Two of its report, the Committee of Experts makes observations on the manner in which various governments are fulfilling their obligations. The Conference Committee then discusses some of these observations with the governments concerned.

Cases of serious failure by member States to respect their reporting and other standards-related obligations [17]

Governments are invited to supply information on cases of serious failure to respect reporting or other standards-related obligations for stated periods. These cases are considered in a single sitting. Governments may remove themselves from this list by submitting the required information before the sitting concerned. Information received both before and after this sitting will be reflected in the report of the Conference Committee.

Individual cases

A draft list of observations (individual cases) regarding which countries will be invited to supply information to the Committee is established by the Committee's Officers. The draft list of individual cases is then submitted to the Committee for approval. In the establishment of this list, a need for balance among different categories of Conventions as well as geographical balance is considered. In addition to the abovementioned considerations on balance, criteria for selection have traditionally included the following elements:

– the nature of the comments of the Committee of Experts, in particular the existence of a footnote (see Appendix I);

– the quality and scope of responses provided by the government or the absence of a response on its part;

– the seriousness and persistence of shortcomings in the application of the Convention;

– the urgency of a specific situation;

– comments received by employers' and workers' organizations;

– the nature of a specific situation (if it raises a hitherto undiscussed question, or if the case presents an interesting approach to solving questions of application);

– the discussions and conclusions of the Conference Committee of previous sessions and, in particular, the existence of a special paragraph;

– the likelihood that discussing the case would have a tangible impact.

Moreover, there is also the possibility of examining one case of progress as was done in 2006, 2007 and 2008.

[17] Formerly "automatic" cases (see *Provisional Record* No. 22, International Labour Conference, 93rd Session, June 2005).

Supply of information [18] *and automatic registration*

1. *Oral replies.* The governments are requested to take note of the preliminary list and prepare for the eventuality that they may be called upon to appear before the Conference Committee. Cases included in the final list will be automatically registered and evenly distributed by the Office, on the basis of a rotating alphabetical system, following the French alphabetical order. This year, the registration will begin with countries with the letter "P", thus continuing the experiment started in 2011.

Cases will be divided in two groups: The first group of countries to be registered following the above alphabetical order will consist of those cases in which a double footnote was inserted by the Committee of Experts and are found in paragraph 73 of that Committee's report. The second group of countries will constitute of all the other cases on the final list and they will be registered by the Office also following the abovementioned alphabetical order. Representatives of governments *which are not members* of the Committee are kept informed of the agenda of the Committee and of the date on which they may be heard:

(a) through the *Daily Bulletin*;

(b) by means of letters sent to them individually by the Chairperson of the Committee.

2. *Written replies.* The written replies of governments – which are submitted to the Office prior to oral replies – are summarized and reproduced in the documents which are distributed to the Committee (see Part III, C and Part V, E). These written replies are to be provided at least **two days** before the discussion of the case. *They serve to complement the oral reply and any other information already provided by the government, without duplicating them.* The total number of pages is not to exceed **five pages**.

Adoption of conclusions

The conclusions regarding individual cases are proposed by the Chairperson of the Committee, who should have sufficient time for reflection to draft the conclusions and to hold consultations with the Reporter and the Vice-Chairpersons before proposing them to the Committee. The conclusions should take due account of the elements raised in the discussion and information provided by the Government in writing. The conclusions should be adopted within a reasonable time limit after the discussion of the case and should be succinct.

C. Minutes of the sittings

No minutes are published for the general discussion and the discussion of the General Survey. Minutes of sittings at which governments are invited to respond to the comments of the Committee of Experts will be produced by the secretariat in English, French and Spanish. It is the Committee's practice to accept corrections to the minutes of previous sittings prior to their approval by the Committee, which should take place 36 hours at the most after the minutes become available. In order to avoid delays in the preparation of the report of the Committee, no corrections may be accepted once the minutes have been approved.

[18] See also section E below on time management.

The minutes are a summary of the discussions and are not intended to be a verbatim record. Speakers are therefore requested to restrict corrections to the elimination of errors in the report of their own statements, and not to ask to insert long additional passages. It would be helpful to the secretariat in ensuring the accuracy of the minutes if, wherever possible, delegates would hand in a written copy of their statements to the secretariat.

D. Special problems and cases

For cases in which governments appear to encounter serious difficulties in discharging their obligations, the Committee decided at the 66th Session of the Conference (1980) to proceed in the following manner:

1. *Failure to supply reports and information.* The various forms of failure to supply information will be expressed in narrative form in separate paragraphs at the end of the appropriate sections of the report, and indications will be included concerning any explanations of difficulties provided by the governments concerned. The following criteria were retained by the Committee for deciding which cases were to be included:

– None of the reports on ratified Conventions has been supplied during the past two years or more.

– First reports on ratified Conventions have not been supplied for at least two years.

– None of the reports on unratified Conventions and Recommendations requested under article 19, paragraphs 5, 6 and 7, of the Constitution has been supplied during the past five years.

– No indication is available on whether steps have been taken to submit the Conventions and Recommendations adopted during the last seven sessions of the Conference [19] to the competent authorities, in accordance with article 19 of the Constitution.

– No information has been received as regards all or most of the observations and direct requests of the Committee of Experts to which a reply was requested for the period under consideration.

– The government has failed during the past three years to indicate the representative organizations of employers and workers to which, in accordance with article 23(2) of the Constitution, copies of reports and information supplied to the Office under articles 19 and 22 have been communicated.

– The government has failed, despite repeated invitations by the Conference Committee, to take part in the discussion concerning its country. [20]

[19] This year the sessions involved would be the 91st (2003) to 100th (2011).

[20] In conformity with the decision taken by the Committee at the 73rd Session of the Conference (1987), as amended at the 97th Session of the Conference (2008), for the implementation of this criterion, the following measures will be applied:

– In accordance with the usual practice, after having established the list of cases regarding which Government delegates might be invited to supply information to the Committee, the

2. *Application of ratified Conventions.* The report will contain a section entitled "Application of ratified Conventions", in which the Committee draws the attention of the Conference to:

– cases of progress (see Appendix II), where governments have introduced changes in their law and practice in order to eliminate divergences previously discussed by the Committee;

– discussions it had regarding certain cases, which are mentioned in special paragraphs of the report;

– continued failure over several years to eliminate serious deficiencies in the application of ratified Conventions which it had previously discussed.

E. Time management

– Every effort will be made so that sessions start on time and the schedule is respected.

– Maximum speaking time for speakers are as follows:

  ■ Fifteen minutes for the spokespersons of the Workers' and the Employers' groups, as well as the Government whose case is being discussed.

  ■ Ten minutes for the Employer and Worker members, respectively, from the country concerned to be divided between the different speakers of each group.

  ■ Ten minutes for Government groups.

  ■ Five minutes for the other members.

Committee shall invite the governments of the countries concerned in writing, and the *Daily Bulletin* shall regularly mention these countries.

– Three days before the end of the discussion of individual cases, the Chairperson of the Committee shall request the Clerk of the Conference to announce every day the names of the countries whose representatives have not yet responded to the Committee's invitation, urging them to do so as soon as possible.

– On the last day of the discussion of individual cases, the Committee shall deal with the cases in which Governments have not responded to the invitation. Given the importance of the Committee's mandate, assigned to it in 1926, to provide a tripartite forum for dialogue on outstanding issues relating to the application of ratified international labour Conventions, a refusal by a Government to participate in the work of the Committee is a significant obstacle to the attainment of the core objectives of the International Labour Organization. For this reason, the Committee may discuss the substance of the cases concerning Governments which are registered and present at the Conference, but which have chosen not to be present before the Committee. The debate which ensues in such cases will be reflected in the appropriate part of the report, concerning both individual cases and participation in the work of the Committee. In the case of governments that are not present at the Conference, the Committee will not discuss the substance of the case, but will bring out in the report the importance of the questions raised. In both situations, a particular emphasis will be put on steps to be taken to resume the dialogue.

- Concluding remarks are limited to ten minutes for spokespersons of the Workers' and the Employers' groups, as well as the Government whose case is being discussed.

– However, the Chairperson, in consultation with the other Officers of the Committee, could decide on reduced time limits where the situation of a case would warrant it, for instance, where there was a very long list of speakers.

– These time limits will be announced by the Chairperson at the beginning of each sitting and will be strictly enforced.

– During interventions, a screen located behind the Chairperson and visible by all speakers will indicate the remaining time available to speakers. Once the maximum speaking time has been reached, the speaker will be interrupted.

– In view of the above limits on speaking time, Governments whose case is to be discussed are invited to complete the information provided, where appropriate, by a written document, not longer than five pages, to be submitted to the Office at least two days before the discussion of the case (see also section B above).

– In the eventuality that discussion on individual cases is not completed by the final Friday, there is a possibility of a Saturday sitting at the discretion of the Officers.

F. Respect of rules of decorum and role of the Chairperson

All delegates have an obligation to the Conference to abide by parliamentary language and by the generally accepted procedure. Interventions should be relevant to the subject under discussion and should avoid references to extraneous matters.

It is the role and task of the Chairperson to maintain order and to ensure that the Committee does not deviate from its fundamental purpose to provide an international tripartite forum for full and frank debate within the boundaries of respect and decorum essential to making effective progress towards the aims and objectives of the International Labour Organization.

Appendix I

Criteria for footnotes [1]

At its November–December 2005 session, in the context of examining its working methods, and in response to the requests coming from members of the Committee for clarification concerning the use of footnotes, the Committee of Experts adopted the following criteria (paragraphs 36 and 37):

> The Committee wishes to describe its approach to the identification of cases for which it inserts special notes by highlighting the basic criteria below. In so doing, the Committee makes three general comments. First, these criteria are indicative. In exercising its discretion in the application of these criteria, the Committee may also have regard to the specific circumstances of the country and the length of the reporting cycle. Second, these criteria are applicable to cases in which an earlier report is requested, often referred to as a "single footnote", as well as to cases in which the government is requested to provide detailed information to the Conference, often referred to as "double footnote". The difference between these two categories is one of degree. The third comment is that a serious case otherwise justifying a special note to provide full particulars to the Conference (double footnote) might only be given a special note to provide an early report (single footnote) in cases where there has been a recent discussion of that case in the Conference Committee on the Application of Standards.
>
> The criteria to which the Committee will have regard are the existence of one or more of the following matters:
>
> – the seriousness of the problem; in this respect, the Committee emphasizes that an important consideration is the necessity to view the problem in the context of a particular Convention and to take into account matters involving fundamental rights, workers' health, safety and well-being as well as any adverse impact, including at the international level, on workers and other categories of protected persons;
>
> – the persistence of the problem;
>
> – the urgency of the situation; the evaluation of such urgency is necessarily case-specific, according to standard human rights criteria, such as life-threatening situations or problems where irreversible harm is foreseeable; and
>
> – the quality and scope of the government's response in its reports or the absence of response to the issues raised by the Committee, including cases of clear and repeated refusal on the part of a State to comply with its obligations.

At its 76th Session, the Committee decided that the identification of cases in respect of which a special note (double footnote) is to be attributed will be a two-stage process: the expert initially responsible for a particular group of Conventions may recommend to the Committee the insertion of special notes; in light of all the recommendations made, the Committee will take a final, collegial decision on all the special notes to be inserted, once it has reviewed the application of all the Conventions.

[1] See paras 67, 68, 69, 70 and 71 of the General Report of the Committee of Experts (102nd Session, Report III (Part 1A)).

Appendix II

Criteria for identifying cases of progress [1]

At its 80th Session (November–December 2009), at its 81st Session (November–December 2010), and at its 82nd Session (November–December 2011), the Committee made the following clarifications on the general approach developed over the years for the identification of cases of progress:

(1) The expression by the Committee of interest or satisfaction does not mean that it considers that the country in question is in general conformity with the Convention, and in the same comment **the Committee may express its satisfaction or interest at a specific issue while also expressing regret concerning other important matters** which, in its view, have not been addressed in a satisfactory manner.

(2) The Committee wishes to emphasize that **an indication of progress is limited to a specific issue related to the application of the Convention and the nature of the measure adopted by the government concerned**.

(3) The Committee exercises its discretion in noting progress, taking into account the particular nature of the Convention and the specific circumstances of the country.

(4) The expression of progress can refer to different kinds of measures relating to national legislation, policy or practice.

(5) If the satisfaction or interest relates to the adoption of legislation or to a draft legislation, the Committee may also consider appropriate follow-up measures for its practical application.

(6) In identifying cases of progress, the Committee takes into account both the information provided by governments in their reports and the comments of employers' and workers' organizations.

Since first identifying cases of **satisfaction** in its report in 1964, [2] the Committee has continued to follow the same general criteria. The Committee expresses satisfaction in cases in which, **following comments it has made on a specific issue, governments have taken measures through either the adoption of new legislation, an amendment to the existing legislation or a significant change in the national policy or practice, thus achieving fuller compliance with their obligations under the respective Conventions**. In expressing its satisfaction, the Committee indicates to governments and the social partners that it considers the specific matter resolved. The reason for identifying cases of satisfaction is twofold:

– to place on record the Committee's appreciation of the positive action taken by governments in response to its comments; and

– to provide an example to other governments and social partners which have to address similar issues.

[1] See paras 79 and 83 of the General Report of the Committee of Experts (102nd Session, Report III (Part 1A)).

[2] See para. 16 of the report of the Committee of Experts submitted to the 48th Session (1964) of the International Labour Conference.

Within cases of progress, the distinction between cases of satisfaction and cases of **interest** was formalized in 1979. [3] In general, cases of interest **cover measures that are sufficiently advanced to justify the expectation that further progress would be achieved in the future and regarding which the Committee would want to continue its dialogue with the government and the social partners**. In comparison to cases of satisfaction, cases of interest relate to progress, which is less significant. The Committee's practice has developed to such an extent that cases in which it expresses interest may encompass a variety of measures. The paramount consideration is that the measures contribute to the overall achievement of the objectives of a particular Convention. This may include:

- draft legislation that is before parliament, or other proposed legislative changes forwarded or available to the Committee;
- consultations within the government and with the social partners;
- new policies;
- the development and implementation of activities within the framework of a technical cooperation project or following technical assistance or advice from the Office;
- judicial decisions, according to the level of the court, the subject matter and the force of such decisions in a particular legal system, would normally be considered as cases of interest unless there is a compelling reason to note a particular judicial decision as a case of satisfaction; or
- the Committee may also note as cases of interest the progress made by a State, province or territory in the framework of a federal system.

[3] See para. 122 of the report of the Committee of Experts submitted to the 65th Session (1979) of the International Labour Conference.

Document No. 83

GB.320/LILS/4, The standards initiative: Follow-up to the 2012 ILC Committee on the Application of Standards, March 2014

INTERNATIONAL LABOUR OFFICE

Governing Body

320th Session, Geneva, 13–27 March 2014

GB.320/LILS/4

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

LILS

Date: 6 March 2014
Original: English

FOURTH ITEM ON THE AGENDA

The standards initiative: Follow-up to the 2012 ILC Committee on the Application of Standards

Purpose of the document

The Governing Body is invited to give its direction on the action proposed to address the main outstanding issues in the supervisory system as outlined in paragraphs 40–43.

Relevant strategic objective: Promote and realize standards and fundamental principles and rights at work.

Policy implications: None.

Legal implications: The eventual follow-up may have such implications.

Financial implications: To be determined depending on the decisions taken.

Follow-up action required: According to the decision that will be taken.

Author unit: Office of the Director-General (CABINET).

Related documents: GB.319/PV/Draft; Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A), International Labour Conference, 103rd Session, Geneva, 2014.

Introduction

1. As requested by the Governing Body at its 319th Session in October 2013, [1] the Director-General launched a consultative process with all groups with a view to submitting to the Governing Body at its current session, concrete proposals that address the main outstanding issues in relation to the standards supervisory system.

2. The Office acted in accordance with the pressing need, underlined by the Governing Body, for substantive progress to be made on matters which were of fundamental importance to the functioning of the ILO supervisory system in advance of the 2014 session of the International Labour Conference. It was also guided by the Governing Body's emphasis on the importance of full tripartite participation in the process as key to the building of consensus and to maintaining the strength and authority of the system.

Consultations

3. The consultations mandated by the Governing Body were carried out from November 2013 to early March 2014 and involved all groups within the Governing Body. After a first round, a non-paper by the Director-General provided the basis for a further round of consultations. The members of the Committee of Experts on the Application of Conventions and Recommendations as well as ILO staff and relevant specialists previously associated with the Office were also consulted.

4. The consultations revealed not only areas where views diverge, but also those where strong consensus does exist, notably:

- on the need for the ILO to continue to have a strong and authoritative supervisory system enjoying the support of all parties; and
- the need for action to be taken quickly to preserve the system's strength and authority on the basis of clear proposals to overcome unresolved issues.

5. The consultations showed substantial overall satisfaction with the system among ILO constituents even if some expressed concern on specific issues. It is often regarded as being among the most effective in the multilateral system.

6. Nevertheless, there is also a body of opinion which takes the view that the system is not operating satisfactorily. While that view is not shared by the majority, it is recognized as a reality which requires a response if full tripartite support for the system is to be maintained.

7. The absence of satisfactory responses to these concerns would damage and already has damaged the functioning and strength of the system. Even those who had no fundamental problems with the current operation of the system were ready to contribute to the restoration of necessary consensus.

8. The consultations suggest that even if the current areas of controversy have arisen around the specific issue of the right to strike, action to respond to them needs to address the systemic questions they raise.

[1] GB.319/PV/Draft, paras 565–567.

Key issues outstanding

9. The discussions that have taken place in the International Labour Conference, the Governing Body and elsewhere, particularly since the failure of the Committee on the Application of Standards to complete its work in 2012, have generated extensive statements of opinion which are not repeated in this document. From these, it is possible to identify a limited number of key issues which need to be addressed, and a similarly limited number of possible responses. The consultations point to the need at this juncture for decision-making of a political nature more than further legal or theoretical reflection.

10. For these reasons, the framework for possible responses given below is shaped with a view to facilitating the Governing Body's consideration of major lines of action to ensure the future strength and authority of the supervisory system. Such action, taken in conformity with the ILO's Constitution, could include:

- an explicit consensus statement on the mandate of the Committee of Experts;
- possible avenues for action where there is a question or dispute relating to the interpretation of a Convention;
- a number of adjustments to current working arrangements of the supervisory system; and
- confirmation of the commitment to establish a standards review mechanism.

