



SECOND ITEM ON THE AGENDA

**Practices for the preparation of
international labour Conventions****(b) Questionnaire – Articles 38 and 39 of the
Standing Orders of the International
Labour Conference****Introduction**

1. At the 286th Session of the Governing Body (March 2003),¹ the Committee on Legal Issues and International Labour Standards (LILS Committee) examined the aspects of the preparation of international labour Conventions relating to the questionnaire provided for in articles 38 and 39 of the Standing Orders of the Conference. The discussion focused on the place of the questionnaire in the normative process (in particular, if this is preceded by a general discussion based on an integrated approach, or preparatory technical meetings), improving the form and content of the questionnaire and optimizing its effectiveness through the utilization of Office resources in the service of constituents, as well as technology for the rapid exchange of information. Reference was also made to improvements made to questionnaires used for instruments in the process of being adopted. The Office was invited to make proposals in the light of discussions held.
2. The examination of this question confirmed the role that can be played by questionnaires under articles 38 and 39 to gather the views of ILO constituents on as broad a basis as possible. It also confirmed that improving the procedure would not necessarily involve amending the Standing Orders of the Conference. The framework offered by these two articles appears sufficiently flexible to permit the introduction of the necessary amendments to respond to the various proposals chosen by the Governing Body, with the sole exception of the communication of questionnaires to organizations of employers and workers.

¹ GB.286/LILS/1/1.

Dispatch of questionnaires

3. Under the provisions of the Standing Orders of the Conference, questionnaires are communicated to governments, which are responsible for consulting the most representative organizations of employers and workers and indicating which organizations they have consulted. This consultation is obligatory for Members that have ratified the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).² Article 5, paragraph 1(a), makes it an obligation for them to consult the most representative organizations of employers and workers on “government replies to questionnaires concerning items on the agenda of the International Labour Conference and government comments on proposed texts to be discussed by the Conference”. The Worker members expressed the wish that questionnaires be sent directly to the organizations.
4. Sending questionnaires directly to the most representative organizations of employers and workers raises several questions. As amended, articles 38 and 39 of the Standing Orders leave it up to governments to decide on the most representative organizations to be consulted and, as a result, the ones that will be sent the questionnaire. It is not for the Office to determine the most representative organizations of employers and workers, and the only possible solution, if the Office were to send questionnaires directly to employers’ and workers’ organizations, would be to send them only to the organizations covered by article 3, paragraph 5, of the Constitution.
5. However, a direct dispatch of this kind would have the disadvantage of physically separating the two operations of the communication of the questionnaire and consultation on the questionnaire. There is a danger that this separation would not promote the development of consultation. Furthermore, in the case of specialized standards – for the maritime sector, for example – the most representative organizations in the meaning of article 3 above are not necessarily the most representative organizations in the sector under consideration. Lastly, direct dispatch to the most representative organizations of employers and workers multiplies at least threefold the work currently involved in the dispatch of reports and questionnaires. In view of these difficulties, none of which are in themselves insurmountable, it is important to consider if any other solution could address this need.
6. Putting questionnaires online on the Office Internet site would give employers’ and workers’ organizations – at least those with easy access to the Internet – the possibility to participate more actively. By using the necessary security guarantees, replying to online questionnaires would be restricted to governments and the most representative organizations of employers and workers referred to above. It would certainly be possible to throw more light on the realities of consultation and its results. A table, to be published in the “yellow” report, could present a summary of the data relating to the replies to the questionnaire and to the organizations consulted for each member State.

² This Convention has been ratified by 110 States. It would be interesting to examine further the impact that the ratification of Convention No. 144 has on the rate of reply to questionnaires as well as on the consultation of the most representative organizations. Almost three-quarters (71 out of 96) of the replies to the questionnaire on human resources development and training came from States that had ratified Convention No. 144 (See ILO: *Learning and training for work in the knowledge society: The constituents’ views*. ILC, 91st Session, 2003, Report IV(2)). However, less than two-thirds of the States that ratified Convention No. 144 (69 out of 110) replied to the abovementioned questionnaire.

