



SECOND ITEM ON THE AGENDA

**Possible improvements in the
standard-setting activities of the ILO**

**The role of standards in the achievement
of the ILO's objectives**

Contents

	<i>Page</i>
1. Background	1
2. The need for a shared commitment	2
3. Specific issues proposed for more detailed discussion	3

“[...] all institutions and structures need to be reviewed from time to time and where necessary strengthened, in order to ensure that their activities remain relevant to the needs of their members in a changing environment”¹

1. Background

1. On various occasions in the 1990s, the International Labour Organization considered activities related to international labour standards. In November 1993 the Governing Body decided to adjust the cycles for reporting on ratified Conventions.² The International Labour Conference discussed three reports by the Director-General concerning improvements in ILO normative activities,³ while in parallel work on standards-related questions and the revisions of standards has proceeded in the Governing Body's Committee on Legal Issues and International Labour Standards since 1995.⁴ Furthermore, in order to permit the Conference to abrogate or to withdraw obsolete Conventions or Recommendations, at its 85th Session (June 1997) the Conference adopted an amendment to the ILO Constitution⁵ and to the Standing Orders of the Conference.⁶ The discussions and negotiations that concluded in 1998 with the adoption of the Declaration on Fundamental Principles and Rights at Work and its Follow-up had their roots in this process. Calls have also been made for a review of the way in which the standards supervisory mechanisms function.
2. Meanwhile, the Governing Body has not yet had sufficient time for a comprehensive discussion of standards-related issues. It has, moreover, become clear that isolated attempts to deal with specific aspects of the ILO's standards-related activities without such discussion can – if at all feasible – have only limited success. In addition, the restructuring of activities in line with the four strategic objectives described in *Decent work* calls for a fresh examination of the role of standards in this dynamic context.

¹ Resolution concerning the 75th anniversary of the ILO and its future orientation, adopted by the International Labour Conference at its 81st Session, 1994.

² GB.258/6/19, paras. 1-40.

³ *Defending values, promoting change – Social justice in a global economy: An ILO agenda*, International Labour Conference, 81st Session, 1994; *ILO standard-setting and globalization*, International Labour Conference 85th Session, 1997; and *Decent work*, International Labour Conference, 87th Session, 1999.

⁴ The Governing Body set up a Working Party (of the LILS) on Policy regarding the Revision of Standards, GB.262/9/2, para. 53. See also GB.262/LILS/3.

⁵ *Instrument for the Amendment of the Constitution of the International Labour Organization*, International Labour Conference, 85th Session, 1997. This constitutional Amendment has not yet come into force.

⁶ Article 45bis of the Standing Orders of the Conference. The question of the withdrawal of five Conventions that have not entered into force is on the agenda of the 88th Session (2000) of the International Labour Conference, and the Governing Body will at its present session examine a proposal to place on the agenda of the 90th Session (2002) of the Conference the question of withdrawing 20 Recommendations (GB.277/2/2(Rev.1)).

3. The present paper builds on the different views expressed by constituents in recent years during discussions in the Conference, the Governing Body and the Committee on Legal Issues and International Labour Standards, and in informal consultations and discussions, the most recent of which took place in Geneva on 4 February 2000. It is not a summary; nor is it intended to be a policy document. Rather it addresses, first, what could be called the *confidence* issue: how to establish a framework for review, in which the process is not merely *zero-sum* but one where *added value* from the point of view of the tripartite constituency is incorporated. The paper then outlines the issues that could be covered in such a review.
4. Any decisions taken in this area must be based on facts rather than imperfect perceptions. Updated information and studies of factual situations, for instance on ratifications, would thus be important components of a review.

2. The need for a shared commitment

5. It seems necessary to have first a common understanding among all constituents of the fundamental role of the ILO's normative activities in translating into reality the ILO's constitutional objectives, as restated in *Decent work*. The question is not *whether* standard-setting should continue, but *how* it can be most efficient in contributing to the realization of these objectives and attaining measurable results. A clear understanding in these terms might be one of the building blocks for the creation of the climate of confidence that is essential for a comprehensive review: the reaffirmation of a shared commitment by constituents to the improvement of existing standards-related activities and procedures. This would also involve agreement on the need to strengthen and not weaken activities that demonstrably perform well in the achievement of the Organization's objectives.
6. A second building block might be the acknowledgment that existing and emerging needs, once clearly identified, can be usefully addressed through international labour standards. This might well lead to the revision of existing instruments; or it might lead to the adoption of entirely new ones.
7. In addition, recognition of the importance of international labour Conventions as a unique and irreplaceable source of binding obligations subject to various types of supervisory procedures might be a third building block. On that basis, it is easier to recognize the contribution that other instruments can make to attaining the aims of the Organization. Recommendations have the potential to supplement Conventions, thus enhancing their impact; or they may pave the way to the adoption of new Conventions through a maturing process. Recommendations can also clear the way for the ratification of existing Conventions by promoting their principles either on an individual basis or through a consolidation, possibly around the four strategic objectives; and they may include details that would be unwieldy in a Convention but which provide additional reference points for national law and practice.
8. Although not legally binding, Recommendations carry the authority of the International Labour Conference and can play an effective role in promoting the aims of the Organization. Guidelines, codes of practice and other kinds of best practice tools can also be used to complement the protection provided by Conventions.
9. Given a climate of good faith, and in an environment where a constructive approach prevails, these basic building blocks should help the envisaged review overcome any remaining misapprehensions.