The mandate of the Committee of Experts

11. In this area, two related issues have arisen. The first concerns whether or not the Committee of Experts has exceeded its mandate in respect of the meaning that it has attributed to Conventions in its reports.

12. The second regards the standing and legal value of the comments the Committee presents in its reports.

13. An initial objection has been that the experts have engaged in interpreting the meaning of Conventions when the Constitution reserves that function to the International Court of Justice. Subsequently, consensus seems to have formed that a degree of interpretation is inherent and necessary to the experts' task of assessing the application of ratified Conventions. However, there remain some differences of opinion about the extent of such interpretation.

14. Linked to the foregoing are some concerns about the question of the substantive effect of the comments of the experts, particularly when they are not the object of specific tripartite discussion and conclusions as one of the 25 cases selected for examination in the Conference Committee. This issue has gained in significance as the contents of the experts' reports have increasingly been used as points of reference outside the ILO.

15. Much attention to date has been given to the inclusion in the report of the Committee of Experts of text which would state explicitly the nature and limits of their mandate and of the standing of its opinions and recommendations. The experts already dedicated

paragraphs in the general part of their 2013 report to these matters and have done so again this year in their 2014 report as reproduced below: [2]

> ***Mandate***
>
> **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-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.**

16. The Experts have provided a clear statement of the mandate conferred on them by the Governing Body. Substantial change in that mandate could only result from a political decision by the relevant ILO bodies. Discussions and consultations to date would indicate that the formulation provided by the experts in their 2014 report could adequately address the concerns that have been raised and command consensus.

Action in case of disagreement on the interpretation of a Convention

17. It is generally recognized (including by the experts themselves) that it is legitimate for ILO constituents to have and to raise disagreement with the views of the Committee of Experts on the application or interpretation of a Convention. Indeed, from the outset, the ILO Constitution foresaw and makes specific provision for such eventualities in its article 37 reproduced below:

> *Article 37*
>
> 1. Any question or dispute relating to the interpretation of this Constitution or of any subsequent Convention concluded by the Members in pursuance of the provisions of this Constitution shall be referred for decision to the International Court of Justice.
>
> 2. Notwithstanding the provisions of paragraph 1 of this article the Governing Body may make and submit to the Conference for approval rules providing for the appointment of a tribunal for the expeditious determination of any dispute or question relating to the interpretation of a Convention which may be referred thereto by the Governing Body or in accordance with the terms of the Convention. Any applicable judgement or advisory opinion of the International Court of Justice shall be binding upon any tribunal established in virtue of this paragraph. Any award made by such a tribunal shall be circulated to the Members of the Organisation and any observations which they may make thereon shall be brought before the Conference.

[2] ILO: *Application of International Labour Standards 2014 (I)*, Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A), International Labour Conference, 103rd Session, Geneva, 2014, para. 31.

18. Considerable, and inconclusive, debate has already been devoted by the Governing Body to the options for action under article 37(1) or 37(2), during which objections have been raised in the past against both:

- in the case of article 37(1), that recourse to the International Court of Justice could be slow and cumbersome; that it might in any case not provide practical answers; and that there would be disadvantage in demonstrating the ILO's incapacity to resolve its difficulties internally; and

- in the case of article 37(2), that the establishment of a tribunal (or similar mechanism) could undermine the authority of the Committee of Experts and be used with excessive frequency and for purposes of political convenience rather than legal clarity. Cost considerations are also a concern.

19. While there has been much reluctance to date, to make use of either option under article 37 of the Constitution, ILO constituents have not been able to move towards consensus on any other methods of resolving the specific and disruptive issue with which they are currently confronted.

20. In these circumstances, and given the improbability of continued tripartite dialogue restoring consensus within the institutional status quo as well as the urgency of overcoming the current impasse, the Governing Body will need to give serious consideration to action under article 37.

21. Consultations revealed interest in exploring further the possibilities for action under both article 37(1) and article 37(2) with divergent views expressed on the relative advantages of each.

22. The views expressed point to the need to further explore in greater detail the possible modalities, costs and safeguards that might be associated with each of these options.

23. In addition, the option exists of an International Labour Conference discussion of issues arising from the application of given international labour standards, where this has led to differences of understanding. At the current stage however, it appears that this course of action would be unlikely to resolve the matters at hand. Nevertheless, it is apparent that alongside the Committee of Experts, the Committee on the Application of Standards itself does provide an important forum for tripartite discussion of issues arising in relation to the application of specific Conventions informed by concrete country situations.

Functioning and working methods of the Committee on the Application of Standards and the Committee of Experts

24. The consultations confirm strong constituent support for the roles and authority of the Conference Committee on the Application of Standards and the Committee of Experts as the crucial and complementary components of the supervisory system.

25. Nevertheless, there are long-standing concerns over aspects of the functioning of these bodies which some constituents believe need to be addressed in the overall response to outstanding issues.

26. Underlying these concerns is the background trend of the continuing increase in the workload of all parts of the supervisory system. This is explained primarily by the increase in the number of member States and of ratifications, and the increased knowledge and use

by constituents of reporting, representation and complaints mechanisms. The following table gives some indicators of the changes in the volume of work of the Committee of Experts.

Selected quantitative information on ILO standards supervisory system

				% change	
	1990	2013	2014	2013–1990	2014–2013
Number of Conventions	171	189	189	10.5	0.0
Number of Ratifications	5 508	7 919	7 929	43.8	0.1
Article 22 reports requested	1 719	2 207	2 319	28.4	5.1
Article 22 reports received	1 260	1 497	1 719	18.8	14.8
Pages of CEACR report	580	917	674	58.1	-26.5
Number of experts on CEACR	20	18	18	-10.0	0.0

Source: ILO.

27. The most frequently voiced concern is over the list of national cases selected for examination by the Committee on the Application of Standards at each session of the Conference.

28. It is generally accepted that Governments themselves should not take a role in the determination of the list, and that this be primarily the responsibility of Workers and Employers. But there are calls for more clearly understood use of agreed and objective criteria in the selection of cases, which could respond to: requirements of balance in the range of Conventions covered and in regional coverage; the guidance of the experts themselves on the seriousness of cases; overall transparency; and adequate visibility for cases of progress.

29. Consultations particularly stress the need to ensure timely publication of a list, and also to counter misperceptions about what a member State's inclusion in the list really signifies. It is widely held that such inclusion constitutes, in itself, a political rebuke, and is therefore something to be avoided, resulting in active lobbying and a damaging politicization of the process. The practice that has been instituted for Employer and Worker representatives to explain to Government members of the Committee on the Application of Standards the rationale for the selection of cases has proven helpful and could be built upon.

30. The consultations reveal some concerns over the appropriate use of the different components of the supervisory system (reports considered by the experts under articles 22 and 23 of the Constitution, representations under article 24, and complaints under article 26, as well as cases before the Committee on Freedom of Association) and the need for balance between them. Questions were raised concerning the appropriate routing of communications, raising points of law, points of practice or specific situations and, in addition, the possibility of using different mechanisms successively and on a graduated basis.

31. The Committee of Experts itself faces challenges arising from an increasing workload, and consequently has given active consideration to necessary modification to its own working methods. It has sought to increase the use of (unpublished) direct requests to governments and to include more precise observations in its reports.

32. Coping mechanisms to deal with this growing workload have included adjustments to the frequency with which reports are required of ratifying governments, increased resource allocations and the introduction of on-line reporting systems. But concerns about overload still exist, and the question has arisen as to whether there are acceptable ways of moderating or rationalizing the flow of communications into the supervisory system and of ensuring that matters that might more properly be dealt with elsewhere are so treated. Some constituents have also raised the option of further extending the reporting cycles for ratified Conventions and of increasing the number of members of the Committee of Experts.

33. In view of the shared opinion that it is important to assure the strength and authority of the supervisory system, the Governing Body could give consideration to concrete action to improve the working methods of the supervisory bodies in ways which will strengthen and not compromise their strength and authority.

34. Specifically, the Governing Body can examine: the methodology for deciding the list of cases to be examined at the Conference including any "default" steps; the relationship between the different supervisory mechanisms; possibilities for action to ensure that access to the supervisory system is assured in line with the established purposes of each of its components; and whether there is a margin for further adjustments to reporting cycles on ratified Conventions.

35. In parallel, the Office could further examine the ways in which it supports the work of the Committee of Experts as well as efforts to ensure that the Committee of Experts works with a full complement of experts, with a view to achieving optimal efficiency in work processes and enabling the experts to make the best use of their necessarily limited time.

36. All parties are aware of the need to guarantee access to the supervisory system to all those who need it. But in circumstances where receivability criteria are generally purely formalistic, the experience of a number of member States in establishing national mechanisms to deal with matters that would otherwise come directly to the ILO can prove instructive. Such mechanisms would require careful design and tripartite acceptance. The procedures provided for in the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), could be of use in this regard. Initial experience with technical cooperation in respect of such mechanisms has proven productive.

37. In all these matters, dialogue between constituents and the Committee of Experts, which has proven valuable in recent months, should be further promoted.

The standards review mechanism

38. The need for full tripartite consensus on an authoritative supervisory system to enhance the relevance of international labour standards through a standards review mechanism were the substance of the "Standards Initiative", one of seven centenary initiatives proposed by the Director-General at the 2013 session of the International Labour Conference, and subsequently approved by the Governing Body. The task of ensuring the continued relevance of international labour standards in the contemporary world of work is an integral part of the outstanding standards-related issues to be addressed. In November 2011, the Governing Body already agreed in principle to the establishment of a standards review mechanism for this purpose. Successful resolution of difficulties in respect of the supervisory system will provide the necessary platform of confidence and understanding for that mechanism to be made operational.

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39. The consultations offer reason to hope that at its current session, the Governing Body will be in a position to advance the construction of consensus around the outstanding issues in respect of the standards supervisory system. But it will not be in a position to conclude that task in advance of the 2014 session of the International Labour Conference. It is therefore of critical importance to the achievement of the overall goals of the standards initiative that the Committee on the Application of Standards is able to undertake its work successfully and that all parties commit to cooperate to that end.

Draft decision

40. ***The Governing Body:***

(a) reaffirms that in order to exercise fully its constitutional responsibilities, it is essential for the ILO to have an effective, efficient and authoritative standards supervisory system commanding the support of all constituents;

(b) welcomes the clear statement by the Committee of Experts of its mandate as expressed in the Committee's 2014 report;

(c) deems it necessary to give further consideration to options to address a dispute or question that might arise with respect to the interpretation of a Convention;

(d) underscores the critical importance of the effective functioning of the Committee on the Application of Standards in conformity with its mandate at the 103rd Session of the International Labour Conference; and

(e) recognizes that a number of steps could be examined with a view to improving the working methods of the standards supervisory system.

41. ***The Governing Body therefore requests the Director-General to:***

(a) prepare a document for its 322nd Session in November 2014 setting out the possible modalities, scope and costs of action under articles 37(1) and 37(2) of the ILO Constitution to address a dispute or question that may arise in relation to the interpretation of an ILO Convention;

(b) present to the 322nd Session of the Governing Body, a timeframe for the consideration of remaining outstanding issues in respect of the supervisory system and for launching the standards review mechanism;

(c) continue to enhance the effectiveness of the support provided by the Office to the Committee of Experts in the discharge of its mandate;

(d) take all necessary action to expedite the filling of vacancies on the Committee of Experts and to propose any adjustments to the relevant procedures to facilitate this objective; and

(e) continue informal consultations with all groups of the Governing Body in respect of all matters referred to in this decision.

42. ***The Governing Body also:***

(a) encourages the continuation of informal dialogue between the Committee of Experts and the Conference Committee on the Application of Standards; and

(b) invites the Committee of Experts to continue to examine its methods of work with a view to further enhancing its effectiveness and efficiency. As in the past, the experts may wish to communicate any progress made in their annual report and through its dialogue with the Committee on the Application of Standards.

43. ***The Governing Body further:***

(a) recommends to the Conference Committee on the Application of Standards that it consider convening its Working Party on Working Methods to take stock of current arrangements and develop further recommendations on the Committee's working methods; and

(b) calls on all parties concerned to contribute to the successful conclusion of the work of the Conference Committee on the Application of Standards at the 103rd Session of the International Labour Conference.

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Minutes of the 320th Session of the Governing Body, March 2014, paras 572-599

INTERNATIONAL LABOUR OFFICE

Governing Body

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GB.320/PV

Minutes of the 320th Session of the Governing Body of the International Labour Office

was necessary to make use of the abrogation procedure, an important tool to follow up on future decisions of the standards review mechanism and to take action on ILO Conventions identified as potential candidates for abrogation.

International Labour Standards and Human Rights Segment

Fourth item on the agenda

The standards initiative: Follow-up to the 2012 ILC Committee on the Application of Standards
(GB.320/LILS/4)

572. *The Director-General* recalled that, at its October 2013 session, the Governing Body had mandated him to hold informal consultations with all three groups, with a view to submitting to the Governing Body proposals to address the main outstanding issues in relation to the standards supervisory system. Constituents had engaged positively and constructively in the consultation process, which had permitted the submission of a carefully constructed draft decision. While adopting the decision would not bring a definitive resolution to the issues in question, it would allow the Governing Body to move forward in that direction, including by enabling the successful completion of the work of the Committee on the Application of Standards at the 103rd Session (2014) of the International Labour Conference. Concrete courses of action to address each set of issues had been proposed, and he was of the view that the Governing Body could decide on some of them at its current session, while agreeing on the steps to be taken to address others at a later stage. He strongly encouraged the Governing Body to adopt the draft decision.

573. *The Worker Vice-Chairperson* recalled, with reference to paragraph 14 of the document, that the Committee on the Application of Standards was never intended to be above the Committee of Experts on the Application of Conventions and Recommendations (CEACR); it added a degree of discussion and political direction to the cases examined each year without passing judgment on the interpretation of the experts. Importantly, there was consensus that a degree of interpretation is necessary to the task of assessing application. There were no particular objections to the statement on the mandate of the CEACR included in its 2014 report, which had the advantage of having been prepared independently by the experts. The group supported the draft decision in paragraph 40(b).

574. Concerning action in the case of disagreement on the interpretation of a Convention, the group would be willing to consider recourse to the International Court of Justice (ICJ) on the interpretation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), regarding the right to strike. The reservations expressed in the document in that regard might have been overstated. The group was also open to exploring the modalities for establishing a tribunal based on article 37(2) of the ILO Constitution under conditions that would need to be discussed and agreed upon prior to the Workers' group approving its establishment. Such a mechanism should only be used in serious situations. The group did not support a tripartite tribunal, but rather one composed of independent judges with extensive international legal expertise, who would hear the interested parties through an adversarial procedure. The tribunal's views should not substitute those of the CEACR. Furthermore, the CEACR's views that were not under review by the tribunal should be treated as valid and generally recognized. Recourse to the

ICJ or an ILO tribunal would be in line with the ILO Constitution that recognized a judiciary solution to a dispute over interpretation. The group did not support the option of holding a Conference discussion on issues arising from the application of given Conventions, leading to differences of understanding. In such cases, the Conference could revise a Convention provided there was a majority of constituents in favour of it, but a general discussion was not a way to obtain a final interpretation of a Convention. This competence had been assigned to the ICJ or an eventual tribunal under article 37(2). The group supported the draft decision in paragraph 41(a).

575. With regard to the functioning and working methods of the CEACR and the Committee on the Application of Standards, he reiterated his group's request for additional resources to support the work of the secretariat of the CEACR. It was also important to ensure that the CEACR had a full complement of experts, and consideration should be given to expanding its membership in the light of the increase in the ratifications of Conventions. The group supported the draft decision in paragraph 41(c) and (d), although adjustments to procedures to fill vacancies on the CEACR, referred to in paragraph 41(d), needed to be clarified. Regarding calls for a more clearly understood use of agreed and objective criteria in the selection of cases to be examined by the Committee on the Application of Standards (paragraph 28 of the document), he recalled that such criteria had already been adopted and included the possible examination of cases of progress. It was important to clarify that the list of cases needed to be endorsed by the Committee on the Application of Standards every year and therefore could not be finalized any earlier. The Tripartite Working Group on the Working Methods of the Committee on the Application of Standards should pursue its efforts and report ongoing progress to the Governing Body as appropriate. The group supported the draft decision in paragraph 43(a) and (b). Concerning the use of the different components of the supervisory system (paragraph 30 of the document), the group would not support any attempts to rebalance the system towards an increased use of representations under article 24 of the Constitution. The CEACR needed to continue to examine the application of ratified Conventions both in law and in practice under article 22 of the Constitution. Representations were more cumbersome to prepare and would be impracticable for many unions. Deadlines for the issuance of conclusions would be long and with such a system some regions would be more active than others. The group also opposed a review of the receivability criteria for representations, notably with regard to the exhaustion of remedies available at the national level, given that the judicial systems of many countries did not function properly. Regarding the working methods of the CEACR, greater recourse to unpublished direct requests (paragraph 31 of the document) would diminish the ability of the Committee on the Application of Standards to supervise those cases as the observations are not reflected in the report. There was no margin for further adjustments to reporting cycles on ratified Conventions (paragraph 32, reiterated in paragraph 34 of the document). The group would find it difficult to agree to the draft decision in paragraph 40(e) if the steps to be examined with a view to improving the working methods of the standards supervisory system related to the issues mentioned in paragraphs 30–32 of the document. The establishment of national mechanisms to deal with matters that would otherwise go directly to the ILO (paragraph 36 of the document), required careful consideration and should not preclude access to the ILO supervisory system.

576. Finally, regarding the standards review mechanism, which was adequately addressed in paragraph 38 of the document, he reiterated that the disputes concerning the Committee on the Application of Standards, and other issues related to the supervisory system, needed to be satisfactorily resolved before making the mechanism operational. The Office should give careful consideration to that issue when preparing proposals in relation to the draft decision in paragraph 41(b) of the document.

577. *The Employer Vice-Chairperson* emphasized the group's willingness to engage in a constructive process to find solutions to improve the functioning of the ILO supervisory system as a whole. The status quo was no longer an option and the constituents should engage in a process to address those matters in a structured and systematic manner, on the basis of concrete time frames and objectives. The mandate of the CEACR was a core issue and the group recognized the effort made by the Committee to address its concerns with the new wording included in its 2014 report. To demonstrate its resolve to move forward, the group was prepared to accept that wording as a permanent addition to CEACR reports.

