



SEVENTH ITEM ON THE AGENDA

Improvements in the standards-related activities of the ILO: A progress report*Contents*

	<i>Page</i>
Introduction	1
1. Fundamental Conventions, principles and rights	1
1.1. Promotion of fundamental Conventions	1
1.2. The Declaration on Fundamental Principles and Rights at Work and its Follow-up	1
2. Review of standards	2
2.1. LILS Working Party on Policy regarding the Revision of Standards	2
2.2. Abrogation and withdrawal of standards	4
3. Standard setting	5
3.1. Selecting items for the Conference agenda	5
3.2. New trends in recent standards	6
3.3. Other standard-setting issues	7
4. Supervisory and reporting mechanisms	8
4.1. Strengthening the supervisory system	8
4.2. Review of the article 22 reporting arrangements	8
4.3. The Committee of Experts (CEACR) and the Committee on the Application of Standards	8
4.4. Special procedures	9
4.5. Article 19 procedures	11
5. Promotion of standards and technical cooperation	12
5.1. Improving standards-related technical cooperation and promotion	12
5.2. The integrated approach and technical cooperation	13
6. The question of interpretation	13
Conclusions	14

Introduction

1. This document seeks to provide an overview of the various discussions and decisions concerning standards-related activities both in the Governing Body and the International Labour Conference since 1994.¹ The starting point of this review of standards-related developments is the Report of the Director-General to the 81st Session (1994) of the International Labour Conference.² That report generated a broad discussion in Conference and specific aspects were pursued in the Governing Body. The current document identifies the main developments and results achieved in order to permit an assessment of the progress made and the need and scope for any further action on the subject.

1. Fundamental Conventions, principles and rights

1.1. Promotion of fundamental Conventions

2. One of the initial areas in the focus of the discussion generated by the Director-General's 1994 report was the ripening consensus on the need for specific action concerning basic or fundamental rights and other international labour standards. This focus marked the conclusion of a development initiated in the middle of the 1970s, and endorsed by the Copenhagen Summit in March 1995.³ It gave rise to a promotional campaign for the universal ratification of the fundamental Conventions. This campaign was well received and has been singularly successful. In the period 1995-2004 the total number of ratifications for the fundamental Conventions increased by more than 300.⁴

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

3. Once the promotional campaign had been launched, attention immediately turned to the need to ensure that these standards were actually globally applied. Initially, the discussion addressed different ways to strengthen the supervisory mechanisms in general. One of the proposals raised in November 1995 was to extend the freedom of association complaints procedure to cover other fundamental Conventions. The discussion on this proposal extended over three sessions of the Governing Body but no decision was reached on this basis.⁵ Instead a suggestion was made to develop what eventually became the Declaration

¹ A summary overview covering the period until the end of 2001 was considered by the Governing Body at its 283rd Session (March 2002), GB.283/4.

² "Defending values, promoting change – Social justice in a global economy: An ILO agenda".

³ See, in particular, Chapter 3, paragraph 54(b) of the Programme of Action which refers to the need for "safeguarding and promoting respect for basic workers' rights". See, <http://www.un.org.esa/socdev/wssd/agreements/poach3.htm>.

⁴ The 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), the Abolition of Forced Labour Convention, 1957 (No. 105), the Equal Remuneration Convention, 1951 (No. 100), the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Minimum Age Convention, 1973 (No. 138), and the Worst Forms of Child Labour Convention, 1999 (No. 182). For the most recent information on the ratifications, see the ILOLEX <http://www.ilo.org/ilolex/english/index.htm> or APPLIS <http://webfusion.ilo.org/public/db/standards/normes/appl/index.cfm?lang=EN> databases.