3. Specific issues proposed for more detailed discussion

10. Standards-related activities in the broadest sense range from standard setting to supervision, assistance and promotion.⁷ A comprehensive approach will be needed to ensure that the review process brings *added value* from the point of view of all members of the ILO's tripartite constituency. There may be a body of issues, discussion of which will make subsequent progress possible in a more comprehensive and dynamic review of the role of standards in the achievement of the ILO's objectives. Specific proposals for the examination of these issues and possible action within an established time frame could be presented to the Governing Body in November 2000.
11. Some constituents are strongly committed to maintaining a steady pace of standard setting. Others attach primary importance to the need for new standard setting to be based on a wide-reaching *consensus* on its focus and content. The need to maintain and enhance the quality of standards is frequently emphasized by all. It thus seems essential to examine the efficiency of the process of preparing standards, so as to ensure that decisions to discuss instruments rest on a common agreement as to the existence of a need and a general understanding as to the way in which new instruments could help meet that need. This may be a sensitive subject: while everyone wishes to achieve a consensus, a requirement of full unanimity will in practice become an obstacle. Consequently, if agreement can be reached to engage in standard setting on a given topic, this must imply a commitment by all concerned to work in good faith to achieve a reasonable outcome.
12. It might be useful to endeavour to improve the way in which potential topics for new standards *mature*. The strategic objectives of the Organization and the cross-cutting themes of gender and development are crucial to the determination of the most urgent needs. Following an analysis of existing standards in this light, topics that would seem to require further normative attention could form a stock of issues that would be regularly reviewed. Once determined to be of current interest, a topic could be selected for further research and preparatory work with a view to standard-setting action. In this context, possibilities for the adoption of new framework Conventions and Recommendations or the consolidation of existing instruments could also be explored.
13. The *method* of negotiating and elaborating a new instrument could also be an important element in ensuring the desired consensus. There has been the classic double discussion procedure, with its statutory preparation time. In some cases a preliminary discussion by the Conference might serve to produce the necessary consensus and allow standard setting to be concluded in a subsequent year. More frequent expert meetings might be held to prepare for standard-setting action.
14. Developing topics for new standards in the medium term should not prevent the Organization from reacting as quickly as is constitutionally feasible where a consensus on an *urgent*, important issue is established. This was the case, for instance, with the Prevention of Major Industrial Accidents Convention, 1993 (No. 174), as well as the Worst Forms of Child Labour Convention, 1999 (No. 182).

⁷ The following paragraphs attempt to map out some routes that the Governing Body may wish to take. A list of major standards-related issues is appended. As a factual foundation for discussions, statistical information reflecting recent trends in the ratification of Conventions will be made available at the Committee's meeting.

15. Allowing new topics to mature might in practice mean that, in the short term, special attention would be given to the *revision* of existing standards. The Governing Body has in fact not yet selected for the Conference agenda any of the items proposed for revision by the LILS Working Party on Policy regarding the Revision of Standards. The aim of revisions is to increase the efficiency of the standards in reaching the objectives, not to downgrade the level of protection. The generally accepted rationale for revisions – themselves an integral element of standard setting throughout the history of the ILO – was stated in March 1995: “the revision of existing standards has two complementary but distinct objectives: to update standards on the one hand and to facilitate the ratification of Conventions and their application on the other. To these must be added a third objective, which has been expressed within the framework of the consolidation of standards and which concerns the consistency of the ILO’s standard-setting system”.⁸
16. Any new or revised instrument should be meaningful, realistic and, in the case of a Convention, ultimately ratifiable. This implies certain considerations in various stages of the *preparatory work*, in the course of negotiating the instrument, and at the drafting and adoption stages.
17. Greater attention should be paid to steps leading to the *ratification* of Conventions once adopted. There should be a commitment by member States to work in line with the objectives of the Convention, which can be supported by more promotional activities, including assistance from the Office.
18. Another important element is to maintain and develop the confidence of constituents in the efficiency, objectivity and transparency of the standards *supervisory mechanisms*. This could be done in the first instance by the Office providing a factual overview of existing procedures⁹ so as to facilitate a discussion of specific aspects and their relation to one another.
19. As the real efficiency of standards-related activities is dependent on the *promotion* of up-to-date standards and *technical cooperation* for the implementation of ratified Conventions, existing and new approaches to the organization of these activities should be examined. Technical assistance and advice could focus more on removing the problems of application identified by the supervisory mechanisms.
20. Finally, *evaluation* and reporting can enable the impact of standards-related activities to be measured in the overall context of the ILO’s strategic objectives by bringing out the real results in the situations in member States that such activities produce. This impact should be constantly monitored and improved.
21. ***The Committee may wish to recommend to the Governing Body that it –***
 - (a) ***confirm its willingness to move ahead with a comprehensive review of the ILO’s standards-related activities with a view to strengthening their efficiency in addressing the strategic objectives of the Organization;***