578. The delay in the adoption of the list of cases of the Committee on the Application of Standards, and the presence of excessively political components, negatively affected the credibility of the system. An earlier determination of the list would enable proper preparation and ensure that the Committee's work was more effective. Objective criteria for the list already existed (contained in Document D.1 on the Work of the Committee on the Application of Standards), [6] and there should be agreement to effectively apply those criteria in June 2014. A realistic short-term deadline should be set to achieve a solution at the March 2015 session of the Governing Body for the Committee on the Application of Standards discussion in 2015, based on certainty and adequate preparation, in line with the new Conference format. The group was ready to engage in a process to establish a new methodology that guaranteed a fair and equitable list of cases.

579. Regarding the interpretation of Conventions, the group considered that all potential solutions should be examined in good faith. It recognized the possibility provided in article 37(1) and (2) of the Constitution, as well as other possibilities provided by the Conference to deal with important disagreements on the specific non-binding guidance provided by the CEACR. The group wanted to identify areas where consensus existed and what items required planning in the following 12 months. Regarding the architecture of the supervisory system, all possibilities should be explored in an integrated manner. The most important challenge, in order to improve the system's credibility, was to engage in a process to find solutions to other equally relevant issues, such as the complementarity of the different existing mechanisms and the graduation in their use; clarification of the difference between the roles of the CEACR and other ILO bodies (including the Committee on Freedom of Association); and a better use of articles 23 and 24 of the Constitution or a proper application of the receivability criteria. That was linked to the increased workload of the CEACR and the reasons for such an increase needed to be identified before a decision on assigning further resources could be taken. A proper rationalization of the different existing tools to avoid overlap could also be an adequate solution.

580. The standards review mechanism was an extremely important issue, and it should be made operational without further delay. Over the previous 12 months, the discussions within the "Swiss Chalet Process" [7] and the Governing Body had established the level of trust required by the Workers' group to further establish the modalities and to operationalize the standards review mechanism.

581. The group did not consider the draft decision to be very clear, but it was willing to accept it on two conditions. First, efficient and concrete action should be taken, within a specific time frame, to find solutions in cases of disagreement on the interpretation of a Convention and to improve coherence in the use of the different supervisory system mechanisms. A first proposal should be discussed by the Governing Body at its November 2014 session.

[6] ILO: *Report of the Committee on the Application of Standards*, Part One, Annex I, *Provisional Record* No. 16-1(Rev.), International Labour Conference, 102nd Session, Geneva, 2013.

[7] See GB.319/PV, paras 548–567.

Second, it was necessary to find an efficient and predictable methodology to establish a list of cases well in advance of the Conference session, using the existing objective criteria. It was necessary to engage on that prior to the November 2014 session of the Governing Body, with a view to achieving a result prior to the Conference session in 2015. On that basis, the group welcomed the statement of the CEACR in its 2014 report, understanding that it would be a permanent addition to the report, and endorsed the draft decision.

582. *Speaking on behalf of the Government group*, a Government representative of the Islamic Republic of Iran reiterated that, to exercise fully its constitutional responsibilities, it was essential for the ILO to have an effective, efficient and authoritative standards supervisory system and he reaffirmed the group's full commitment to the ILO supervisory system. The group welcomed the statement on the mandate of the CEACR included in its 2014 report and emphasized the importance of the independence, objectivity and impartiality of the experts. The increased number of member States and ratifications, as well as the constituents' increased awareness and use of reporting, representation and complaint mechanisms, reflected well on the importance of the ILO supervisory system. The system should have the capacity to respond effectively and efficiently to the increased workload. Further consideration should be given to the options for addressing any questions or disputes that might arise with respect to the interpretation of a Convention within an agreed time frame. The group looked forward to the establishment of a standards review mechanism.

583. *Speaking on behalf of ASPAG*, a Government representative of Australia recalled that his group was of the view that the supervisory system was operating satisfactorily and remained a model for tripartite cooperation and international governance. As that view was not shared across the ILO, the group was committed to contributing to the steps proposed in the document. The group highly appreciated the paragraph prepared by the CEACR for its 2014 report, which lent clarity and certainty to the status of the Committee's recommendations and observations and provided an important reference point for jurisdictions when considering the implications of ILO standards. With respect to the interpretation of a Convention, the ICJ provided an avenue for the resolution of disagreements, although there might be some issues regarding recourse thereto. Dealing with disputes internally, as envisaged in the Constitution, was a positive approach that should be taken into account. Thus, the option of a tribunal should be considered on its merits but issues arising in that regard would require clarification and certainty before ASPAG could agree to embark on that course of action. Options for reviewing the establishment of the list of cases to be discussed by the Committee on the Application of Standards could be considered, with a view to ensuring a balance across regions and Conventions, while also taking national developments into account. ASPAG had submitted a paper to the Office containing options for consideration on how to better manage the increasing workload of the supervisory system. It had been a long time since the Governing Body had agreed to the establishment of the standards review mechanism and the group looked forward to its implementation. ASPAG supported the draft decision.

584. *Speaking on behalf of the Africa group*, a Government representative of Botswana underlined the need for an impartial and effective supervisory system that enjoyed the support of all parties. Failure to provide satisfactory responses to all concerns raised would damage the functioning and the strength of the system. The group welcomed the statement concerning the mandate of the CEACR and the efforts to explore options for addressing questions or disputes that could arise with respect to the interpretation of a Convention. Consensus building and commitment by ILO constituents to the resolution of disputes through dialogue should form an integral part of the options proposed. The group welcomed the continuation of dialogue on the working methods of the Committee on the Application of Standards. Consensus was needed on fair and objective criteria for the selection of cases to be discussed by the Committee on the Application of Standards.

Launching a standards review mechanism was critical for improving the quality of, and compliance with, ILO standards. The Africa group supported the draft decision.

585. *Speaking on behalf of GRULAC*, a Government representative of Costa Rica reiterated her group's strong commitment to the ILO supervisory system and to seeking solutions for the outstanding issues. Her group would have preferred the draft decision in paragraph 40(a) to highlight the criteria of objectivity, transparency and predictability of the supervisory system, but would not object to joining a possible consensus in that respect. Regarding the mandate of the CEACR, she emphasized that no ILO supervisory body was competent to establish legally binding interpretations of international labour Conventions, as that fell within the exclusive competence of the ICJ, in accordance with article 37(1) of the ILO Constitution. GRULAC took note of, and welcomed, the paragraph included in the 2014 report of the CEACR on the Committee's mandate. Regarding the draft decision in paragraph 40(b), in the light of discrepancies between the English, French and Spanish versions, it should be specified that the CEACR received its mandate from the constituents through the Governing Body. With regard to measures in the event of disagreement on the interpretation of a Convention, the group appreciated the proposal to prepare a document for the November 2014 session of the Governing Body (paragraph 41(a) of the document), but pointed out that the document should allow for a real comparison of the two options, by including a table setting out the costs involved and the estimated time frames for the consultation process before the ICJ and the establishment of the tribunal contemplated under article 37(2) of the ILO Constitution. GRULAC was still not convinced that establishing a tribunal was the most advisable option, but it was prepared to consider the matter from all angles. It supported the draft decision in paragraph 40(c). It considered that the content of the draft decision in paragraph 41(a) was important and would like clarification regarding the substantive competence of the tribunal, the actors involved in its proceedings, and its relationship with the Office. The tribunal should be impartial, transparent, objective and independent, should not overburden any ILO department, and should therefore have its own secretariat, with the same characteristics.

586. With regard to the functioning of the supervisory system, consideration should be given to what a country's inclusion in the list of individual cases actually entailed, the selection methodology and the use of objective and clear criteria. The elements contained in Document D.1 on the work of the Committee on the Application of Standards, [8] adopted by that body, should be reviewed. The group had doubts regarding the criterion relating to comments received from employers' and workers' organizations, which lacked objectivity. The group once again highlighted the need for geographic and thematic balance, and for improvements to ensure that the final list of cases was published early enough to allow Governments to prepare properly. Paragraph 43(a) was understood to mean that the recommendations in question would be presented to the Governing Body for consideration. A better graduation of the components of the supervisory system was needed to avoid the simultaneous examination of the same allegations against a country by different mechanisms. The group supported the draft decision in paragraphs 40(e) and 42(a) and (b). Regarding the standards review mechanism, it supported the establishment of a mechanism that would develop a clear, sound and updated body of standards. GRULAC maintained its commitment to contribute to ensuring that the Committee on the Application of Standards would be able to carry out its functions in a satisfactory manner at the 2014 session of the Conference. GRULAC supported the draft decision in paragraphs 40(d) and 43(b). Considering paragraph 41(b) as one of the most important parts of the draft decision, the group wondered whether November 2014 would not be too late to receive a time frame for the consideration of the remaining outstanding issues. GRULAC hoped that the matter would not be left at a standstill until November 2014, which would not be appropriate given the seriousness of the issues. While it supported the draft decision in paragraph

[8] ILO: *Report of the Committee on the Application of Standards*, op. cit.

41(c), the group wished to highlight its understanding that the Office's work did not have to be supervisory. If it took that approach, the Office would not run the risk of becoming part of the problem, but could have a key role in seeking and providing the solutions. Regarding the draft decision contained in paragraph 41(d), GRULAC noted that vacancies in the CEACR should be filled in an objective, impartial and transparent manner. With regard to the draft decision in paragraph 41(e), the group supported the continuation of broad informal consultations, focused on building tripartite consensus.

587. *Speaking on behalf of IMEC*, a Government representative of the United States said that maintaining the strength and authority of the ILO supervisory system was of fundamental importance to the ILO as a whole. Tripartite participation and consensus would be key to implementing the multifaceted draft decision and IMEC would engage substantively in that regard. IMEC welcomed the statements contained in paragraph 40 of the document (draft decision), in particular in relation to the explicit recognition of the mandate of the CEACR as expressed in its 2014 report. While steps could be examined to improve the working methods of the supervisory system, that examination should not compromise the independence of the CEACR. IMEC supported the draft decision in paragraph 41(a) requesting the preparation of a document for the Governing Body at its November 2014 session, setting out the possible modalities, scope and costs of action under article 37(1) and (2) of the Constitution in relation to the interpretation of a Convention. However, until recourse to one of those constitutional mechanisms was initiated, the opinions and recommendations of the CEACR would remain in place. IMEC supported the development of a time frame for considering the remaining outstanding issues in respect of the supervisory system and for launching the standards review mechanism, as set out in the draft decision in paragraph 41(b). The Governing Body should adopt a comprehensive package on the most critical issues. In the meantime, the achievement of the overall goals of the standards initiative was dependent on the Committee on the Application of Standards' ability to undertake its work successfully at the June 2014 session of the Conference, and on the commitment of all parties to cooperate to that end. IMEC fully supported the draft decision.

588. *A Government representative of France* said that the supervisory system should remain at the heart of the ILO's work and that adjustments were needed to maintain and strengthen it. The Governing Body should approve the clarification of the mandate of the CEACR in its 2014 report. The mechanism contemplated under article 37(2) of the ILO Constitution would appear to provide a solution to limit the risk of legal uncertainty arising from the non-binding nature of the CEACR's opinions. Recourse to such a body should be limited to exceptional disagreements on the interpretation of Conventions under Governing Body decisions and a clear commitment and time frame for its establishment should be provided. His Government would also support any other measure that would increase the transparency and effectiveness of the supervisory system.

589. *Speaking on behalf of the EU and its Member States*, a Government representative of Italy said that the following countries aligned themselves with the statement: Turkey, the former Yugoslav Republic of Macedonia, Montenegro, Iceland, Serbia, Albania, Bosnia and Herzegovina, Republic of Moldova and Georgia. They supported the IMEC statement. The ILO supervisory system contributed to the promotion of universal human rights, which was important to the EU. The system played a key role in monitoring and promoting international labour standards, which were referenced in EU policies and law. The EU supported the draft decision.

590. *A Government representative of Switzerland* said that the issue that had arisen during the 2012 session of the Conference had highlighted the challenges facing the supervisory system, which should be addressed as a coherent whole. The supervisory system should contribute to the credibility and effectiveness of the ILO and ensure legal certainty. It was

essential for the constituents to reach consensus on topics for examination within a strictly respected time frame. The Constitution should be observed and the level of protection surrounding international labour standards should in no way be diminished. Prompt consideration should be given to the standards review mechanism and the creation of a mechanism under article 37(2) of the ILO Constitution.

591. *A Government representative of India* said that disagreements on the interpretation of a Convention by the CEACR should be referred to the Conference, as it was up to that supreme forum to decide on any matter pertaining to the world of work. In the light of the ILO Constitution, the ICJ could address serious issues of interpretation. Her Government did not support resorting to article 37(2) of the Constitution as it might further complicate the supervisory system. Some selection criteria could be established with respect to the list of cases for examination by the Committee on the Application of Standards, with a view to ensuring balance across regions and Conventions. It supported an increased use of online reporting systems, provided that due precautions on security and accessibility were taken. Her Government supported the draft decision.

592. *A Government representative of Japan* said that the issue of the mandate of the CEACR was adequately addressed by the statement included in its 2014 report. Regarding the action to be taken in case of disagreement on the interpretation of a Convention, his Government would not object to the preparation of a document for the November 2014 session of the Governing Body, setting out the possible modalities, scope and costs of action under article 37(1) and (2) of the Constitution. Conflicts arising from the interpretation of a Convention should be settled within the Organization and resorting to the ICJ should be avoided. Moreover, if a tribunal was to be established pursuant to article 37(2) of the Constitution, it should not duplicate or undermine the functions of the CEACR. The standards review mechanism was a crucial tool to improve and update international labour standards that would contribute to reducing conflicts related to interpretation and should therefore be established as soon as possible. His Government supported the draft decision.

593. *A Government representative of Zimbabwe* welcomed the ongoing consultations regarding the outstanding issues for the Committee on the Application of Standards. Convergence and mutual understanding would hopefully be reached as soon as possible, thus enabling the Committee on the Application of Standards to fulfil its mandate. The ILO should find long-lasting internal solutions with regard to disputes relating to the interpretation of a Convention. His Government supported the draft decision.

594. *A Government representative of China* agreed with the lines of action set out in paragraph 10 of the document to ensure the strength and authority of the supervisory system in the future. The Governing Body should recognize the clear statement concerning the mandate of the CEACR included in its 2014 report. Vacancies in the CEACR should be filled as soon as possible. Regarding action to resolve disagreements on the interpretation of a Convention, his Government would favour the option under article 37(1) of the Constitution because a ruling of the ICJ would be more timely and authoritative. Regarding the working methods and functioning of the Committee on the Application of Standards, while the progress achieved was welcomed, further improvement could be made on the selection of individual cases. In that respect, the criteria in paragraph 28 of the document concerning the determination of the list of cases should be applied more consistently and discussions should focus on how to help member States improve their capacity to implement the Conventions. The different supervisory procedures should be coordinated to avoid the discussion of the same cases on different occasions. Concerning the standards review mechanism, the Director-General should take concrete action as soon as possible to ensure that standards were up to date to further improve the authority of the supervisory machinery.

595. *The Director-General* said that the discussion showed that the Governing Body was in a position to approve the draft decision on the basis of full tripartite consensus. The Governing Body was dealing with a package of decisions through an integral process, which was partly why it had been presented as "a standards initiative". The establishment of a timetable for the road ahead should not result in a piecemeal approach, which could obstruct overall progress. The draft decision had been carefully calibrated and the Office had made proposals for moving forward as far and as quickly as was judged possible and compatible with the maintenance of consensus. General formulations had been used intentionally in the draft decision, such as those concerning the working methods and the methodology for filling vacancies in the CEACR, given the wide range of views on possible responses on those matters, and further consultations were required. The merits of different options could be examined as the process advanced and issues that could be the object for decision-making could be determined during the November 2014 session. The Employers' group and the Governments had expressed eagerness for the launch of the standards review mechanism in the light of the ILO's obligation under the 2008 ILO Declaration on Social Justice for a Fair Globalization to ensure that international labour standards met the needs of the contemporary world of work. However, a certain degree of progress on the outstanding issues needed to be achieved before the standards review mechanism could be launched. That concern was taken up in the draft decision point on the establishment of a time frame. Although it was not yet possible to be precise on time frames, the Governing Body needed to move closer to determining the matters at stake. A successful session of the Committee on the Application of Standards at the forthcoming session of the Conference would be essential in that regard and a fundamental element of the draft decision was its call on all parties to contribute to that outcome. Finally, concerning informal consultations prior to November 2014, the Office would continue to invest the same levels of energy and commitment in the process as it had since October 2013. Much remained to be accomplished before November 2014, and some of the issues were quite formidable. The task would require effort and commitment from both the Office and constituents. The Office would do everything within its power to ensure progress towards the planned objectives for November.

Decision

596. ***The Governing Body:***

(a) reaffirmed that in order to exercise fully its constitutional responsibilities, it is essential for the ILO to have an effective, efficient and authoritative standards supervisory system commanding the support of all constituents;

(b) welcomed the clear statement by the Committee of Experts of its mandate as expressed in the Committee's 2014 report;

(c) deemed it necessary to give further consideration to options to address a dispute or question that may arise with respect to the interpretation of a Convention;

(d) underscored the critical importance of the effective functioning of the Committee on the Application of Standards in conformity with its mandate at the 103rd Session of the International Labour Conference; and

(e) recognized that a number of steps could be examined with a view to improving the working methods of the standards supervisory system.

597. ***The Governing Body therefore requested the Director-General to:***

(a) prepare a document for its 322nd Session (November 2014) in setting out the possible modalities, scope and costs of action under article 37(1) and (2) of the ILO Constitution to address a dispute or question that may arise in relation to the interpretation of an ILO Convention;

(b) present to the 322nd Session of the Governing Body, a time frame for the consideration of remaining outstanding issues in respect of the supervisory system and for launching the standards review mechanism;

(c) continue to enhance the effectiveness of the support provided by the Office to the Committee of Experts in the discharge of its mandate;

(d) take all necessary action to expedite the filling of vacancies on the Committee of Experts and to propose any adjustments to the relevant procedures to facilitate this objective; and

(e) continue informal consultations with all groups of the Governing Body in respect of all matters referred to in this decision.

598. ***The Governing Body also:***

(a) encouraged the continuation of informal dialogue between the Committee of Experts and the Conference Committee on the Application of Standards; and

(b) invited the Committee of Experts to continue to examine its methods of work with a view to further enhancing its effectiveness and efficiency. As in the past, the experts may wish to communicate any progress made in their annual report and through its dialogue with the Committee on the Application of Standards.