⁵ GB.262/LILS/4 and GB.262/9/2, para. 55 (March-April 1995); GB.264/6 (November 1995); GB.265/LILS/7 and GB.265/8/2 (March 1996); GB.267/LILS/5 and GB.267/9/2, paras. 15-80 (November 1996); GB. 268/LILS/6 and GB.268/8/2, para. 55 (March 1997).

on Fundamental Principles and Rights at Work and its Follow-up.⁶ The innovative and non-binding form of this instrument has been discussed at length, and a key feature of this instrument is its report and technical cooperation-based follow-up mechanism for Members that have not ratified the fundamental Conventions. On that basis and since its adoption, action plans have been developed for each of the four categories of fundamental principles and rights at work. Declaration-related technical cooperation is now an integral part of the ILO's overall technical cooperation programme.

2. Review of standards

2.1. LILS Working Party on Policy regarding the Revision of Standards

4. The second main priority in these discussions was to carry out a review of the ILO's body of other standards. It is to be recalled that the Governing Body has, at regular intervals, examined ILO's body of standards. A previous review was concluded in 1987. By 1994, most of the recommendations for standard setting and revision of standards identified in 1987⁷ had been implemented. The rapidly changing political context was also clearly a reason for the need to carry out another examination of the ILO's standards and to assess whether they needed updating.⁸ A proposal to set up a working party of the Governing Body for this purpose under the LILS Committee took shape in March 1995 and the Working Party on Policy regarding the Revision of Standards held its first session in November 1995.⁹ Over seven years this Working Party, also known as the "Cartier" group,¹⁰ carried out a case-by-case examination of all the "other"¹¹ Conventions and Recommendations¹² adopted before 1985.¹³ It concluded its work in March 2002.¹⁴

⁶ ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up adopted at the 86th Session (June 1998) of the Conference. *Provisional Record* No. 20, 86th Session of the ILC, June 1998.

⁷ See the Ventejol Working party: "Report of the Working Party on International Labour Standards", *Official Bulletin*, Vol. LXX, 1987, Series A, special issue, paras. 2-4. This Working Party was preceded in 1979 by another review also led by Mr. Ventejol. See the Final report of the Working Party on International Labour Standards, *ibid.*, Vol. LXII, 1979, Series A, special issue, paras. 3-9.

⁸ See GB.262/LILS/3/1 and GB.262/9/2 (March-April 1995).

⁹ GB.262/PV(Rev.) (March-April 1995).

¹⁰ Named after its Chairperson, Mr. Jean-Louis Cartier, Government representative of France.

¹¹ Regrettably, no appropriate term has yet been found to denote the group of instruments which are not fundamental or priority instruments.

¹² While Conventions had been subject to previous examinations, this was the most thorough review of Recommendations that the ILO had carried out since its inception.

¹³ Standards adopted in the ten-year period 1985-1995 were considered to be modern and up to date.

¹⁴ For information on the details of the decisions taken see GB.283/LILS/WP/PRS/1/2 (March 2002). This document does not, however, take into account the decisions taken based on the recommendations of the Working Party at the same session in March 2002.

5. The initial focus of the Working Party was to identify the need for revision of existing standards and, as a result, the Governing Body decided that 22 Conventions¹⁵ and 15 Recommendations should be revised. The recommendations of the Working Party also enabled the Governing Body to identify 71 Conventions¹⁶ and 71 Recommendations that should be promoted for ratification as well as 60 outdated Conventions and 68 outdated Recommendations.¹⁷ Unlike previous reviews, this examination did not, however, result in recommendations concerning the need for new standards.
6. Follow-up concerning almost all of the 22 decisions to revise Conventions has been initiated.
- The general discussion on ILO standards-related activities in the area of occupational safety and health (OSH) at the 91st Session (2003) resulted in setting directions and priorities for the revision of four OSH Conventions and six Recommendations.
 - A follow-up to the decisions to revise ten maritime Conventions is under way in the broader context of the consolidation process of 68 instruments in the maritime sector.
 - The revision of three Conventions concerning the fishing sector is under way and will be considered by the Conference at its forthcoming session.
 - A proposal for a general discussion based on an integrated approach on child labour and the protection of young workers is among the agenda items for consideration for the agenda of the Conference in 2007 and could involve a follow-up on the revision of three Conventions on night work of children and young persons.
 - A proposal for the revision of one Convention is being considered in the context of a proposed integrated approach to work in ports which at the earliest can be considered in 2008.
 - The follow-up to the decision to revise of the Hours of Work and Rest Periods (Road Transport) Convention, 1979 (No. 153), needs to be considered at a future date.
7. As emphasized by the Governing Body in the context of the reviews in the Working Party, an important element of the modernization of the ILO's standards is the follow-up each member State should consider undertaking when ILO instruments have been revised. The