⁸ GB.262/LILS/3, para. 9.

⁹ See, for example, the *Handbook of Procedures relating to International Labour Conventions and Recommendations*.

- (b) request the Director-General, taking into consideration the discussions in the Committee and the Governing Body, to submit to the Governing Body in November 2000 a workplan for such a review;*
- (c) request the Office, when formulating proposals for items for inclusion on the agenda of future sessions of the International Labour Conference, to take into consideration the views expressed during the current session of the Governing Body.*

Geneva, 3 March 2000.

Point for decision: Paragraph 21.

Appendix

ILO standards-related activities: List of possible issues

1. Objectives of standard setting

- Common understanding on what a standard is:
 - Conventions, Recommendations and protocols.
- Other forms of normative or policy-setting instruments in the ILO:
 - utility and effectiveness of declarations, guidelines, codes of conduct, codes of practice, etc.

2. Identification of items for standard setting

- Criteria for the identification of standard-setting items:
 - suitability of the topic for legal requirements;
 - the need for a new standard;
 - prospects of ratification;
 - utility as a benchmark;
 - extent of coverage.
- Selection of the type of instrument.
- General versus sectoral instruments.
- Revision of existing standards:
 - revision methods;
 - revising instruments;
 - timetable for revisions;
 - consolidation;
 - ways to ensure that revised standards do replace the standards they have revised.

3. Preparation of standards

- Portfolio approach:
 - input by the Office;

- views of constituents;
- background information.
- Expert meetings or other preliminary discussions;
 - experience of the Joint Maritime Commission.

4. The negotiating process

- Discussion in the Governing Body:
 - timing;
 - short-listing and selection of items;
 - deadlines for selection.
- Adoption of Conventions and Recommendations by the Conference:
 - preliminary work by the secretariat;
 - questionnaire;
 - discussions in the Conference;
 - timing of discussions;
 - extent of agreement (consensus, votes, reservations).
- Considerations in drafting the text of new instruments:
 - drafting stages, flexibility clauses, time-bound and condition-bound commitments, degree of detail, balance between objectives and means, etc.;
 - framework Conventions and prescriptive Conventions, balance between the principles and the definition of their actual implementation.

5. Ratification, entry into force, denunciation

- Obstacles to ratification.
- Required number of ratifications.
- Period before entry into force.
- Periods for denunciation.

6. The supervisory system

- Reporting obligations:
 - frequency of reports;
 - content of reports and questionnaires;
 - participation of workers' and employers' organizations.

-
- Committee of Experts on the Application of Conventions and Recommendations:
 - role and mandate of the Committee;
 - appointment and term of office of members.
 - Conference Committee on the Application of Standards:
 - mandate;
 - procedures.
 - Committee on Freedom of Association:
 - mandate, membership, frequency of meetings;
 - nature of procedure (confidential, consensus decisions).
 - Article 24 and 26 procedures:
 - Standing Orders (receivability);
 - financing of procedures;
 - appointment of members to commissions of inquiry.

7. The promotion and implementation of standards

- The work of the Office in:
 - the promotion of ratifications;
 - assistance in implementing the standards.
- Technical cooperation and technical assistance:
 - awareness-raising, training, capacity-building, dissemination of best practices;
 - assistance in solving of problems raised by the supervisory system;
 - direct contacts missions;
 - advisory services;
 - involvement of MDTs and area offices in standards-related work of the Office.
- Relationship between different sets of activity to achieve a common goal:
 - relationship between supervisory and promotional activities;
 - relationship between standards activities and the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up.

8. Evaluation of standards-related activities in terms of their objectives

- Strategic programming and impact:
 - global objectives, indicators and targets;
 - local objectives, indicators and targets.