599. ***The Governing Body further:***

(a) recommended to the Conference Committee on the Application of Standards that it consider convening its Working Party on Working Methods to take stock of current arrangements and develop further recommendations on the Committee's working methods; and

(b) called on all parties concerned to contribute to the successful conclusion of the work of the Conference Committee on the Application of Standards at the 103rd Session of the International Labour Conference.

(GB.320/LILS/4, paragraphs 40–43.)

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International Labour Conference, 103rd Session, 2014

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)

General Report
and observations concerning particular countries

International Labour Office Geneva

Reader's note

Overview of the ILO supervisory mechanisms

Since its creation in 1919, the mandate of the International Labour Organization (ILO) has included adopting international labour standards, promoting their ratification and application in its member States, and the supervision of their application as a fundamental means of achieving its objectives. In order to monitor the progress of member States in the application of international labour standards, the ILO has developed supervisory mechanisms which are unique at the international level. [1]

Under article 19 of the ILO Constitution, a number of obligations arise for member States upon the adoption of international labour standards, including the requirement to submit newly adopted standards to national competent authorities and the obligation to report periodically on the measures taken to give effect to the provisions of unratified Conventions and Recommendations.

A number of supervisory mechanisms exist whereby the Organization examines the standards-related obligations of member States deriving from ratified Conventions. This supervision occurs both in the context of a regular procedure through annual reports (article 22 of the ILO Constitution), [2] as well as through special procedures based on representations or complaints to the Governing Body made by ILO constituents (articles 24 and 26 of the Constitution, respectively). Moreover, since 1950, a special procedure has existed whereby complaints relating to freedom of association are referred to the Committee on Freedom of Association of the Governing Body. The Committee on Freedom of Association may also examine complaints relating to member States that have not ratified the relevant freedom of association Conventions.

Role of employers' and workers' organizations

As a natural consequence of its tripartite structure, the ILO was the first international organization to associate the social partners directly in its activities. The participation of employers' and workers' organizations in the supervisory mechanism is recognized in the Constitution under article 23, paragraph 2, which provides that reports and information submitted by governments in accordance with articles 19 and 22 must be communicated to the representative organizations.

In practice, representative employers' and workers' organizations may submit to their governments comments on the reports concerning the implementation of ratified Conventions. They may, for instance, draw attention to a discrepancy in law or practice regarding a Convention and thus lead the Committee of Experts to request further information from the government. Furthermore, any employers' or workers' organization may submit comments on the application of Conventions directly to the Office. The Office will then forward these comments to the government concerned, which will have an opportunity to respond before the comments are examined by the Committee of Experts.

[1] For detailed information on all the supervisory procedures, see the *Handbook of procedures relating to international labour Conventions and Recommendations*, International Labour Standards Department, International Labour Office, Geneva, Rev., 2012.

[2] Reports are requested every three years for the fundamental Conventions and governance Conventions, and every five years for other Conventions. Reports are due for groups of Conventions according to subject matter.

Origins of the Conference Committee on the Application of Standards and the Committee of Experts on the Application of Conventions and Recommendations

During the early years of the ILO, both the adoption of international labour standards and the regular supervisory work were undertaken within the framework of the plenary sitting of the annual International Labour Conference. However, the considerable increase in the number of ratifications of Conventions rapidly led to a similarly significant increase in the number of annual reports submitted. It soon became clear that the plenary of the Conference would not be able to examine all of these reports at the same time as adopting standards and discussing other important matters. In response to this situation, the Conference in 1926 adopted a resolution [3] establishing on an annual basis a Conference Committee (subsequently named the Conference Committee on the Application of Standards) and requesting the Governing Body to appoint a technical committee (subsequently named the Committee of Experts on the Application of Conventions and Recommendations) which would be responsible for drawing up a report for the Conference. These two committees have become the two pillars of the ILO supervisory system.

Committee of Experts on the Application of Conventions and Recommendations

Composition

The Committee of Experts is composed of 20 members, [4] who are outstanding legal experts at the national and international levels. The members of the Committee are appointed by the Governing Body upon the proposal of the Director-General. Appointments are made in a personal capacity from among impartial persons of competence and independent standing drawn from all regions of the world, in order to enable the Committee to have at its disposal first-hand experience of different legal, economic and social systems. The appointments are made for renewable periods of three years. In 2002, the Committee decided that there would be a limit of 15 years' service for all members, representing a maximum of four renewals after the first three-year appointment. At its 79th Session (November–December 2008), the Committee decided that its Chairperson would be elected for a period of three years, which would be renewable once for a further three years. At the start of each session, the Committee would also elect a Reporter.

Mandate

The Committee of Experts meets annually in November–December. In accordance with the mandate given by the Governing Body, [5] the Committee is called upon to examine the following:

– the annual reports under article 22 of the Constitution on the measures taken by member States to give effect to the provisions of the Conventions to which they are parties;

– the information and reports concerning Conventions and Recommendations communicated by member States in accordance with article 19 of the Constitution;

– information and reports on the measures taken by member States in accordance with article 35 of the Constitution. [6]

The task of the Committee of Experts is to indicate the extent to which each member State's legislation and practice are in conformity with ratified Conventions and the extent to which member States have fulfilled their obligations under the ILO Constitution in relation to standards. In carrying out this task, the Committee adheres to its principles of independence, objectivity and impartiality.

The comments of the Committee of Experts on the fulfilment by member States of their standards-related obligations take the form of either *observations* or *direct requests*. Observations contain comments on fundamental questions raised by the application of a particular Convention by a member State. These observations are reproduced in the annual report of the Committee of Experts, which is then submitted to the Conference Committee on the Application of Standards in June every year. Direct requests usually relate to questions of a more technical nature. They are not published in the report of the Committee of Experts, but are communicated directly to the government concerned. [7] In addition, the Committee of Experts examines, in the context of the General Survey, the state of the legislation and practice concerning a specific area covered by a given number of Conventions and Recommendations chosen by the Governing Body. The General Survey is

[3] Appendix VII, *Record of Proceedings* of the Eighth Session of the International Labour Conference, 1926, Vol. 1.

[4] There are currently 18 experts appointed.

[5] Terms of reference of the Committee of Experts, Minutes of the 103rd Session of the Governing Body (1947), Appendix XII, para. 37.

[6] Article 35 covers the application of Conventions to non-metropolitan territories.

[7] Observations and direct requests are accessible through the NORMLEX database available at: http://www.ilo.org.

based on the reports submitted in accordance with articles 19 and 22 of the Constitution, and it covers all member States regardless of whether or not they have ratified the concerned Conventions. This year's General Survey covers minimum wage fixing. Pursuant to the decision taken by the Governing Body at its 307th Session (March 2010), the subjects of General Surveys have been aligned with the four strategic objectives of the ILO as set out in the ILO Declaration on Social Justice for a Fair Globalization, 2008 (the Social Justice Declaration). [8]

Report of the Committee of Experts

As a result of its work, the Committee produces an annual report. The report consists of two volumes. The first volume (Report III (Part 1A)) [9] is divided into two parts:

- **Part I:** the **General Report** describes, on the one hand, the progress of the work of the Committee of Experts and specific matters relating to it that have been addressed by the Committee and, on the other hand, the extent to which member States have fulfilled their constitutional obligations in relation to international labour standards.
- **Part II: Observations concerning particular countries** on the fulfilment of obligations in respect of the submission of reports, the application of ratified Conventions grouped by subject matter and the obligation to submit instruments to the competent authorities.

The second volume contains the **General Survey** (Report III (Part 1B)). [10]

Furthermore, an ***Information document on ratifications and standards-related activities*** (Report III (Part 2)) accompanies the report of the Committee of Experts. [11]

Committee on the Application of Standards of the International Labour Conference

Composition

The Conference Committee on the Application of Standards is one of the two standing committees of the Conference. It is tripartite and therefore comprises representatives of governments, employers and workers. At each session, the Committee elects its Officers, which include a Chairperson (Government member), two Vice-Chairpersons (Employer member and Worker member) and a Reporter (Government member).

Mandate

The Conference Committee on the Application of Standards meets annually at the June session of the Conference. Pursuant to article 7 of the Standing Orders of the Conference, the Committee shall consider:

- measures taken to give effect to ratified Conventions *(article 22 of the Constitution)*;
- reports communicated in accordance with article 19 of the Constitution *(General Surveys)*;
- measures taken in accordance with article 35 of the Constitution *(non-metropolitan territories)*.

The Committee is required to present a report to the Conference.

Following the independent technical examination carried out by the Committee of Experts, the proceedings of the Conference Committee on the Application of Standards provide an opportunity for the representatives of governments, employers and workers to examine together the manner in which States are fulfilling their standards-related obligations, particularly with regard to ratified Conventions. Governments are able to elaborate on information previously supplied to the Committee of Experts, indicate any further measures taken or proposed since the last session of the Committee of Experts, draw attention to difficulties encountered in the fulfilment of obligations and seek guidance as to how to overcome such difficulties.

[8] By virtue of the follow-up to the Social Justice Declaration, a system of annual recurrent discussions in the framework of the Conference has been established to enable the Organization to gain a better understanding of the situation and varying needs of its members in relation to the four strategic objectives of the ILO, namely: employment; social protection; social dialogue and tripartism; and fundamental principles and rights at work. The Governing Body considered that the recurrent reports prepared by the Office for the purposes of the Conference discussion should benefit from the information on the law and practice of member States contained in General Surveys, as well as from the outcome of the discussions of General Surveys by the Conference Committee.

[9] This citation reflects the agenda of the International Labour Conference, which contains as a permanent item, item III relating to information and reports on the application of Conventions and Recommendations.

[10] ibid.

[11] This document provides an overview of recent developments relating to international labour standards, the implementation of special procedures and technical cooperation in relation to international labour standards. It also contains, in the form of tables, full information on the ratification of Conventions, together with "country profiles" containing key information on standards for each country.

The Conference Committee on the Application of Standards discusses the report and the General Survey of the Committee of Experts, and the documents submitted by governments. The work of the Conference Committee starts with a general discussion based essentially on the General Report of the Committee of Experts, and with a discussion on the General Survey. With regard to the alignment of the subject of General Surveys with the strategic objective discussed in the context of the recurrent report under the follow-up to the Social Justice Declaration, the outcome of the discussion of the Conference Committee concerning the General Survey is transmitted to the Conference Committee responsible for examining the recurrent report. Following its general discussion, the Conference Committee examines cases of serious failure to fulfil reporting and other standards-related obligations. Finally, the Conference Committee embarks upon its main task, which is to examine a number of individual cases concerning the application of ratified Conventions which have been the subject of observations by the Committee of Experts. The Conference Committee invites the Government representatives concerned to attend one of its sittings to discuss the observations in question. After listening to the Government representatives, the members of the Conference Committee may ask questions or make comments. At the end of the discussion, the Conference Committee adopts conclusions on the case in question.

In its report [12] submitted to the plenary sitting of the Conference for adoption, the Conference Committee on the Application of Standards may invite the member State whose case has been discussed to accept a technical assistance mission by the International Labour Office to increase its capacity to fulfil its obligations, or may propose other types of missions. The Conference Committee may also request a government to submit additional information or address specific concerns in its next report to the Committee of Experts. The Conference Committee also draws the attention of the Conference to certain cases, such as cases of progress and cases of serious failure to comply with ratified Conventions.

The Committee of Experts and the Conference Committee on the Application of Standards

In numerous reports, the Committee of Experts has emphasized the importance of the spirit of mutual respect, cooperation and responsibility that has always existed in relations between the Committee of Experts and the Conference Committee. It has accordingly become the practice for the Chairperson of the Committee of Experts to attend the general discussion of the Conference Committee including the discussion on the General Survey as an observer, with the opportunity to address the Conference Committee at the opening of the general discussion and to make remarks at the end of the discussion on the General Survey. Similarly, the Employer and Worker Vice-Chairpersons of the Conference Committee are invited to meet the Committee of Experts during its sessions and discuss issues of common interest within the framework of a special session held for that purpose.

[12] The report is published in the *Record of Proceedings* of the Conference. Since 2007, it has also been issued in a separate publication. See, for the last report, *Conference Committee on the Application of Standards: Extracts from the Record of Proceedings*, International Labour Conference, 102nd Session, Geneva, 2013.

Part I. General Report

I. Introduction

1. The Committee of Experts on the Application of Conventions and Recommendations, appointed by the Governing Body of the International Labour Office to examine the information and reports submitted under articles 19, 22 and 35 of the Constitution by member States of the International Labour Organization on the action taken with regard to Conventions and Recommendations, held its 84th Session in Geneva from 27 November to 14 December 2013. The Committee has the honour to present its report to the Governing Body.

Composition of the Committee

2. The composition of the Committee is as follows: Mr Mario ACKERMAN (Argentina), Mr Denys BARROW, SC (Belize), Mr Lelio BENTES CORRÊA (Brazil), Mr James J. BRUDNEY (United States), Mr Halton CHEADLE (South Africa), Ms Graciela Josefina DIXON CATON (Panama), Mr Rachid FILALI MEKNASSI (Morocco), Mr Abdul G. KOROMA (Sierra Leone), Mr Dierk LINDEMANN (Germany), Mr Pierre LYON-CAEN (France), Ms Elena MACHULSKAYA (Russian Federation), Ms Karon MONAGHAN, QC (United Kingdom), Mr Vitit MUNTARBHORN (Thailand), Ms Rosemary OWENS (Australia), Mr Paul-Gérard POUGOUÉ (Cameroon), Mr Raymond RANJEVA (Madagascar), Mr Ajit Prakash SHAH (India), Mr Yozo YOKOTA (Japan). Appendix I of the General Report contains brief biographies of all the Committee members.

3. The Committee notes that Ms Laura Cox, QC (United Kingdom), who had been a member of the Committee since 1998, has completed her 15-year mandate. The Committee expresses its deep appreciation for the outstanding manner in which Ms Cox has carried out her duties during her service on the Committee and, in particular, commends her warmly for the excellent way in which she has carried out her duty as Chairperson of the Subcommittee on Working Methods over a number of years. The Committee also notes that Mr Francisco Pérez de los Cobos Orihuel (Spain), who had been a member of the Committee since 2012, has submitted his resignation, following his nomination as Chairperson of the Constitutional Tribunal of Spain.

4. During its session, the Committee welcomed Ms Monaghan and Mr Shah, nominated by the Governing Body at its 317th Session (October 2013). The Committee noted that Mr Bentes Corrêa and Mr Lindemann were unable to participate in its work this year.

5. Mr Koroma started his mandate as Chairperson of the Committee and the Committee elected Mr Muntarbhorn as Reporter.

Working methods

6. The Committee has in recent years undertaken a thorough examination of its working methods. In order to guide this reflection on working methods efficiently, a subcommittee on working methods was set up in 2001. The mandate of the subcommittee includes examining the working methods of the Committee and any related subjects, in order to make appropriate recommendations to the Committee. The subcommittee met on three occasions between 2002 and 2004.[1] During its sessions in 2005 and 2006, issues relating to its working methods were discussed by the Committee in plenary sitting. [2] From 2007 to 2011, the subcommittee met at each of the Committee's sessions. [3]

[1] See CEACR: General Report, 73rd Session (November–December 2002), paras 4–8; General Report, 74th Session (November–December 2003), paras 7–9; General Report, 75th Session (November–December 2004), paras 8–10.

[2] See CEACR: General Report, 76th Session (November–December 2005), paras 6–8; General Report, 77th Session (November–December 2006), para. 13.

[3] See CEACR: General Report, 78th Session (November–December 2007), paras 7–8; General Report, 79th Session (November–December 2008), paras 8–9; General Report, 80th Session (November–December 2009), paras 7–8; General Report, 81st Session (November–December 2010), paras 6–13; General Report, 82nd Session (November–December 2011), paras 6–12.

7. Last year, a new subcommittee on the streamlining of treatment of certain reports was established. This subcommittee met again this year, on two occasions, before the beginning of the work of the Committee and examined all the comments related to repetitions (which are comments repeating what had been said previously by the Committee of Experts), as well as the general observations and direct requests. Concerning repetitions, the subcommittee examined 143 observations (compared to 269 in 2012) and 329 direct requests (compared to 462 in 2012). This represents a significant 35.43 per cent decrease in the total number of repetitions. The subcommittee then presented, for adoption in the plenary, its report to the Committee of Experts and drew attention to the most important issues which had been raised during its examination. The approach taken by the subcommittee has enabled, once again, the Committee of Experts to save time for the examination of individual observations and direct requests regarding ratified Conventions.

Relations with the Conference Committee on the Application of Standards

8. A spirit of mutual respect, cooperation and responsibility has consistently prevailed over the years in the Committee's relations with the International Labour Conference and its Committee on the Application of Standards. The Committee of Experts has always taken the proceedings of the Conference Committee into full consideration, not only in respect of general matters concerning standard-setting activities and supervisory procedures, but importantly with regard to specific matters concerning the way in which States fulfil their standards-related obligations. The Committee has also paid close attention in recent years to the comments on its working methods that have been made by the members of the Committee on the Application of Standards and the Governing Body.

9. In this context, the Committee once more welcomed the participation of Mr Yokota as an observer, in his capacity as Chairperson of the 2012 session of the Committee of Experts, in the general discussion of the Committee on the Application of Standards at the 102nd Session of the International Labour Conference (June 2013). It noted the decision by the Conference Committee to request the Director-General to renew this invitation to the Chairperson of the Committee of Experts for the 103rd Session (May–June 2014) of the Conference. The Committee of Experts accepted this invitation.

10. The Chairperson of the Committee of Experts invited the Employer Vice-Chairperson (Ms Sonia Regenbogen) and the Worker Vice-Chairperson (Mr Marc Leemans) of the Committee on the Application of Standards at the 102nd Session of the International Labour Conference (June 2013) to participate in a special sitting of the Committee at its present session. They both accepted this invitation.

11. The Chairperson of the Committee of Experts welcomed the opportunity to exchange views on issues of common interest with the two Vice-Chairpersons of the Conference Committee. In the current institutional context arising from the session of the Conference Committee in June 2012, the dialogue between the two committees was even more important. This dialogue would be constructive and embedded in mutual respect, cooperation and responsibility, which helps to generate an atmosphere of trust between the two committees. He reassured the Employer and Worker Vice-Chairpersons that the Committee of Experts, in adhering to the fundamental principles of independence, impartiality and objectivity, was attentive to the issues that had been raised and had continued to give them due consideration.