¹⁵ The Governing Body also decided that two old Conventions on working time and glass works should be included among the Conventions that might be revised should the Working Party recommend a revision of other Conventions dealing with hours of work and the working conditions of shiftworkers.

¹⁶ This includes the fundamental and priority Conventions and all instruments adopted between 1985 and 2002. The priority Conventions are the Employment Policy Convention, 1964 (No. 122), Labour Inspection Convention, 1947 (No. 81), the Labour Inspection (Agriculture) Convention, 1969 (No. 129), and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).

¹⁷ In addition, 23 Conventions and 25 Recommendations have an "interim status", and for five Conventions and 12 Recommendations a request for additional information is the only decision taken. No consensus could be reached with respect to the Termination of Employment Convention (No. 158), and Recommendation (No. 166), 1982. This information reflects the status at the conclusion of the work of the Working Party in March 2002. Taking into account the developments after that date, 73 Conventions, six Protocols and 75 Recommendations are presently (February 2005) to be promoted. For a list of instruments to promote, see appendix to GB.291/LILS/5 (November 2004).

Working Party reviews highlighted that in a number of cases, two (or in some cases even three) sets of ILO instruments exist in parallel. Although member States may have contributed to the development of a more modern instrument,¹⁸ this has not led into a ratification of the new more modern instrument. Follow-up on these issues has to be undertaken on the same basis as promotional activities in general. Summaries of the need for action in this respect in each ILO member State can be found in the ILO's ILOLEX database available on the ILO web site.¹⁹

2.2. Abrogation and withdrawal of standards

8. Following the identification by the Working Party of a series of outdated instruments,²⁰ a discussion on the possible abrogation of these instruments was examined by the Governing Body in November 1996.²¹ This led to the adoption of the 1997 amendment to the Constitution which, when it enters into force, would enable the abrogation of Conventions which no longer make a useful contribution to attaining the objectives of the Organization. Unfortunately, and despite the adoption of this important tool which would contribute to the rationalization of the body of ILO standards, the process of ratification of this amendment has been disappointingly slow.²²
9. Furthermore, in connection with the introduction of the abrogation procedure, the Conference also adopted an amendment to its Standing Orders enabling a withdrawal of outdated Recommendations and Conventions which have not entered into force. This procedure does not depend on the entry into force of the constitutional amendment. It was applied for the first time at the 88th Session (2000) in relation to five Conventions²³ which had never entered into force and, subsequently, in 2002 and 2004 respectively in relation to a total of 36 outdated Recommendations.²⁴

¹⁸ It is proposed to follow up on the streamlining of the instruments concerning child labour in the context of a proposal for a general discussion based on an integrated approach, see GB.291/2, para. 14.

¹⁹ An Internet-based analysis of the situation for each country in this respect is available at <http://www.ilo.org/ilolex/english/profileframeE.htm>.

²⁰ The Governing Body has retained the following seven Conventions as candidates for a possible abrogation: Conventions Nos. 67 (hours of work), 4 and 41 (night work of women), 28 (dockers), 15 and 60 (minimum age) and 91 (seafarers).

²¹ GB.267/LILS/WP/PRS/1 (November 1996).

²² As at 1 Jan. 2005, the 1997 constitutional amendment had been ratified (or accepted) by 80 member States out of the 118 required.

²³ Conventions Nos. 31, 46, 51, 61 and 66.