The place of the questionnaire in the process of adopting standards

7. The few examples presented below are intended to demonstrate the directions in which the process of preparing standards is moving.

Preparing the questionnaire?

8. The conclusions of the first general discussion based on an integrated approach made it possible to outline the main elements of an “overarching” instrument establishing a promotional framework in one sphere, occupational safety and health, in which there have already been 47 Conventions and Recommendations and 19 codes of practice. The Conference has not yet given its views on the nature of this instrument and, if the Governing Body decided to place the item on the agenda of the Conference, it would be possible that it might not wish to give its views at this stage. The nature of the instrument depends on the objectives it is assigned. The questionnaire prepared by the Office under articles 38 and 39 of the Standing Orders of the Conference should propose alternative solutions that take into account the nature of the objectives defined and the conclusions adopted by the Conference at its 91st Session during the general discussion based on an integrated approach.

Supplementing the questionnaire?

9. In deciding to place on the agenda of the 92nd Session of the International Labour Conference an item concerning a comprehensive standard on work in the fishing sector, the Governing Body recommended that a meeting of experts be convened to make proposals to the Conference on the points to include in this standard. The Meeting of Experts was held from 2 to 4 September 2003. It permitted consultations based on the questionnaire drawn up by the Office and the initial elements drawn from the replies received to date from governments and employers’ and workers’ organizations. The results of these consultations, which are before the Committee at the current session,³ should help to supplement the replies to the questionnaire received by the Office and contribute to a more appropriate formulation of the conclusions proposed for examination by the Conference.

Improving the form and content of the questionnaire

10. The examination of the most recent questionnaires sent to member States provides an opportunity to evaluate some of the proposals made by the Office in real terms.
11. An initial assessment can be made from the preparation of the Seafarers’ Identity Documents Convention (Revised), 2003 (No. 185), adopted by the International Labour Conference at its 91st Session (June 2003), for which the questionnaire was accompanied by a “preliminary draft of possible provisions”. This preliminary draft was intended to illustrate how the proposals presented in the form of questions could translate into legal

³ GB.288/LILS/8.

provisions.⁴ A number of delegates considered that this preliminary draft had allowed a better comprehension of the economy of the future instrument. In the light of the amendments made to the final text adopted by the Conference (approximately 25 per cent of amendments in relation to the initial text), the preliminary draft does not seem to have restricted the freedom of the constituents. To take a recent example, the difference between the questionnaire and the text adopted following the first reading of the draft Recommendation concerning human resources development and training is lower (10 per cent of amendments in relation to the initial text). The warning that the provisions of the preliminary draft “are not intended as concrete proposals for the new instrument” and that in order to avoid any duplication, it is proposed “that comments on the substance of the provisions be made in connection with the corresponding questions” was adhered to by all. It therefore seems that it could be considered that this practice of following the questionnaire with an “indicative preliminary draft” is becoming the norm, barring exceptions for which the Office will indicate the reasons as appropriate.

Optimizing the effectiveness of the questionnaire

12. While it has been generally accepted that the rate of reply to questionnaires depends on factors which at times do not fall within the competence of the Office, efforts can be made to facilitate the task of those who, in their various capacities, must reply to them. Several Committee members were favourable to the questionnaire being put online, and proposals have been made in this connection in the present document (see paragraphs 3 to 6).
13. *The Committee may wish to recommend that the Governing Body invite the Office to implement as appropriate the practices described in the present document and to allow the Governing Body to evaluate the results by submitting a report to a subsequent session of the Governing Body.*

Geneva, 20 October 2003.

Point for decision: Paragraph 13.

⁴ In this connection, this presentation of a preliminary draft of a text differs from that used previously for the preparation of the Plantations Convention, 1958 (No. 110), which presented provisions extracted from other international labour Conventions in force and which “would be, either included as they stand or eliminated from the proposed instruments” (ILC, 40th Session, Geneva, 1957, *Conditions of Employment of Plantation Workers*, p. 62).