12. The Employer Vice-Chairperson welcomed the opportunity to participate in this meeting. In the first place, she emphasized that the ILO supervisory mechanisms were increasing in relevance and importance for a number of reasons, including the consideration by national courts of the international obligations of member States, the globalization of business and the adoption by multinational corporations of codes of conduct. In that context, the Employers were completely committed to ensuring the relevance, sustainability and credibility of the ILO supervisory system. The technical work carried out by the Committee of Experts in preparing observations was an invaluable and crucial part of the supervisory system. The Employers also recognized and appreciated the invaluable contribution that the Office made in supporting the work of the Committee of Experts.

13. With reference to the ongoing process following up on the 2012 Conference Committee, she indicated that there had been a few encouraging developments, but that the constituents were far from having achieved a definitive and forward-looking outcome. The Employers considered that the following principles had been identified to guide the way forward: the need to restore the balance between the different supervisory bodies, as well their complementarity so as to eliminate overlap; the need to better articulate a progressive hierarchy and predictability in the use of the different supervisory bodies; the possibility to require prior recourse to national jurisdiction before a claim is presented to the ILO, as well as more objective admissibility criteria before a claim is accepted for discussion; and the need to reinforce the capacity of the constituents to jointly provide alternative guidance on Conventions, or to explore other possibilities for the review of labour standards, as foreseen by the ILO Constitution. The Employer Vice-Chairperson also indicated that it had been possible to re-establish some of the trust between Employers and Workers. However, substantial progress was yet to be achieved. The Employers felt that one of the keys to further progress also lay with the Committee of Experts and they were fully committed to cooperating closely with the Committee for that purpose, in a spirit of respect, mutual collaboration and responsibility.

14. Turning to the issue of the right to strike, the Employers had expressed the view on many occasions that a "right to strike" was not regulated in the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). In a recent submission to the Committee of Experts, the International Organisation of Employers (IOE) had added further arguments on the "right to strike" and Convention No. 87 in response to a submission on the same subject by the International Trade Union Confederation (ITUC). She added that there had been an important change in the treatment by the Conference Committee in June 2013 of cases involving the "right to strike", when most of the conclusions on those cases included the sentence: "The Committee did not address the right to strike in this case as the Employers do not agree that there is a right to strike in Convention No. 87." The sentence made two things clear: firstly, that there was no consensus in the Conference Committee that Convention No. 87 contained and guaranteed a "right to strike"; and secondly, that the Conference Committee accepted that, because of the lack of consensus, it was not in a position to ask governments to change their law and practice with regard to strike issues. The statement in the conclusions of the Conference Committee was in contrast with the current position of the Committee of Experts. The Employers considered that a difference of opinion of that nature between the two main supervisory bodies of the ILO on such an important matter was detrimental to the Organization and was bound to result in a loss of credibility, authority and therefore relevance for the supervisory system in the long term. It was the hope of the Employers that there would be coherence between the two pillars of the supervisory system on this issue and that the Committee of Experts would therefore reconsider its views. The Employers had declared their readiness to hold an in-depth and thorough examination of the issue of "industrial action" through a general discussion at the Conference. They therefore respectfully called on the Committee of Experts to desist from making observations related to the "right to strike" pending the outcome of a general discussion on this subject.

15. With regard to the mandate of the Committee of Experts and the related question of its clarification, while appreciating the recognition by the Committee of Experts that its views were not legally binding in its 2013 report, the Employers regretted that, by providing additional explanations, this recognition had been rendered ambiguous. They called on the Committee of Experts to draft concise and sufficiently clear wording to be included in its reports by way of clarification of its mandate and the legal status of its views, starting with its 2014 report.

16. With regard to the supervisory role of the Committee of Experts, the Employer Vice-Chairperson recognized that the determination of whether there were divergences between national law and practice and the requirements of Conventions involved a certain degree of interpretation. However, the Employers considered that it was not the role or function of the Committee of Experts to act as a standard-setting body by adding further rules to Conventions by means of extensive interpretations or by filling in gaps or narrowing the flexibility of Conventions by providing restrictive interpretations. Standard setting was vested with the ILO constituents. Nor should the Committee of Experts act as a political body by using the supervision of particular Conventions to criticize general government policies, such as fiscal consolidation policies, or by making recommendations to ratify Conventions. These matters pertained to the Conference and the Governing Body. The Employers appreciated that the competent tripartite bodies on standards-related matters had a more proactive role to play and recalled their commitment to the standards review mechanism, which had been adopted by the Governing Body in principle, but not yet operationalized. It should also be recalled that, during the general discussion in the Conference Committee in 2013, the Employer members had made proposals to improve the effectiveness of the standards supervisory system, for example through addressing reporting failures, improving the focus of supervision by reducing the number of observations and measuring progress in compliance with ratified Conventions more meaningfully and reliably. The Employers were very sensitive to the very heavy workload of the Committee of Experts and would support any initiative to address this issue. They looked forward to a discussion of those proposals.

17. In conclusion, the Employers expressed deep appreciation of the work of the Committee of Experts in preparing its observations. It was their desire to reach meaningful conclusions on the basis of those observations. The Committee of Experts could be sure of the Employers' continued commitment to the functioning and reliability of the supervisory system. Their criticisms should be seen as a contribution to preserving the supervisory system and making it resilient for the future.

18. The Worker Vice-Chairperson emphasized the informal nature of the meeting between the Committee of Experts and the Vice-Chairpersons of the Conference Committee, adding that it was not an occasion for tripartite discussions, which lay within the competence of the Governing Body. In particular, it was the tripartite constituents' responsibility to address the issues arising from the report of the Conference Committee in June 2012. He reiterated the support of the Workers' group for the role and mandate of the Committee of Experts, whose independence and expertise they respected. He also recalled the complementarity of the respective roles of the Committee of Experts and the Conference Committee.

19. He recalled the position of his group that the recognition of the right to strike was based on a joint reading of Articles 3 and 10 of Convention No. 87. He did not agree with the view of the Employers concerning the sentence adopted in the conclusions of the Conference Committee in cases of the right to strike. He added that in the majority of ILO member States the right to collective action was already regulated, including through international and regional instruments. He also recalled that the Committee on Freedom of Association had already set a framework that was incontestable and as yet unchallenged. He expressed the fear that other matters of controversy might emerge relating to other Conventions, the application of which could be seen as an obstacle to enterprise competitiveness.

20. The Worker Vice-Chairperson referred to the six proposals made by the Employers' group during the general discussion at the Conference Committee in June and considered that the purpose of the six proposals, behind the apparent neutrality of the language, was to weaken the Committee of Experts.

21. With reference to the request by the Employers for a "disclaimer" or "caveat", intended to explain clearly the non-binding nature of the opinions of the Committee of Experts, he considered that this idea was without pertinence and that it would contribute to undermining the work of the Committee of Experts, which would automatically be suspected of partiality or a lack of objectivity. In his view, the articulation of the supervisory mechanisms on the application of standards, and even the role of the ILO, would be compromised. A "disclaimer" or "caveat" would amount to a denial of responsibility and would be inadequate in light of the mandate of the Committee of Experts and the evolving nature of the mandate which the Governing Body had entrusted to the Committee over the years. It would be contrary to the ILO Constitution which, in light of articles 19, 22 and 35, gave a specific value to the work of the Committee of Experts. He emphasized that the Committee of Experts itself considered that its analyses and conclusions could only become binding if a competent body, for example a judicial body, considered them as such. He called on the Committee of Experts not to modify its position and referred to the recent decision by the Governing Body, which had requested the Director-General to organize consultations as a matter of priority with all the groups with a view to submitting concrete proposals to its session in March 2014 for the resolution of the principal issues that were outstanding concerning the supervisory system.

22. With reference to the possibility of having recourse to article 37(1) of the ILO Constitution, even if his group did not wish to take that path, he acknowledged that it remained possible, and was perhaps inevitable. In fact, article 37(1) would be the only option. In addition, the Workers' group hoped that the Governing Body would be able to discuss the options and possible procedures for the implementation of article 37(2) of the ILO Constitution.

23. The Worker Vice-Chairperson reiterated the support of the Workers' group for the Committee of Experts and trusted that it would continue its work, in accordance with its mandate, with full confidence, based on the reports received.

24. In response, the Committee reaffirmed its technical role and stressed that it had no interest in extending its mandate nor the wish to do so. It would continue to fulfil the mandate it had been given by the Conference and the Governing Body. Recalling that the issues raised in relation to its mandate were fully addressed the previous year, the Committee therefore referred to its 2013 General Report, in particular paragraph 33, in which four principal factors were identified, that are summarized here:

– The examination of a range of reports and information in order to monitor the application of Conventions and Recommendations logically and inevitably requires an assessment, which in turn involves a degree of interpretation of both the national legislation and the text of the Convention.

– The Committee's approach to examining the meaning of Conventions emphasizes due regard to achieving equality of treatment for States and uniformity in practical application. This emphasis is essential to maintaining principles of legality and promoting a level of certainty.

– The Committee of Experts' views on the meaning of Conventions are broadly accepted because the Committee is composed of independent persons who have distinguished backgrounds in law and direct experience of the different national legal systems. This independence is also attributable to the means by which members are selected.

– If governments were to view the Committee's positions as somehow discounted or of less certain value, some would feel freer to ignore its requests or invitations to comply. This would inevitably undermine orderly monitoring or the predictable application of the standards. In addition, the Conference Committee, the Committee on Freedom of Association, and the Governing Body also rely on the Committee of Experts' framework of opinions about the meaning of the provisions of the Conventions in the course of the application process.

25. Concerning the right to strike in relation to Convention No. 87, the Committee appreciated the additional thoughts shared and arguments put forward by the two Vice-Chairpersons, as well as the extensive presentations by the IOE and the ITUC concerning the issue. The Committee had presented its views at considerable length in the past on why the right to strike was a part of this Convention. The Committee appreciated submissions from both sides on the need to examine situations in individual countries that involved the relationship between the right to strike and national law. These were helpful to the Committee when fulfilling its responsibilities.

26. The Committee noted that it had spent considerable time discussing the issues raised and preparing to communicate its positions. While this was obviously important work for the Committee, it also came at the expense of time the Committee would be spending reviewing reports from governments and related comments from the social partners. The Committee further noted that five of its members had returned to Geneva last February (an unprecedented activity for the Committee) in part to respond to questions from the tripartite constituencies. It had also made a series of adjustments to its working methods over the years, and would continue to do so, including by reviewing the proposals made during the June 2013 general discussion of the Conference Committee. Some adjustments had already been made this year, reflecting constructive suggestions from the social partners regarding the length of the Committee's observations and the possibility of shifting some informational queries into direct requests.

27. The Committee considered that it was for the International Labour Conference and the Conference Committee to decide whether its understanding of the matters at stake should be sustained or adjusted going forward. These were ultimately political decisions for the tripartite constituents to address and resolve. The Committee was not a political body.

28. The Employer Vice-Chairperson, in response to the discussion, expressed great appreciation of the commitment of the Committee of Experts to its role and of the amount of work that was carried out over a short period. She emphasized that there was no desire on the part of the Employers to weaken the role of the Committee of Experts, and that they wished to express their appreciation of its work very clearly. She was heartened by the clear statements by the members of the Committee of Experts acknowledging its role as a technical, and not a judicial body, and called on it to work within that mandate. In response to the statement made by the Worker Vice-Chairperson, she added that the Employers were not seeking a "disclaimer", but a "clarification" to be included in the report of the Committee of Experts which was intended to clarify the scope of its mandate. It should also be noted that the Employers had never taken the extreme view that the Committee of Experts could not engage in any interpretation, as its supervisory work logically involved a degree of interpretation.

29. The Worker Vice-Chairperson, in response to the discussion, recalled that the tripartite process was in the hands of the Governing Body. He was satisfied to note that nobody wanted to weaken the Committee of Experts, the mandate of which had been clearly defined by the tripartite constituents. In conclusion, he emphasized that there was no need for the Committee of Experts to clarify its own mandate.

30. This year, the Committee of Experts also held for the first time an informal information meeting with representatives of governments. The members of the Committee of Experts emphasized that the Committee's mandate was defined by the International Labour Conference and the Governing Body. They recalled that the Committee of Experts was a technical body and adhered to the principles of independence, objectivity and impartiality. The members of the Committee of Experts provided information on a number of aspects related to their work. These included: a succinct history of the Committee and the evolution of its composition and mandate; its role in the context of the ILO supervisory system, with particular emphasis on its relationship with the Conference Committee on the Application of Standards; the sources of information used in carrying out its work; the preparatory work and examination of comments during its plenary sittings; the types of comments made in its reports concerning the application of ratified Conventions in accordance with article 22 of the ILO Constitution; and the general surveys on the law and practice of member States in accordance with article 19 of the ILO Constitution. The Committee of Experts replied to the questions raised by Government representatives concerning its mandate, methods of work and approach. All the Government representatives who took the floor expressed appreciation for the holding of the informal meeting with the Committee of Experts and for the explanations provided. They believed that dialogue between the Committee of Experts and the constituents of the ILO was of great importance and, in this regard, hoped that such an informal meeting with Government representatives could continue.

Mandate

31. 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-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.

Document No. 86

Standing Orders of the International Labour Conference, article 10

Standing Orders of the International Labour Conference

International Labour Office, Geneva, 2021

Article 10

Committee on the Application of Standards

1. The Conference shall establish a Committee on the Application of Standards to consider:

(a) compliance by Members with their obligations to communicate information and reports under articles 19, 22, 23 and 35 of the Constitution;

(b) individual cases relating to the measures taken by Members to give effect to the Conventions to which they are parties;

(c) the law and practice of Members with regard to selected Conventions to which they are not parties and Recommendations, as chosen by the Governing Body (general survey).

2. The Committee on the Application of Standards shall also consider reports transmitted by the Governing Body to the Conference for the Committee's consideration.

3. No resolutions may be submitted under article 41 to the Committee on the Application of Standards.

4. The Committee on the Application of Standards shall submit a report to the Conference.

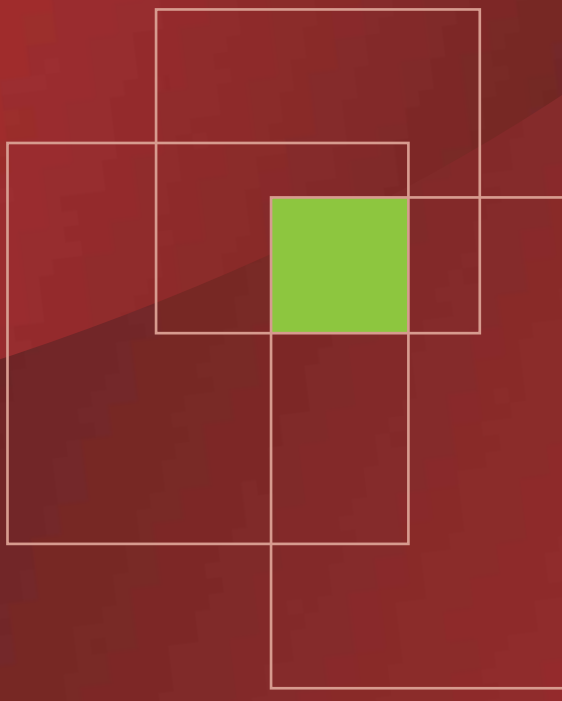
Document No. 87

ILO, The Committee on the Application of Standards of the International Labour Conference: A dynamic and impact built on decades of dialogue and persuasion, 2011, pp. 5–21

International
Labour
Office
Geneva

The Committee on the Application of Standards of the International Labour Conference

A dynamic and impact built on decades of dialogue and persuasion



INTRODUCTION

Since its creation in 1919, the International Labour Organization has constantly had recourse to international law and, more precisely, to international labour standards as a means of promoting social justice. From the outset, it was clear that without effective standards this objective would not be achieved. The Organization included in its original Constitution a whole series of supervisory procedures and mechanisms which, with the exception of a reform when the Constitution was revised in 1946, still remain in force today.[2] However, while the constitutional mechanisms remain largely unchanged, the supervisory system has gone through important developments in practice, which has resulted in the progressive development of various supervisory mechanisms intended to follow up, after their adoption by the International Labour Conference, and their ratification by States, the effect given to Conventions and Recommendations in practice.

The ILO Constitution, adopted when the Organization was created, accordingly established the obligation for member States to submit regular reports on the application of each of the Conventions that they had ratified. However, it did not establish a supervisory body specifically responsible for analysing these reports. During the first years, the International Labour Conference itself supervised standards. It rapidly became clear that the Conference could not take on this role in an effective manner in view of the constantly increasing number of ratifications and reports, as well as the adoption each year of new standards. This led to the simultaneous creation in 1926 of the Conference Committee on the Application of Standards and of the Committee of Experts on the Application of Conventions and Recommendations.

[2] See in particular article 19 of the ILO Constitution.

Based on its tripartite and universal composition, the Conference Committee adds its tripartite and political authority to the independent appraisal undertaken by the Committee of Experts. It needs to be borne in mind that in 1927 there were 26 member States of the ILO and 180 reports were due for examination by the Committee of Experts. This year, at the 100th Session of the International Labour Conference, the Conference Committee will have to select 25 individual cases for discussion from among over 1900 comments by the Committee of Experts concerning 183 member States. The Conference Committee will also, as it does every year, have to discuss the General Survey prepared by the Committee of Experts, in addition to examining cases of serious failure by governments to comply with their constitutional obligations to provide reports and to submit the instruments adopted by the Conference to the competent authorities in their respective countries. The discussions in the Conference Committee offer the opportunity for constructive dialogue with member States concerning the difficulties that they are encountering in fulfilling their international obligations. This forum offers them the occasion to demonstrate their political will to make the necessary changes and to benefit from the technical assistance of the Office, where appropriate. It also enables the Office to establish its priorities in terms of the technical assistance needs of the different countries.