²⁴ Recommendations Nos. 1, 5, 11, 15, 37, 38, 39, 42, 45, 50, 51, 54, 56, 59, 63, 64, 65, 66, 72 and 73 in 2002 and Recommendations Nos. 2, 12, 16, 18, 21, 26, 32, 33, 34, 36, 43, 46, 58, 70, 74 and 96 in 2004. The question of the withdrawal of six Conventions on seafarers – Conventions Nos. 54, 57, 72, 75, 76 and 93 – will be considered at a later stage.

3. Standard setting

3.1. Selecting items for the Conference agenda

10. The process of selection of items for the agenda of the International Labour Conference is determinative for the development of future standards. Between 1987 and 1994, many of the items on the Conference agenda followed up on the outcome of the review of standards concluded in 1987.²⁵ As noted above, in 1994, that follow-up was by and large concluded, and at the same time, the political context of the ILO was rapidly changing. As a result, a number of items proposed for Conference action were considered not to be sufficiently relevant or topical and the method for selecting items was deemed too “Office-driven.”²⁶ In March 1997 the Governing Body reinitiated a discussion on the selection process. A decision was made to revitalize this process by consulting with all the constituents on possible proposals for the agenda of the Conference. This procedure, which enabled the Office to submit to the Governing Body a “portfolio” containing a rather large number of proposals, was pursued for three years. However, this procedure was not backed up by sufficient research into the feasibility of the proposals or, indeed, policy discussions on their feasibility and desirability. By November 1999, it had become clear that this procedure was not viable and it was abandoned.
11. At the Governing Body session in November 2000, and following an intense period of consultations with the constituents, a proposal was made to consider a complementing approach referred to as the integrated approach. This approach is aimed at reinforcing the coherence, relevance and impact of standards and was based on the premise that items for standard setting should be selected not only in a larger, subject-wide context but taking into account all the ILO’s standards-related activities.²⁷ A strong consensus emerged in favour of this approach and it was adopted on a trial basis.
12. This new approach has, so far, been implemented for occupational safety and health (OSH) (2003) and migrant workers (2004).²⁸ In the case of OSH the comprehensive action plan adopted by the Conference included proposed standard-setting action in two stages: first for the development of a new instrument establishing a promotional framework in the area of OSH and, secondly, for the revision of existing instruments. In the case of migrant workers, the comprehensive action plan included an agreement to develop a non-binding multilateral framework for a rights-based approach to labour migration and the Governing Body decided at its November 2004 session to convene a Tripartite Meeting of Experts to discuss the development of this framework. In parallel to this work, follow-up is also under way as regards other aspects of the plans of action, in particular as regards the parts related to the structuring of effective technical cooperation.

²⁵ See footnote 7 above.

²⁶ See GB.261/LILS/3/1 (November 1994).

²⁷ GB.279/4 (November 2000).

²⁸ See GB.288/3/1 (November 2003) and GB.291/3/1 (November 2004).

3.2. New trends in recent standards

13. In the period 1994-2004, the ILO adopted nine Conventions, one Protocol and 12 Recommendations, and held two general discussions based on an integrated approach. Four sets of standards are currently in preparation.²⁹

3.2.1. Consensus building

14. Increasing emphasis has been placed on the consensus-building process, prior to engaging the actual standard-setting process or as an essential part thereof. One notable example is provided by the instruments on the worst forms of child labour (Convention No. 182 and Recommendation No. 190). The unanimous adoption of these instruments in 1999 was preceded by a series of confidence-building discussions at the Conference as well as in the Governing Body. This has, most probably, contributed to the fact that this instrument has achieved the fastest rate of ratification in ILO history – 150 ratifications by the end of 2004.³⁰
15. Another example of a consensus-building process of vast proportions is the preparations for a new consolidated maritime labour Convention where a long series of consultations and preparatory meetings is being held in order to reach an agreement on the consolidation of 68 ILO maritime Conventions and Recommendations. This standard-setting process, which is unprecedented in terms of scope and significance, has already in its preparatory stages generated a series of innovations which have facilitated consensus building and have contributed to the development of a viable draft set of provisions. The lessons learned from this process will have to be carefully analysed as they could have an impact on existing procedures.
16. Finally, it should be recalled, in an integrated approach, the very purpose of the general discussion is to build a consensus for a strategy or a plan of action with respect to the subject matter at issue. The two discussions held so far both successfully resulted in plans of action backed by consensus.³¹