The present study analyses both the institutional dynamic and the impact in practice of the work of the Conference Committee on the Application of Standards. It is divided into three sections. The first part describes the origins, composition, mandate and functioning of the Conference Committee, and the developments and improvements in its working methods over recent decades. The second part is devoted to the impact of the work of the Conference Committee in relation to the individual cases of non-compliance with ratified Conventions that are discussed in this tripartite forum during the annual session of the Conference Committee. Twelve countries from all continents have been selected for a more in-depth analysis of their application of the Conventions that they have ratified. The cases identified concern fundamental Conventions, Conventions considered to be the most significant from the viewpoint of governance (the "governance" Conventions), or "priority" Conventions, as well as so-called "technical" Conventions. Finally, the third section of the study analyses the impact of the work of the Conference Committee in relation to cases of serious failure to comply with reporting and other standards-related obligations. Following a description of the recent measures taken to engage in a personalized follow-up of these cases of serious failure of compliance, once again twelve countries from the different regions of Asia, Europe, Africa and the Americas and the Caribbean have been identified as significant cases of progress and are therefore analysed in detail.

It is important to recall that the countries identified in no way make up an exhaustive list of the cases in which the work of the Conference Committee, in combination with that of other supervisory bodies, has had a positive impact on compliance with international labour standards at the national level. This selection should not, in any event, obscure either the importance of, or the fact that many other cases of progress have occurred over the years in the application of ILO Conventions. But, as it is not possible to list, analyse and quantify everything, it has been necessary to make choices with a view to achieving an equitable geographical representation and diversity in the subjects covered by the Conventions.

PART I

The Conference Committee on the Application of Standards: Composition and functioning

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This section of the study is intended to describe the composition of the Conference Committee on the Application of Standards. It reviews briefly the origins of the Conference Committee and its mandate in the framework of the ILO supervisory system. It then describes the functioning in practice of the Conference Committee and covers developments and reforms in the working methods of the Committee.

I. Origins, composition and mandate

The Conference Committee on the Application of Standards is a standing body of the International Labour Conference. Its terms of reference are set out in article 7 of the Standing Orders of the Conference, by virtue of which:

> "1. The Conference shall, as soon as possible, appoint a Committee to consider:
>
> *(a)* the measures taken by Members to give effect to the provisions of Conventions to which they are parties and the information furnished by Members concerning the results of inspections;
>
> *(b)* the information and reports concerning Conventions and Recommendations communicated by Members in accordance with article 19 of the Constitution, except for information requested under paragraph 5 (e) of that article where the Governing Body has decided upon a different procedure for its consideration;
>
> *(c)* the measures taken by Members in accordance with article 35 of the Constitution.
>
> 2. The Committee shall submit a report to the Conference."[3]

It was in response to the increase in the volume of reports provided by member States and the complexity of their technical content that the International Labour Conference decided in 1926 to establish the Committee on the Application of Standards. It is important to emphasize that in the same resolution the Conference also decided to create the Committee of Experts on the

[3] Standing Orders of the International Labour Conference, Part I, General Standing Orders, Article 7 "Committee on the Application of Conventions and Recommendations".

Application of Conventions and Recommendations. It was therefore understood very early on that an effective supervisory system involved the combination, on the one hand, of a technical examination involving certain guarantees of impartiality and independence and, on the other, an examination by a body of the ILO's supreme political organ, which would therefore be of tripartite composition. This complementarity of roles means that the ILO's supervisory system is the most developed at the international level. More precisely, this combination is reflected in the fact that the work of the Conference Committee on the Application of Standards is based, on the one hand, on the report of the Committee of Experts on the Application of Conventions and Recommendations and, on the other, on the oral and written replies provided by governments to the comments of the Committee of Experts. If the mandate of the Conference Committee were to be resumed in one word, it would be "dialogue". The Conference Committee is in practice the dialogue body within which the Organization discusses with the governments concerned the difficulties encountered in the application of international labour standards. In this regard, the tripartite composition of the Committee is unique the international level.

II. Functioning

The mandate of the Conference Committee on the Application of Standards is therefore to discuss the reports of the Committee of Experts. In the first place, it normally holds an opening general discussion on the issues addressed in the general part of the report of the Committee of Experts, followed by a discussion of the General Survey prepared by the Committee of Experts. It then examines the individual cases that it has selected concerning the application of ratified Conventions. In general, it examines around 25 individual cases each year. The governments concerned by the observations on the selected cases have a further opportunity to submit written replies, the content of which is published in a document for the information of the Committee. When the Committee wishes to be provided with further information, it invites the representatives of the governments concerned to attend one of its sittings to discuss the respective observation. Following the statements by the government representatives, the members of the Committee are able to raise issues and make comments, and the Committee then adopts conclusions on the case. A summary of the statements made by the governments and the discussion that follows, together with the conclusions reached, are contained in Part II of the report of the Conference Committee.

The Committee's report is then submitted to the Conference and discussed in plenary, which provides delegates with another opportunity to draw attention to specific aspects of its work. The report is published in the *Provisional Record* of the Conference and sent separately to governments. Since 2007, with a view to improving the visibility of the work of the Conference Committee and in response to the wishes of ILO constituents, it has been decided to publish the report separately in a more attractive format containing the three usual parts of the report of the Committee's work. Furthermore, the attention of governments is drawn to any particular issues raised by the Committee that concern them, as well as to the examination of individual cases, so that due account can be taken of them when preparing subsequent reports.

III. Developments in the working methods

The present section briefly recalls the manner in which the work of the Conference Committee on the Application of Standards is carried out and has evolved over recent years.

1. Distinguishing between reporting obligations and the application of Conventions

One of the first developments in the working methods and functioning of the Conference Committee following the Second World War consisted of establishing a distinction between reporting obligations and the application of ratified Conventions. It was in 1957 that the Conference Committee decided to draw the attention of the Conference to cases in which the discrepancies were of a fundamental nature or were of long standing.[4] These cases were compiled in the report of the Conference Committee and designated the countries concerned without any distinction being made by the Committee between cases based on formal criteria, that is failure to supply reports, and those based on substantive criteria relating to discrepancies in the application of Conventions and Recommendations. In 1959, the Committee clarified its position by emphasizing that "the tasks of supervision could best be served by drawing attention to a limited number of instances where it was clearly apparent from the report of the Committee of Experts and from the particulars supplied by Governments

[4] ILC, 40th Session, 1957, *Record of Proceedings,* Appendix VI, para. 30.

to the [Conference Committee] that fundamental obligations existing under the I.L.O. Constitution and under ratified Conventions had not been discharged for several years running and that no satisfactory remedy was being applied."[5]

In 1968, the criteria to be followed in establishing what had in the meantime become the special list were changed slightly and failure to meet constitutional obligations (including the failure to submit instruments to the competent authorities) were for the first time separated from the failure to apply ratified Conventions.[6] Other reforms decided upon by the Conference Committee relating to its working methods were also adopted in 1979, 1980 and 1987.

In parallel, reforms were introduced at various times in relation to the cycle for the submission of reports with the objective of increasing the effectiveness of the supervisory system and the work of the Conference Committee in a context of the continued increase in workload, which was itself related to the rise in the number of Conventions, ratifications and member States.

2. Reforming the reporting cycle

(A) Changes in the reporting procedures since 1959

The ILO supervisory system is generally considered to be one of the most developed and effective in the United Nations system. However, at the same time, it is confronted with the constant challenge of maintaining and improving its effectiveness in view of the constant increase in the number of reports received due to the rising number of ratifications and new member States of the Organization, and the regular adoption of new Conventions and Recommendations. With a view to responding to this situation, the Governing Body has therefore periodically made changes to the reporting procedures.

In 1959, the reporting cycle was increased from one to two years and a general report was to be submitted for Conventions for which no regular report was due in a specific year. In 1976, the Governing Body decided to raise from two to four years the reporting period, except for the "most important" Conventions.[7] It also approved a number of safeguards to ensure that the lengthening of the reporting cycle did not weaken the effectiveness of the supervisory system.

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[5] ILC, 43rd Session, 1959, *Record of Proceedings*, Appendix VI, para. 15.

[6] ILC, 52nd Session, 1968, *Record of Proceedings*, Appendix VI, para. 29.

[7] See GB.201/SC/1/2 and GB.201/14/32. The 17 Conventions for which reports had to be provided every two years were those on freedom of association (C11, C84, C85, C98, C135, C141), forced labour (C29, C105), equality of treatment (C100, C111), employment policy (C122), migrant workers (C97, C103), labour inspection (C81, C85, C129) and tripartite consultations (C144). The number of these Conventions was later raised to 20 through the inclusion of Conventions Nos 151 and 154 (industrial relations) and Convention No. 147 (merchant navy).

In 1985, it decided that, subject to certain conditions and safeguards, reports should no longer be required for a group of Conventions which no longer corresponded to current needs. A total of 25 Conventions currently meet this condition and have been shelved. They are therefore no longer subject to regular reporting requirements.

In 1993, the Governing Body decided that detailed reports should be provided every two years on a group of ten "priority Conventions".[8] For all the other Conventions, the four-year reporting cycle was replaced by a five-year cycle of the presentation of "simplified" reports, subject to certain safeguards. A distinction was therefore made between detailed reports and simplified reports. In its decision, the Governing Body retained the possibility of periodically reviewing the list of priority Conventions.[9] The objective of these changes was not only to reduce the workload of constituents and of the Office, but also "to maintain and improve the quality of the supervisory machinery […] and to focus the requests for reports on cases where serious problems of application arise".[10] The strengthening of the supervisory system was based on the broader possibility of requesting non-regular reports. After a transitional period, the modifications were fully implemented in 1996.

The evaluation carried out in 2001 of the changes introduced in 1993 showed that, following a relative decline in 1996, the absolute number of reports received at each stage had increased steadily, with certain minor exceptions. The conclusions of this evaluation suggested the need for other modifications to the reporting procedures with a view to lightening the resulting workload. In November 2001 and March 2002, the Governing Body approved the grouping of Conventions by subject matter for reporting purposes. This grouping was implemented as of 2003 and the Office was called upon to undertake an evaluation following a complete five-year cycle.[11]

In March 2007, the Governing Body began to discuss the possibility of increasing the interval for the submission of reports under article 22 from two to three years for both the fundamental Conventions and for the governance Conventions (priority Conventions), with a view to lightening to a certain extent the workload of governments, the Office and the Committee of Experts. It was indicated that, during the interval between reports, any serious issue relating to

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[8] The following Conventions: C29, C105, C87, C98, C100, C111, C81, C129, C122 and C144.

[9] The two Conventions on child labour (C138 and C182) were added to this list later: Convention No. 138 was added following the promotional campaign in 1985, and Convention No. 182 after its adoption in 1999.

[10] See GB.258/LILS/6/1, para. 2.

[11] See GB.282/8/2 and GB.283/10/2.

the application of standards could be raised by employers' and workers' organizations and, where appropriate, the supervisory bodies could request an early report on these issues.[12]

In November 2009, the Governing Body examined an evaluation of the grouping of Conventions by subject for the purposes of reporting under article 22 of the Constitution. It also examined the options that could be envisaged for an overall approach to the rationalization of reporting in light of the 2008 Declaration on Social Justice for a Fair Globalization. Endorsing the recommendations of the Committee on Legal Issues and International Labour Standards, the Governing Body decided that, for reporting purposes, Conventions should be grouped by strategic objective and that the article 22 reporting cycle should be increased from two to three years for fundamental Conventions and governance Conventions, and maintained at five years for technical Conventions.

(B) Introduction of a personalized follow-up procedure

Furthermore, while the Governing Body was addressing the question of the duration of the reporting cycle, at the same time, at the initiative of the Committee on the Application of Standards at the 93rd Session of the Conference in June 2005, the Committee of Experts and the Conference Committee, with the assistance of the Office, strengthened the follow-up in cases of serious failure by member States to comply with reporting and other standards-related obligations, with a view identifying appropriate solutions on a case-by-case basis.

Failure to provide reports undermines the functioning of the supervisory system, which is essentially based on the information provided by governments. Accordingly, cases of serious failure to comply with the obligation to provide reports have to be accorded the same attention as cases of non-compliance with ratified Conventions.

- Each year, the report of the Conference Committee lists specific cases of failure to comply with reporting obligations, with particular reference to:
- failure to supply reports for the past two years or more on the application of ratified Conventions
- failure to supply first reports on the application of ratified Conventions
- failure to supply information in reply to the comments of the Committee of Experts

[12] At the same session in March 2007, with a view, among other purposes, to facilitating the selection of individual cases by the Conference Committee, an approach intended to achieve a grouping by country was discussed, but was not however retained.

- failure to submit to the competent authorities the instruments adopted by the Conference during at least seven sessions
- failure to supply reports for the past five years on unratified Conventions and Recommendations.

The procedure for the personalized follow-up of cases of serious failure to comply with reporting obligations is described in detail in Part III of this study.

3. A new impetus in improving the working methods over the past decade

Moreover, since 2002, informal discussions and consultations have been held regularly on the working methods of the Conference Committee. In particular, following the adoption of a new strategy for the ILO standards system by the Governing Body in November 2005,[13] further consultations were launched in March 2006 on numerous aspects of the standards system,[14] the starting point for which, in relation to the work of the Conference Committee, was the issue of the publication of the list of individual cases discussed by the Conference Committee. A tripartite working group on the working methods of the Committee was set up in June 2006 and has met on ten occasions up to now.[15] Based on these consultations and the recommendations of the working group, the Committee has made certain changes to its working methods.

Accordingly, the practice was introduced in 2006 of sending governments (at least two weeks before the beginning of the Conference) a preliminary list of individual cases. Since June 2007, following the adoption of the list of individual cases, the Employer and Worker Vice-Chairpersons have held an informal information session for governments to explain the criteria for the selection of cases. Changes in the organization of work to make it possible to start the discussion of cases as of the Monday morning of the second week have been introduced. Improvements have been made in the preparation and adoption of the conclusions on cases. Furthermore, as indicated above, the report of the Conference Committee has been published separately since 2007 with a view to increasing its visibility. In June 2008, further measures were adopted concerning cases in which governments are registered and present at the Conference, but which choose not to appear before the Committee. In particular, the Conference Committee can henceforth discuss the substance of such cases. Specific provisions have also been adopted concerning respect for the rules of decorum.

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[13] See GB.294/LILS/4 and GB.294/9.

[14] See paragraph 22 of GB.294/LILS/4.

[15] This working group is composed of nine representatives each of the Workers', Employers' and Government groups and all geographical regions are represented.

With regard time management, the measures adopted by the Conference Committee in June 2007[16] proved to be inadequate, particularly in view of the difficulties experienced in 2009. As a consequence, in November 2009 and March 2010, the working group examined significant measures to introduce additional improvements. Finally, in June 2010, a new procedure for the automatic registration of the countries on the list of individual cases, based on the French alphabetical order, was decided upon.

During its recent meetings, the working group has also discussed procedures for the discussion of future General Surveys in the light of the discussion of the recurrent reports on the four strategic objectives which are held in parallel during the International Labour Conference.

4. How the Conference Committee carries out its work

General discussion

General questions. The Conference Committee begins its work with a brief general discussion, essentially based on the General Report of the Committee of Experts on the Application of Conventions and Recommendations (Report III (Part 1A)).

General Survey. The Conference Committee then examines the General Survey prepared by the Committee of Experts (Report III (Part 1B)). These General Surveys are principally prepared on the basis of the reports furnished by member States and the information supplied by employers' and workers' organizations. They enable the Committee of Experts, and subsequently the Conference Committee, to examine the impact of Conventions and Recommendations, analyse the difficulties reported by governments in terms of their application and identify means of overcoming these difficulties. The discussion of these General Surveys by the Conference Committee is an important component of the supervisory system and has on occasion constituted the first step towards the adoption of new standards or other standards-related action. Since 2010, the subject of the General Survey has been aligned with the strategic objective that is being discussed in the context of the recurrent report under the follow-up to the 2008 Social Justice Declaration. The purpose of this alignment has to be to improve the integration of standards into ILO objectives and priorities with a view to reaffirming their central role in the achievement of

[16] Governments were invited to register as early as possible and in any case by the Friday of the first week at 6 p.m. at the latest, after which time the Office was authorized to set the schedule for the discussion of the cases of governments which had not registered. Basic rules were adopted with a view to improving the management of time by the Committee.

the Organization's objectives. Accordingly, the 2010 General Survey covered the employment instruments and was examined by the Conference Committee on the Application of Standards, while the recurrent report on employment was examined by the Committee for the Recurrent Discussion on Employment. With a view to ensuring the best possible interaction between these two discussions, including the manner in which the outcome of the discussion by the Committee on the Application of Standards could best be taken into account by the Committee for the Recurrent Discussion on Employment, adjustments were proposed in the programme of work for the discussion of the General Survey. In addition, the Officers of the Committee on the Application of Standards provided information on the discussion to the Committee for the Recurrent Discussion on Employment. In 2011, the General Survey prepared by the Committee of Experts will cover social security.

Discussion of observations

In the second part of its report, the Committee of Experts makes observations on the manner in which various governments fulfil their obligations. The Conference Committee then discusses certain of these observations with the governments concerned.

Cases of serious failure to respect reporting and other standards-related obligations[17]

Governments are invited to supply information on cases of serious failure to comply with reporting or other standards-related obligations for determined periods. These cases are considered in a single sitting. Governments may remove themselves from the list of cases of serious failure if they provide the information required before the sitting concerned. Information received both before and after this sitting is reflected in the report of the Conference Committee.

Individual cases

A draft list of observations (individual cases) on Conventions regarding which the governments concerned are invited to supply information to the Committee is drawn up by the Workers' and Employers' groups of the Committee.[18] The draft list of individual cases is then submitted to the Committee for

[17] Otherwise known as "automatic" cases (see ILC, 93rd Session, June 2005, *Record of Proceedings*, 22, and Part III of the present study).

[18] It should be recalled that the practice was introduced in 2006 of sending a preliminary list of individual cases to governments (at least two weeks before the Conference).

approval. In the establishment of this list, a need for balance among different categories of Conventions, as well geographical balance, is considered. In addition to the above considerations on balance, the criteria for selection have traditionally included the following elements:

- the nature of the comments of the Committee of Experts, in particular the existence of a footnote;[19]
- the quality and scope of responses provided by the government or the absence of a response on its part;
- the seriousness and persistence of shortcomings in the application of the Convention;
- the urgency of a specific situation;
- comments received from employers' and workers' organizations;
- the nature of a specific situation (if it raises hitherto undiscussed questions, or if the case presents an interesting approach to solving questions of application);

[19] At its session in November-December 2005, in the context of the examination of its working methods, and in response to requests for clarification from members of the Conference Committee concerning the use of footnotes, the Committee of Experts adopted the following criteria (paras. 36 and 37): "The Committee wishes to describe its approach to the identification of cases for which it inserts special notes by highlighting the basic criteria below. In so doing, the Committee makes three general comments. First, these criteria are indicative. In exercising its discretion in the application of these criteria, the Committee may also have regard to the specific circumstances of the country and the length of the reporting cycle. Second, these criteria are applicable to cases in which an earlier report is requested, often referred to as a "single footnote", as well as to cases in which the government is requested to provide detailed information to the Conference, often referred to as "double footnote". The difference between these two categories is one of degree. The third comment is that a serious case otherwise justifying a special note to provide full particulars to the Conference (double footnote) might only be given a special note to provide an early report (single footnote) in cases where there has been a recent discussion of that case in the Conference Committee on the Application of Standards. […] The criteria to which the Committee will have regard are the existence of one or more of the following matters:

– the seriousness of the problem; in this respect, the Committee emphasizes that an important consideration is the necessity to view the problem in the context of a particular Convention and to take into account matters involving fundamental rights, workers' health, safety and well-being as well as any adverse impact, including at the international level, on workers and other categories of protected persons;
– the persistence of the problem;
– the urgency of the situation; the evaluation of such urgency is necessarily case-specific, according to standard human rights criteria, such as life-threatening situations or problems where irreversible harm is foreseeable; and
– the quality and scope of the government's response in its reports or the absence of response to the issues raised by the Committee, including cases of clear and repeated refusal on the part of a State to comply with its obligations.

At its 76th Session, the Committee decided that the identification of cases in respect of which a special note (double footnote) is to be attributed will be a two-stage process: the expert initially responsible for a particular group of Conventions may recommend to the Committee the insertion of special notes; in light of all the recommendations made, the Committee will take a final, collegial decision on all the special notes to be inserted, once it has reviewed the application of all the Conventions.

- the discussions and conclusions of the Conference Committee of previous session and, in particular, the existence of a special paragraph;
- the likelihood that discussing the case would have a tangible impact.[20]

Adoption of conclusions

The conclusions regarding individual cases are proposed by the Chairperson of the Committee, who should have sufficient time for reflection to draft the conclusions and to hold consultations with the Reporter and the Vice-Chairpersons before proposing the conclusions to the Committee. The conclusions take due account of the elements raised in the discussion and the information provided by the government in writing. The conclusions should be adopted within a reasonable time after the discussion of the case and should be succinct.

Use of special paragraphs

It has been the practice of the Conference Committee for many years to draw the attention of the Conference to its discussion of certain particularly serious cases relating to non-compliance with the provisions of ratified Conventions, including the most serious cases of continued failure of application. It therefore includes these cases in special paragraphs in the general part of its report.

[20] It is important to emphasize that, while taking all these elements into account, the Worker and Employer Vice-Chairpersons of the Conference Committee have on many occasions indicated that these elements cannot reflect, or be equivalent to a simple mathematical formula.

Document No. 88

Compendium of rules applicable to the Governing Body of the International Labour Office, Annex I, Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the International Labour Organization

Compendium of rules applicable to the Governing Body of the International Labour Office

International Labour Office, Geneva, 2021

Annex I

Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the International Labour Organization

Introductory note

1. The Standing Orders concerning the procedure for the examination of representations were adopted by the Governing Body at its 57th Session (1932) and amended on some points of form at its 82nd Session (1938). They were revised by the Governing Body at its 212th Session (February–March 1980).

2. In adopting further amendments at its 291st Session (November 2004), the Governing Body decided to precede the Standing Orders with this introductory note, which summarizes the various stages of the procedure while indicating the options open to the Governing Body at the various stages of the procedure in accordance with the Standing Orders and with the guidance that emerges from the preparatory work of the Standing Orders and the decisions and practice of the Governing Body.

3. The Standing Orders comprise six titles, the first five of which correspond to the main stages of the procedure, namely: (i) receipt by the Director-General; (ii) examination of receivability of the representation; (iii) decision on referral to a committee; (iv) examination of the representation by the committee; and (v) examination by the Governing Body. The sixth title of the Standing Orders concerns the application of the procedure in the specific instance of a representation against a non-Member State of the Organization.

General provision

4. Article 1 of the Standing Orders concerns the receipt of representations by the Director-General of the ILO, who informs the Government against which the representation is made.

Receivability of the representation

5. Examining receivability means determining whether the prior conditions that have to be satisfied before the Governing Body can proceed to examine the merits of the representation and formulate recommendations have been met.

6. The examination of receivability is, in the first instance, entrusted to the Officers of the Governing Body, to whom the Director-General transmits all the representations that are received. The Officers of the Governing Body make a proposal with respect to receivability, which is communicated to the Governing Body; the Governing Body then decides whether it deems the representation receivable. Although the Standing Orders specify that the Governing Body must not, at this stage, enter into a discussion of the merits of the representation, the conclusions of its Officers regarding receivability may be the subject of discussions.

7. Pursuant to article 7, paragraph 1, of the Standing Orders, the Office invites the Government concerned to send a representative to take part in these deliberations if that Government is not a member of the Governing Body.

8. The conditions of receivability for representations are set out in article 2, paragraph 2, of the Standing Orders. Four of the conditions simply relate to the form of submission (paragraph 2(a), (c), (d) and (e)), while the remaining two conditions may require examination of the representation in greater depth: these relate to the industrial character of the association that is making the representation, on the one hand (paragraph 2(b)), and, on the other hand, the indication of in what respect the State concerned is alleged to have failed to secure the effective observance of the Convention to which the representation relates (paragraph 2(f)).

The representation must emanate from an industrial association of employers or workers (article 2, paragraph 2(b), of the Standing Orders)

9. The following principles may guide the Governing Body in its application of this provision:

- The right to make a representation to the International Labour Office is granted without restriction to any industrial association of employers or workers. No conditions are laid down in the Constitution as regards the size or nationality of that association. The representation may be made by

any industrial association whatever may be the number of its members or in whatever country it may be established. The industrial association may be an entirely local organization or a national or international organization. [1]

- The widest possible discretion should be left to the Governing Body in determining the actual character of the industrial association of employers or workers which makes the representation. The criteria to be applied in this connection by the Governing Body should be those which have up to the present guided the general policy of the Organization and not those laid down by the national legislation of States. [2]

- The Governing Body has the duty of examining objectively whether, in fact, the association making the representation is "an industrial association of employers or workers", within the meaning of the Constitution and the Standing Orders. It is the duty of the Governing Body to determine in each case, independently of the terminology employed and of the name that may have been imposed upon the association by circumstances or selected by it, whether the association from which the representation emanates is in fact an "industrial association of employers or workers" in the natural meaning of the words. In particular, when considering whether a body is an industrial association, the Governing Body cannot be bound by any national definition of the term "industrial association". [3]

10. Moreover, the Governing Body might apply mutatis mutandis the principles developed by the Committee on Freedom of Association on receivability as regards a complainant organization that is alleging violations of freedom of association. Those principles are formulated as follows:

> At its first meeting in January 1952 (First Report, General observations, paragraph 28), the Committee adopted the principle that it has full freedom to decide whether an organization may be deemed to be an employers' or

[1] *Proposed Standing Orders concerning the application of articles 409, 410, 411, §§4 and 5, of the Treaty of Peace*, explanatory note of the International Labour Office submitted to the Standing Orders Committee of the Governing Body at its 56th Session (1932).

[2] *Proposed Standing Orders concerning the application of articles 409, 410, 411, §§4 and 5, of the Treaty of Peace*.

[3] See representation submitted by Dr J.M. Curé on behalf of the Labour Party of the Island of Mauritius concerning the application of certain international labour Conventions in the Island, Report of the Committee of the Governing Body (adopted by the Governing Body at its 79th Session), ILO, *Official Bulletin*, Vol. XXII (1937), 71–72, paras 6–7.

workers' organization within the meaning of the ILO Constitution, and it does not consider itself bound by any national definition of the term.

The Committee has not regarded any complaint as being irreceivable simply because the Government in question had dissolved, or proposed to dissolve the organization on behalf of which the complaint was made, or because the person or persons making the complaint had taken refuge abroad.

The fact that a trade union has not deposited its by-laws, as may be required by national laws, is not sufficient to make its complaint irreceivable since the principles of freedom of association provide precisely that the workers shall be able, without previous authorization, to establish organizations of their own choosing.

The fact that an organization has not been officially recognized does not justify the rejection of allegations when it is clear from the complaints that this organization has at least a de facto existence.

In cases in which the Committee is called upon to examine complaints presented by an organization concerning which no precise information is available, the Director General is authorized to request the organization to furnish information on the size of its membership, its statutes, its national or international affiliations and, in general, any other information calculated, in any examination of the receivability of the complaint, to lead to a better appreciation of the precise nature of the complainant organization.

The Committee will only take cognizance of complaints presented by persons who, through fear of reprisals, request that their names or the origin of the complaints should not be disclosed, if the Director-General, after examining the complaint in question, informs the Committee that it contains allegations of some degree of gravity which have not previously been examined by the Committee. The Committee can then decide what action, if any, should be taken with regard to such complaints. [4]

[4] See paras 35–40 of the Procedures of the Fact-Finding and Conciliation Commission and the Committee on Freedom of Association for the examination of complaints alleging violations of freedom of association (*Digest of decisions and principles of the Freedom of Association Committee*, fourth edition, 1996, Annex I).

The representation must indicate in what respect it is alleged that the Member against which it is made has failed to secure the effective observance within its jurisdiction of the said Convention (article 2, paragraph 2(f), of the Standing Orders)

11. In examining this condition of receivability, particular importance is attached to article 2, paragraph 4, of the Standing Orders, which provides that in reaching a decision concerning receivability on the basis of the report of its Officers, the Governing Body shall not enter into a discussion of the substance of the representation. It is important, however, that the representation be sufficiently precise for the Officers of the Governing Body to be able to legitimately substantiate their proposal to the Governing Body.

Reference to a committee

12. If the Governing Body deems, on the basis of the report of its Officers, that a representation is receivable, it shall usually set up a tripartite committee to examine the representation (article 3, paragraph 1). However, depending on the content of the representation, the Governing Body has, under certain conditions, other options:

(a) if the representation relates to a Convention dealing with trade union rights, the Governing Body may decide to refer it to the Committee on Freedom of Association for examination in accordance with articles 24 and 25 of the Constitution (article 3, paragraph 2);

(b) if the representation relates to matters and allegations similar to those which have been the subject of a previous representation, the Governing Body may decide to postpone the appointment of the committee to examine the new representation until the Committee of Experts on the Application of Conventions and Recommendations has been able, at its next session, to examine the follow-up to the recommendations that were adopted by the Governing Body in relation to the previous representation (article 3, paragraph 3).

13. It is the practice for the report of the Officers of the Governing Body concerning the receivability of the representation to also include a recommendation concerning reference to a committee. It is for the Governing Body to appoint the members who make up the tripartite committee, taking into account the conditions established in article 3, paragraph 1.

Examination of the representation by the committee

14. Under article 6, the tripartite committee charged with examining a representation must present its conclusions on the issues raised in the representation and formulate its recommendations as to the decisions to be taken by the Governing Body. The committee examines the merits of the allegation made by the author of the representation, that the Member concerned has failed to secure effective observance of the Convention or Conventions ratified by the Member and indicated in the representation.

15. The powers of the tripartite committee during its examination of the representation are laid down in article 4. Article 5 concerns the rights of the Government concerned if the committee invites it to make a statement on the subject of the representation.

16. Moreover, the committee may apply, mutatis mutandis, two principles developed by the Committee on Freedom of Association:

(a) In establishing the matters on which the representation is based, the committee may consider that, while no formal period of prescription has been fixed for the examination of representations, it may be very difficult – if not impossible – for a Government to reply in detail regarding matters which occurred a long time ago. [5]

(b) In formulating its recommendations as to the decision to be taken by the Governing Body, the committee may take into account the interest that the association making the representation has in taking action with regard to the situation motivating the representation. Such interest exists if the representation emanates from a national association directly interested in the matter, from international workers' or employers' associations having consultative status with the ILO, or from other international workers' or employers' associations when the representation concerns matters directly affecting their affiliated organizations. [6]

Consideration of the representation by the Governing Body

17. On the basis of the report of the tripartite committee, the Governing Body considers the issues of substance raised by the

[5] *Digest of decisions*, 1996, para. 67.

[6] *Digest of decisions*, 1996, para. 34.

representation and what follow-up to undertake. Article 7 determines the modalities for the participation of the Government concerned in the deliberations.

18. The Standing Orders recall and determine two options provided for in the Constitution that are open to the Governing Body if it decides that a representation is substantiated, it being understood that the Governing Body remains free to take or not to take these measures:

(a) Under the conditions laid down in article 25 of the Constitution, the Governing Body may publish the representation received and, if applicable, the statement made by the Government concerned; in the event that it so decides, the Governing Body also decides the form and date of publication.

(b) The Governing Body may, at any time, in accordance with article 26, paragraph 4, of the Constitution, adopt, against the Government concerned and with regard to the Convention the effective observance of which is contested, the procedure of complaint provided for in article 26 and the following articles (article 10 of the Standing Orders).

19. Furthermore, the Governing Body may decide to refer issues concerning any follow-up to the recommendations adopted by the Governing Body to be undertaken by the Government concerned to the Committee of Experts on the Application of Conventions and Recommendations. That Committee shall examine the measures taken by the Government to give effect to the provisions of the Conventions to which it is a party and with respect to which recommendations had been adopted by the Governing Body.

Representations against non-Members

20. Article 11 of the Standing Orders stipulates that a representation against a State which is no longer a Member of the Organization may also be examined in accordance with the Standing Orders, in virtue of article 1, paragraph 5, of the Constitution, which provides that the withdrawal of a Member of the Organization shall not affect the continued validity of obligations arising under or relating to Conventions that it had ratified.

* * *

Standing Orders

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).

GENERAL PROVISION

Article 1

When a representation is made to the International Labour Office under article 24 of the Constitution of the Organization, the Director-General shall acknowledge its receipt and inform the Government against which the representation is made.

RECEIVABILITY OF THE REPRESENTATION

Article 2

1. The Director-General shall immediately bring the representation before the Officers of the Governing Body.

2. The receivability of a representation is subject to the following conditions:

(a) it must be communicated to the International Labour Office in writing;

(b) it must emanate from an industrial association of employers or workers;

(c) it must make specific reference to article 24 of the Constitution of the Organization;

(d) it must concern a Member of the Organization;

(e) it must refer to a Convention to which the Member against which it is made is a party; and

(f) it must indicate in what respect it is alleged that the Member against which it is made has failed to secure the effective observance within its jurisdiction of the said Convention.

3. The Officers shall report to the Governing Body on the receivability of the representation.

4. In reaching a decision concerning receivability on the basis of the report of its Officers, the Governing Body shall not enter into a discussion of the substance of the representation.

REFERENCE TO A COMMITTEE

Article 3

1. If the Governing Body decides, on the basis of the report of its Officers, that a representation is receivable, it shall set up a committee for the examination thereof, composed of members of the Governing Body chosen in equal numbers from the Government, Employers' and Workers' groups. No representative or national of the State against which the representation has been made and no person occupying an official position in the association of employers or workers which has made the representation may be a member of this committee.

2. Notwithstanding the provisions of paragraph 1 of this article, if a representation which the Governing Body decides is receivable relates to a Convention dealing with trade union rights, it may be referred to the Committee on Freedom of Association for examination in accordance with articles 24 and 25 of the Constitution.

3. Notwithstanding the provisions of paragraph 1 of this article, if a representation which the Governing Body decides is receivable relates to facts and allegations similar to those which have been the subject of an earlier representation, the appointment of the committee charged with examining the new representation may be postponed pending the examination by the Committee of Experts on the Application of Conventions and Recommendations at its next session of the follow-up given to the recommendations previously adopted by the Governing Body.

4. The meetings of the committee appointed by the Governing Body pursuant to paragraph 1 of this article shall be held in private and all the steps in the procedure before the committee shall be confidential.

EXAMINATION OF THE REPRESENTATION BY THE COMMITTEE

Article 4

1. During its examination of the representation, the committee may:

(a) request the association which has made the representation to furnish further information within the time fixed by the committee;

(b) communicate the representation to the Government against which it is made without inviting that Government to make any statement in reply;

(c) communicate the representation (including all further information furnished by the association which has made the representation) to the Government against which it is made and invite the latter to make a statement on the subject within the time fixed by the committee;

(d) upon receipt of a statement from the Government concerned, request the latter to furnish further information within the time fixed by the committee;

(e) invite a representative of the association which has made the representation to appear before the committee to furnish further information orally.

2. The committee may prolong any time limit fixed under the provisions of paragraph 1 of this article, in particular at the request of the association or Government concerned.

Article 5

1. If the committee invites the Government concerned to make a statement on the subject of the representation or to furnish further information, the Government may:

(a) communicate such statement or information in writing;

(b) request the committee to hear a representative of the Government;

(c) request that a representative of the Director-General visit its country to obtain, through direct contacts with the competent authorities and organizations, information on the subject of the representation, for presentation to the committee.

Article 6

When the committee has completed its examination of the representation as regards substance, it shall present a report to the Governing Body in which it shall describe the steps taken by it to examine the representation, present its conclusions on the issues raised therein and formulate its recommendations as to the decisions to be taken by the Governing Body.

CONSIDERATION OF THE REPRESENTATION BY THE GOVERNING BODY

Article 7

1. When the Governing Body considers the reports of its Officers on the issue of receivability and of the committee on the issues of substance, the Government concerned, if not already represented on the Governing Body, shall be invited to send a representative to take part in its proceedings while the matter is under consideration. Adequate notice of the date on which the matter will be considered shall be given to the Government.

2. Such a representative shall have the right to speak under the same conditions as a member of the Governing Body, but shall not have the right to vote.

3. The meetings of the Governing Body at which questions relating to a representation are considered shall be held in private.

Article 8

If the Governing Body decides to publish the representation and the statement, if any, made in reply to it, it shall decide the form and date of publication. Such publication shall close the procedure under articles 24 and 25 of the Constitution.

Article 9

The International Labour Office shall notify the decisions of the Governing Body to the Government concerned and to the association which made the representation.