3.2.2. Keeping standards up to date

17. Another concern reflected in the recent and ongoing developments is the need to explore different ways to keep standards up to date – in particular standards with a technical

²⁹ A second discussion on a comprehensive standard in the fishing sector is on the agenda of the ILC 93rd Session (2005), together with a first discussion on a new instrument establishing a promotional framework in the area of occupational safety and health following up on the first general discussion based on an integrated approach held in 2003. A new Recommendation on the employment relationship is on the agenda of the 94th Session (2006) Conference. And, finally, at a separate Maritime Conference in early 2006, the new consolidated maritime labour Convention is scheduled for discussion and adoption. With one exception (the employment relationship), these developments all follow up on the work of the LILS Working Party. See also above, section 2.1.

³⁰ Other contributing factors may be the drafting style of Convention No. 182 – i.e. a focus on an objective and a principle – leaving details of implementation to national determination as well as the inclusion of provisions for how it is to be implemented inter alia – and for member States so requesting – through technical assistance of the ILO. The implementation of these instruments (as well as other relevant instruments in this area) has also benefited from an unprecedented level of targeted financial support through the International Programme on the Elimination of Child Labour (IPEC).

³¹ See para. 12 above.

content – in a context of rapid technological and scientific change. This has been an area of particular concern in relation to occupational safety and health and a recent innovation is the mechanism for a simplified updating procedure in the new list of occupational accidents and diseases.³² Another example is the ILO rapid response to the urgent need for identity documents for seafarers which resulted in the adoption of the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185). This Convention includes a simplified amendment procedure for the Annexes of the Convention. This procedure will also be an important feature of the new consolidated maritime labour Convention.³³

3.2.3. Consolidation and grouping of standards

- 18.** The recent developments also reflect a trend to group by subject matter or consolidate standards in order to create synergies and facilitate targeted action. The process to consolidate 68 instruments concerning seafarers has already been mentioned and a similar process is under way in the area of fishing.³⁴ The integrated approach on OSH and migrant workers also reflects this trend, as does the decision to group ILO Conventions by subject matter for reporting purposes.³⁵

3.3. Other standard-setting issues

- 19.** Discussions on a series of other issues related to standard setting and standards in general have been initiated on several occasions throughout this period.³⁶ A first set of questions concerned the final provisions of Conventions.³⁷ A background document was prepared by the Office and discussed at the March 2003 session of the Governing Body.³⁸ Consensus was, however, not reached on the substantive issues or on how to proceed with these questions. The tripartite constituents agreed to pursue the discussion on these issues informally.
- 20.** The Governing Body also considered questions related to the practices for the preparation of Conventions.³⁹ A discussion was held on the questionnaires⁴⁰ and focused on how to increase the response rate in general and in particular from the social partners, inter alia,

³² Para. 3 of the List of Occupational Diseases Recommendation, 2002 (No. 194). See also Protocol No. P.155 of 2002 to the Occupational Safety and Health Convention, 1981.

³³ See Articles XIV and XV of the consolidated maritime labour Convention, PTMC/04/1.

³⁴ A comprehensive standard (a Convention and a Recommendation) in this area will be discussed at the ILC in June 2005. See further below, section 4.2.

³⁵ See further below, section 4.2.

³⁶ The Reports of the Director-General to the 81st, 85th and 87th Sessions (June 1994, 1997 and 1999, respectively) of the Conference raised a number of issues relevant in this context, but on none of these occasions did these issues become a focal point of interest.