Article 10

When a representation within the meaning of article 24 of the Constitution of the Organization is communicated to the Governing Body, the latter may, at any time in accordance with paragraph 4 of article 26 of the Constitution, adopt, against the Government against which the representation is made and concerning the Convention the effective observance of which is contested, the procedure of complaint provided for in article 26 and the following articles.

REPRESENTATIONS AGAINST NON-MEMBERS

Article 11

In the case of a representation against a State which is no longer a Member of the Organization, in respect of a Convention to which it remains party, the procedure provided for in these Standing Orders shall apply in virtue of article 1, paragraph 5, of the Constitution.

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List of Complaints/Commissions of Inquiry (1934-to date)

Complaints/Commissions of Inquiry (Art 26)

Display By: (•) By Year ( ) By Country ( ) By Status

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2023

- **COMPLAINT (article 26) - 2023 - NICARAGUA - C087, C098, C111, C144** (Pending)
  Complaint alleging non-observance by Nicaragua of Convention No. 87, Convention No. 98, Convention No. 111, and Convention No. 144, filed by various delegates at the 111th Session of the International Labour Conference (2023) under article 26 of the ILO Constitution
  (GB 349/INS/19/1)

- **COMPLAINT (article 26) - 2023 - GUATEMALA - C087, C098** (Pending)
  Complaint alleging non-observance by Guatemala of the Convention No. 87 and Convention No. 98, filed by various delegates at the 111th Session of the International Labour Conference (2023) under article 26 of the ILO Constitution (GB.349/INS/19/2)

2022

- **COMPLAINT (article 26) - 2022 - MYANMAR - C029, C087** (Closed)
  REPORT OF THE COMMISION OF INQUIRY established in accordance with article 26 of the ILO Constitution concerning the non-observance by Myanmar of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Forced Labour Convention, 1930 (No. 29)
  (GB.344/INS/12) (GB.345/INS/5/2) (GB.349/INS/14)

- **COMPLAINT (article 26) - 2022 - AUSTRIA, BELGIUM, BULGARIA, CROATIA, CYPRUS, CZECHIA, DENMARK, ESTONIA, FINLAND, FRANCE, GERMANY, GREECE, HUNGARY, IRELAND, ITALY, LATVIA, LITHUANIA, LUXEMBOURG, MALTA, NETHERLANDS, POLAND, PORTUGAL, ROMANIA, SLOVAKIA, SLOVENIA, SPAIN, SWEDEN - C111, C122** (Closed)
  Complaint alleging non-observance by Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the Employment Policy Convention, 1964 (No. 122)
  (GB.346/INS/18/3)

2019

- **COMPLAINT (article 26) - 2019 - BANGLADESH - C081, C087, C098** (Pending)
  Complaint concerning non-observance by Bangladesh of the Labour Inspection Convention, 1947 (No. 81), 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), made under article 26 of the ILO Constitution by several delegates to the 108th Session (2019) of the International Labour Conference
  (GB.337/INS/13/1) (GB.340/INS/14(Rev.1)) (GB.341/INS/11(Rev.1)) (GB.342/INS/INF/2) (GB.343/INS/10(Rev.2) (GB.344/INS/13(Rev.1)) (GB.346/INS/11(Rev.2)) (GB.347/INS/15(Rev.2))

- **COMPLAINT (article 26) - 2019 - CHILE - C087, C098, C103, C135, C151** (Closed)
  Complaint concerning non-observance by Chile of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Maternity Protection Convention (Revised), 1952 (No. 103), the Workers' Representatives Convention, 1971 (No. 135), and the

Labour Relations (Public Service) Convention, 1978 (No. 151), made under article 26 of the ILO Constitution by a delegate to the 108th Session (2019) of the International Labour Conference
(GB.337/INS/13/2) (GB.340/INS/15(Rev.1))

2016

- **COMPLAINT (article 26) - 2016 - BOLIVARIAN REPUBLIC OF VENEZUELA - C087, C095, C111** (Closed)
  Complaint concerning non-observance by the Bolivarian Republic of Venezuela of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Protection of Wages Convention, 1949 (No. 95), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), made under article 26 of the ILO Constitution by a delegate at the 105th Session (2016) of the International Labour Conference
  (GB.328/INS/18/2) (GB.329/INS/16(Rev.))

- **COMPLAINT (article 26) - 2016 - CHILE - C087, C098, C103, C135, C151** (Closed)
  Complaint concerning non-observance by the Republic of Chile of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), the Maternity Protection Convention (Revised), 1952 (No. 103), the Workers' Representatives Convention, 1971 (No. 135), and the Labour Relations (Public Service) Convention, 1978 (No. 151), made under article 26 of the ILO Constitution by a delegate to the 105th Session (2016) of the International Labour Conference
  (GB.328/INS/18/1) (GB.329/INS/12/(Rev.))

2015

- **COMPLAINT (article 26) - 2015 - BOLIVARIAN REPUBLIC OF VENEZUELA - C026, C087, C144** (Closed)
  REPORT OF THE COMMISSION OF INQUIRY appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by the Government of the Bolivarian Republic of Venezuela of the Minimum WageFixing Machinery Convention, 1928 (No. 26), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No.144)
  (GB.325/INS/16/1) (GB.326/INS/9(Rev)) (GB.328/INS/12(Rev)) (GB.329/INS/15(Rev)) (GB.331/INS/14(Rev)) (GB.332/INS/10(Rev)) (GB.333/INS/7/1) (GB.337/INS/8)

2014

- **COMPLAINT (article 26) - 2014 - QATAR - C029, C081** (Closed)
  Complaint alleging non-observance by Qatar of the Forced Labour Convention, 1930 (No. 29), and the Labour Inspection Convention, 1947(No. 81), made by delegates to the 103rd Session (2014) of the International Labour Conference under article 26 of the ILO Constitution
  (GB.322/INS/14/1) (GB.325/INS/10(Rev.)) GB.326/INS/8(Rev.) GB.328/INS/11(Rev.) GB.329/INS/14(rev.) GB.331/INS /13(Rev.)

2013

- **COMPLAINT (article 26) - 2013 - FIJI - C087** (Closed)
  Complaint concerning non-observance by Fiji of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), made by delegates to the 102nd Session (2013) of the International Labour Conference under article 26 of the ILO Constitution
  (GB.319/INS/15/1) (GB.320/INS/11) (GB.322/INS/9/1) (GB.324/INS/5) (GB.325/INS/9 (Rev.)) (GB.326/INS/7(Rev.))

2012

- **COMPLAINT (article 26) - 2012 - GUATEMALA - C087** (Closed)
  Complaint concerning non-observance by Guatemala of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), made by delegates to the 101st Session (2012) of the International Labour Conference under article 26 of the ILO Constitution
  (GB.316/INS/15/2)(GB.317/INS/17/6)(GB.319/INS/7)(GB.320/INS/9)(GB.322/INS/8(Add))(GB.324/INS/4)(GB.325 /INS/8(Rev1))(GB.326/INS/6(Rev))(GB.328/INS/10(Rev))(GB.329/INS/13(Rev))(GB.331/INS/12 (Rev&Add)) (GB.332/INS/9 (Rev))(GB.333/INS/4(Rev)(GB.334/INS/9(Rev)

2011

- **COMPLAINT (article 26) - 2011 - BAHRAIN - C111** (Closed)
  Complaint concerning the non-observance by Bahrain of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), made by delegates to the 100th Session (2011) of the International Labour Conference under article 26 of

the ILO Constitution
(GB.312/INS/16/1) (GB.317/INS/13/1) (GB.320/INS/15/1)

2010

- **COMPLAINT (article 26) - 2010 - MYANMAR - C087** (Closed)
  Complaint concerning the non-observance by Myanmar of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), made by delegates to the 99th Session (2010) of the International Labour Conference under article 26 of the ILO Constitution
  (GB.309/7) (GB.316/INS/7)

2008

- **COMPLAINT (article 26) - 2010 - ZIMBABWE - C087, C098** (Closed)
  REPORT OF THE COMMISSION OF INQUIRY appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by the Government of Zimbabwe of 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)
  (GB.307/5):(Vol. XCIII, 2010, Series B, Special Supplement)

2004

- **COMPLAINT (article 26) - 2004 - VENEZUELA - C087, C098** (Closed)
  Complaint concerning non-observance by Venezuela of 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), made by various delegates at the 92nd Session (2004) of the Conference under article 26 of the ILO Constitution
  (GB.291/17):(O.B. LXXXVIII, 2005, Series B, No. 3):(GB.310/7)

2003

- **COMPLAINT (article 26) - 2003 - BELARUS - C087, C098** (Closed)
  REPORT OF THE COMMISSION OF INQUIRY appointed under article 26 of the Constitution of the International Labour Organization to examine the Observance by the Government of the Republic of Belarus of 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)
  (Vol. LXXXVI1, 2004, Series B, Special Supplement)

1998

- **COMPLAINT (article 26) - 1998 - NIGERIA - C087, C098** (Closed)
  Discontinuation of the procedure initiated by the Governing Body in accordance with article 26(4) of the ILO Constitution concerning the observance by Nigeria of 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)
  (GB.271/18/5):(GB.272/7/1):(GB.273/15/1):(GB.275/8/2)

- **COMPLAINT (article 26) - 1998 - COLOMBIA - C087, C098** (Closed)
  Complaint concerning the non-observance by Colombia of 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), made by delegates to the 86th (1998) Session of the Conference under article 26 of the Constitution of the ILO
  (GB.273/15/2):(GB.274/8/2):(GB.276/8):(GB.276/7/2):(GB.278/4):(GB.281/8)

1996

- **COMPLAINT (article 26) - 1996 - MYANMAR - C029** (Closed)
  REPORT OF THE COMMISSION OF INQUIRY appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29)
  (Vol. LXXXI, 1998, Series B, Special Supplement)

1992

- **COMPLAINT (article 26) - 1992 - COTE D'IVOIRE - C087** (Closed)
  Complaint concerning the observance by Côte d'Ivoire of the Freedom of Association and Protection of the Right to

Organise Convention, 1948 (No. 87) presented by Workers' delegates to the 79th Session (1992) of the International Labour Conference under article 26 of the Constitution of the ILO
(GB.253/15/29):(O.B. Vol. LXXV, 1992, Series B, No. 3):(O.B. Vol. LXXVI, 1993, Series B, No. 2):(O.B. Vol. LXXVII, 1994, Series B, No. 3)

1991

- **COMPLAINT (article 26) - 1991 - SWEDEN - C087, C098, C147** (Closed)
  Complaint by Mr. Von Holten, Employers' delegate of Sweden to the 78th (1991) session of the International Labour Conference, under article 26 of the ILO Constitution concerning the observance of Sweden of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and the Merchant Shipping (Minimum Standards) Convention, 1976, (No. 147)
  (GB.251/7/3):(GB.252/7/9):(GB.258/13/9):(GB.262/15/2)

1989

- **COMPLAINT (article 26) - 1989 - ROMANIA - C111** (Closed)
  REPORT OF THE COMMISSION OF INQUIRY appointed under article 26 of the Constitution of the International Labour Organisation to examine the observance by Romania of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
  (Vol. LXXIV, 1991, Series B, Supplement 3)

1987

- **COMPLAINT (article 26) - 1987 - NICARAGUA - C087, C098, C144** (Closed)
  REPORT OF THE COMMISSION OF INQUIRY appointed under article 26 of the Constitution to examine the observance by Nicaragua of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).
  (Vol. LXXIV, 1991, Series B, Supplement 2)

1986

- **COMPLAINT (article 26) - 1986 - LIBYAN ARAB JAMAHIRIYA - C095, C111, C118** (Closed)
  Complaint by the Government of Tunisia concerning the observance by the Libyan Arab Jamahiriya of the Protection of Wages Convention, 1949 (No. 95), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) and the Equality of Treatment (Social Security) Convention, 1962 (No. 118).
  (GB.240/14/26)

1985

- **COMPLAINT (article 26) - 1985 - FEDERAL REPUBLIC OF GERMANY - C111** (Closed)
  REPORT OF THE COMMISSION OF INQUIRY appointed under article 26 of the Constitution of the International Labour Organisation to examine the observance of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), by the Federal Republic of Germany
  (Vol. LXX, 1987, Series B, Supplement 1)

1982

- **COMPLAINT (article 26) - 1982 - POLAND - C087, C098** (Closed)
  REPORT OF THE COMMISSION OF INQUIRY instituted under article 26 of the Constitution of the International Labour Organization to examine the complaint on the observance by Poland of 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)
  (Vol. LXVII, 1984, Series B, Special Supplement)

1981

- **COMPLAINT (article 26) - 1983 - DOMINICAN REPUBLIC and HAITI - C029, C087, C095, C098, C105** (Closed)
  REPORT OF THE COMMISSION OF INQUIRY appointed under article 26 of the Constitution of the International Labour Organization to examine the observance of certain international labour Conventions by the Dominican Republic and Haiti with respect to the employment of Haitian workers on the sugar plantations of the Dominican Republic
  (Vol. LXVI, 1983, Series B, Special Supplement)

1978

- **COMPLAINT (article 26) - 1978 - PANAMA - C023, C053, C068** (Closed)
  Complaints made by the Government of France concerning the observance by Panama of the Officers' Competency Certificates Convention, 1936 (No. 53) and of the Repatriation of Seamen Convention, 1926 (No. 23) and the Food and Catering (Ships' Crews) Convention, 1946 (No. 68)
  (GB.207/6/6):(GB.208/21/10):(GB.209/3/11):(GB.210/7/29):(GB.211/5/9):(GB.213/6/3):(GB.214/5/5):(GB.219/16/6):(GB.221/19/15):(GB.222/18/7):(GB.223/5/8):(GB.223/5/18):(GB.226/13/5)

1977

- **COMPLAINT (article 26) - 1977 - ARGENTINA - C087** (Closed)
  Complaint concerning the observance by Argentina of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), made by delegates at the 63rd Session (1977) of the Conference under article 26 of the ILO Constitution
  (GB.203/19/42):(O.B. Vol. LXI, 1978, Series B, No. 1):(O.B. Vol. LXI, 1978, Series B, No. 2):(O.B. Vol. LXI, 1978, Series B, No. 3):(O.B. Vol. LXII, 1979, Series B, No. 1):(O.B. Vol. LXII, 1979, Series B, No. 2):(O.B. Vol. LXIII, 1980, Series B, No. 1):(O.B. Vol. LXIII, 1980, Series B, No. 2):(O.B. Vol. LXIV, 1981, Series B, No. 2):(O.B. Vol. LXIV, 1981, Series B, No. 3):(O.B. Vol. LXV, 1982, Series B, No. 3):(O.B. Vol. LXVI, 1983, Series B, No. 1):(O.B. Vol. LXVI, 1983, Series B, No. 2):(O.B. Vol. LXVI, 1983, Series B, No. 3)

1976

- **COMPLAINT (article 26) - 1976 - PANAMA - C055** (Closed)
  Complaint concerning the observance by Panama of the Shipowners' Liability (Sick and Injured Seamen) Convention, 1936 (No. 55), made by the Government of France
  (GB.201/23/17):(GB.201/23/41):(GB.202/7/15)

- **COMPLAINT (article 26) - 1976 - URUGUAY - C087, C098** (Closed)
  Complaint concerning the observance by Uruguay of 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), made by delegates to the 61st Session (1976) of the Conference under article 26 of the ILO Constitution
  (GB.200/17/44):(O.B. Vol. LX, 1977, Series B, No. 1):(O.B. Vol. LX, 1977, Series B, No. 2):(O.B. Vol. LX, 1977, Series B, No. 3):(O.B. Vol. LXI, 1978, Series B, No. 1):(O.B. Vol. LXI, 1978, Series B, No. 2):(O.B. Vol. LXI, 1978, Series B, No. 3):(O.B. Vol. LXII, 1979, Series B, No. 1):(O.B. Vol. LXII, 1979, Series B, No. 2):(O.B. Vol. LXII, 1979, Series B, No. 3):(O.B. Vol. LXIII, 1980, Series B, No. 1)

1975

- **COMPLAINT (article 26) - 1975 - BOLIVIA - C087** (Closed)
  Complaint concerning the observance by Bolivia of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), made by a number of delegates to the 60th Session (1975) of the Conference under article 26 of the ILO Constitution
  (GB.198/6/4):(GB.198/6/5):(O.B. Vol. LX, 1977, Series B, No. 1):(O.B. Vol. LX, 1977, Series B, No. 2):(O.B. Vol. LX, 1977, Series B, No. 3):(O.B. Vol. LXI, 1978, Series B, No. 1):(O.B. Vol. LXI, 1978, Series B, No. 2)

1974

- **COMPLAINT (article 26) - 1975 - CHILE - C001, C111** (Closed)
  REPORT OF THE COMMISSION OF INQUIRY appointed under article 26 of the Constitution of the International Labour Organization to examine the observance by Chile of the Hours of Work (Industry) Convention, 1919 (No. 1), and the Discrimination (Employment and Occupation) Convention, 1958 (No. 111)
  (Report of the Commission, ILO, 1975)

1968

- **COMPLAINT (article 26) - 1968 - GREECE - C087, C098** (Closed)

REPORT OF THE COMMISSION OF INQUIRY appointed under article 26 of the Constitution of the International Labour Organization to examine the complaints concerning the observance by Greece of 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)
(Vol. LIV, 1971, No. 2, Special Supplement)

1962

- **COMPLAINT (article 26) - 1963 - LIBERIA - C029** (Closed)
  REPORT OF THE COMMISSION OF INQUIRY appointed under article 26 of the Constitution of the International Labour Organization to examine the complaint filed by the Government of Portugal concerning the Observance by the Government of Liberia of the Forced Labour Convention, 1930 (No. 29)
  (O.B., Vol. XLVI, 1963, No. 2, Supplement II)

1961

- **COMPLAINT (article 26) - 1962 - PORTUGAL - C105** (Closed)
  REPORT OF THE COMMISSION OF INQUIRY appointed under article 26 of the Constitution of the International Labour Organization to examine the complaint filed by the Government of Ghana concerning the observance by the Government of Portugal of the Abolition of Forced Labour Convention, 1957 (No. 105)
  (Vol. XLV, 1962, No. 2, Supplement II)

1934

- **COMPLAINT (article 26) - 1934 - INDIA - C001** (Closed)
  Complaint concerning the observance by India of the Hours of Work (Industry) Convention, 1919 (No. 1), made by the Workers' Delegate of India
  (O.B. Vol. XX, No.1, 1935, p.15)