³⁷ Including provisions for the entry into force and denunciation of a Convention, provisions concerning revision, provisions concerning the depository function of the Director-General and the Secretary-General of the United Nations, and, finally, provisions relating to authoritative texts.

³⁸ See GB.286/LILS/1/2 and GB.286/13/1, paras. 44-63 (March 2003).

³⁹ GB.286/LILS/1/1 and GB.286/LILS/1/2 (March 2003).

⁴⁰ Articles 38 and 39 of the Standing Orders of the International Labour Conference.

through the Internet. In terms of content, the questionnaire used in preparations for the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185), was referred to as an interesting innovative example.

21. A discussion was also held on a proposed handbook of good drafting practice in the Tripartite Meeting of Experts which was held in January 2005. A document on the outcome of the meeting is submitted for consideration in the Committee on Legal Issues and International Labour Standards at the present session of the Governing Body.⁴¹

4. Supervisory and reporting mechanisms

4.1. Strengthening the supervisory system

22. In the early stages of the current set of discussions, the debate on strengthening the supervisory system mainly focused on different ways to increase the impact of fundamental principles and rights. Renewed calls were subsequently made for a more general review of the supervisory system. A review was also due of the reporting arrangements that had been introduced in 1993. The main issues raised and pursued in March 2001 included the regular reporting mechanism, the special procedures as well as the composition, mandate and functioning of the supervisory bodies.⁴² As regards the latter, a formal decision was taken to inform them of any relevant comments that might facilitate the review of their working methods and any proposals they themselves might wish to make.⁴³

4.2. Review of the article 22 reporting arrangements

23. The reviews held in November 2001 and March 2002 of the 1993 reporting arrangements resulted in a decision to maintain the distinction between fundamental and priority Conventions,⁴⁴ on the one hand, and "other" Conventions, on the other, as well as their respective two-year and five-year reporting cycles. It was decided, however, to group all Conventions by subject matter for reporting purposes, and to introduce this grouping as of 2003.⁴⁵ The regrouping concerned also the fundamental Conventions in a two-year reporting cycle. The reporting system will be re-examined after one full reporting cycle, i.e. in 2008.

4.3. The Committee of Experts (CEACR) and the Committee on the Application of Standards

24. The issues concerning the Conference Committee on Standards raised in the Governing Body discussions were pursued in informal consultations and also generated a discussion on working methods in both these bodies. The CEACR also established a subcommittee at

⁴¹ GB.292/LILS/3 (March 2005).

⁴² GB.280/LILS/3 (March 2001).

⁴³ GB.280/12/1 (March 2001).

⁴⁴ *ibid.*

⁴⁵ GB.282/LILS/5 (November 2001) and GB.283/LILS/6 (March 2002).

its session in November 2001, which has continued to meet during each session since then, to consider possible improvements in its methods of work. Issues considered have included changes in the presentation and structure of the report, the organization of work during the sessions of the CEACR and, most recently, an initial discussion on different ways to increase the impact of work of the CEACR. Information on progress made on the review is regularly included in the general part of the report of the CEACR, which is submitted to the Conference Committee.

25. The Conference Committee on the Application of Standards has also had an item on its agenda for the last three years to consider possible improvements in its methods of work.⁴⁶ The main concerns expressed related to the criteria for and timing of decisions to select individual cases for consideration at the Conference and the procedure for the adoption of the conclusions. At the end of the discussion in 2004, the Chairperson noted the “high level of consensus concerning the current methodology of the methods of work which guaranteed transparency, objectivity and appropriate balance in the selection of individual cases, taking into account the diversity of standards, the various geographical regions and their development”. She also noted that there had been agreement that “the list of cases needed to be made known in due time so as to facilitate the intervention of the countries concerned” and that, with regard to the adoption of conclusions, “emphasis had been placed on the need for the chairperson to have sufficient time for reflection to draw up the Committee’s conclusions in each case”. Finally, the Chairperson noted that there was no consensus on the need to change the working methods of the Committee.⁴⁷

4.4. Special procedures

4.4.1. Committee on Freedom of Association

26. The special procedure relating to the Committee on Freedom of Association (CFA) of the Governing Body is the most frequently invoked of the ILO’s supervisory mechanisms. The Committee meets prior to each session of the Governing Body and handles a large volume of complaints and replies. The Committee is considered to be one of the most efficient supervisory bodies of the Organization. The CFA was also informed of the ongoing discussions, and – as it does on a regular basis – carried out a review of its working methods and adjusted some of them. It reported to the Governing Body on its discussions and decisions in March 2002.⁴⁸
27. On that occasion the Committee made a series of proposals – which were approved by the Governing Body – to improve the effectiveness and transparency of the procedure, to speed up as much as possible the examination of complaints, to improve its working methods as well as to strengthen and improve the follow-up action on its recommendations. In particular, the Committee underlined that a greater effort should be made to use preliminary and follow-up missions. It adopted certain improvements to be made in the presentation of its reports with the aim of facilitating the examination of cases. It considered that greater publicity should be given to its conclusions and recommendations, particularly in the cases that are of a grave nature. Given the increase in

⁴⁶ *Working methods of the Committee on the Application of Standards*, ILC, 2003, C.App./D.1, and ILC, 2004 C.App./D.1.

⁴⁷ Report of the Committee on the Application of Standards, Part I, para. 44, ILC, 92nd Session (2004), *Provisional Record* No. 24.

⁴⁸ See 283rd Session (March 2002) of the Governing Body, 327th Report of the CFA.

the number of complaints and their increasing complexity, it recommended that measures be put in place by enabling all the substitute members to participate by right in the work of the Committee. It also extended the possibility for its chairperson to meet with governmental delegations during the International Labour Conference and the sessions of the Governing Body. Finally, the Committee adopted on a trial basis a procedure which would allow seeking the comments of all the parties concerned in a particular case, so that the Government may transmit to the Committee the most exhaustive reply possible.

4.4.2. Article 24 procedure

28. Another special procedure is the representation procedure laid down in article 24 of the Constitution. Triggered by the perception that there was a rapid increase in the number of representations received by the ILO and risks for overlapping between various supervisory procedures, a discussion of a proposed revision to the procedures for the examination of representations was initiated in March 1998. The initial discussions on these issues were largely inconclusive⁴⁹ but in November 2003⁵⁰ and November 2004 this procedure was again discussed.⁵¹ A consensus was eventually reached on the following issues: clarifications, modelled on the practice of the CFA, of the notions of “industrial association”, and the possible “prescription” of certain matters which form the basis of a representation were introduced, and – as regards the problems concerning the repetitive nature of some representations – provisions were introduced permitting a postponement of the examination of such representations until the Committee of Experts, which is responsible for the follow-up of the decisions adopted by the Governing Body, had been able to examine the situation. Amendments to the relevant Standing Orders and an Information Note were adopted in 2004.⁵²

4.4.3. Other special supervisory procedures

29. Other special supervisory procedures,⁵³ including the complaints procedure under articles 26-29 of the Constitution, comprise procedures that have been used very sparingly⁵⁴ or not at all, or have not been used for a considerable length of time.⁵⁵ The articles 26-29 complaints procedure was briefly examined in November 2003.⁵⁶ In a document submitted for discussion on this issue, it was noted that although the Governing Body had no formal rules concerning the examination of complaints, the current practice was to use the same

⁴⁹ See discussions in LILS based on GB.273/LILS/1 (November 1998) and GB.276/LILS/2 (November 1999). The question of confidentiality was singled out for separate consideration in March 2000, but no consensus was reached at that time. See GB.277/11/1 (March 2000), para. 18.

⁵⁰ GB.288/LILS/1 (November 2003).

⁵¹ GB.291/LILS/1. The number of representations received by the ILO over the years has varied greatly: 1924-1983: 21 cases; 1984-1993: 25 cases; 1994-2004: 61 cases. However, 30 of these latter 61 cases were received (1994-96) and in 2004, a single case was registered.

⁵² GB.291/LILS/1, paras. 11-30 and GB.291/9(Rev.) para. 30 and Appendix I (November 2004).

⁵³ For an overview see, paras. 74-83, *Handbook of procedures relating to international labour Conventions and Recommendations*, Rev.2/1998, ILO.

⁵⁴ The article 26-29 complaints procedure has been used 11 times in total.

⁵⁵ Fact-Finding and Conciliation Commission on Freedom of Association last convened in 1991.

⁵⁶ GB.288/LILS/1 (November 2003).

procedures *mutatis mutandis* as those used when the Governing Body examined a complaint for the first time. It was concluded that no improvement of this procedure was called for.⁵⁷

4.5. Article 19 procedures

30. Although brought up more briefly in other contexts,⁵⁸ the Governing Body also discussed in November 2003⁵⁹ the reporting requirements relating to the effect to be given by member States to non-ratified Conventions and Recommendations.⁶⁰ The relevant provisions of article 19 state that each member State has an obligation to report to the ILO “at appropriate intervals as requested by the Governing Body on the position of its law and practice in regard to the matters dealt with” concerning Conventions they have not ratified and Recommendations adopted, “showing the extent to which effect has been given, or is proposed to be given, to any of the provisions of” such instruments. This is a unique and flexible provision which is demonstrated by the ways in which it has been used in practice.
31. Its most common use has been to serve as a basis for drawing up a global picture on relevant aspects of law and practice in member States. The article 19 reports requested on this basis on the implementation of unratified Conventions and Recommendations, together with those submitted under articles 22 and 35 of the Constitution by the States parties to the Conventions in question, have, since 1955, allowed the CEACR to carry out General Surveys on the effect given to the instruments under consideration. These General Surveys (Report III, Part 1B) are examined by the Conference Committee on the Application of Conventions and Recommendations in the framework of its general discussion. Their purpose has most often been to assist member States to overcome obstacles to ratification of the instruments examined. In some cases – particularly in the case of General Surveys recommended by the Working Party on Policy regarding Revision of Standards – the objective of these surveys has been to evaluate whether or not the instruments at issue were in need of revision.⁶¹
32. This provision is also the basis for the reporting under the follow-up procedures to the ILO Declaration. The reports received in this context, however, go through an entirely different procedure involving the ILO Declaration Expert-Advisers, and an examination by the Governing Body or a discussion at the Conference. It should also be noted that the requests addressed to member States during the preparatory work for the general discussions based on an integrated approach were also partially based on article 19.

⁵⁷ *ibid.*, para. 36. Mention should also be made of article 33 of the Constitution, which was invoked for the first time in March 2000 as a follow-up on an article 26 complaint against Myanmar. The Governing Body recommended a number of measures to the International Labour Conference, intended to secure compliance of Myanmar with the recommendations contained in the report of the Commission of Inquiry established to examine the observance by Myanmar of its obligations in respect of the Forced Labour Convention, 1930 (No. 29). See GB.277/6 (Add.1 and Add.2) (March 2000). This question had been before the Governing Body since then.

⁵⁸ GB.282/LILS/9 (November 2001).

⁵⁹ GB.288/LILS/1 (November 2003).

⁶⁰ Article 19(5)(e) and 6(d) of the Constitution. See also Article 19(7)(b)(iv) and (7)(b)(v) (concerning federal States).

⁶¹ See, for example, the General Survey on migrant workers, ILC, 87th Session, 1999.

33. In a document submitted for discussion by the Governing Body, it was noted that the scope offered by this provision for promotional action, notably for identifying obstacles to the implementation of standards – an essential prerequisite for providing technical assistance – could be explored more systematically.⁶²
34. The LILS Committee also discussed in November 2003 and November 2004 issues related to the obligation of member States to submit the instruments adopted by the Conference to their competent authorities and the obligation to report on them.⁶³ A broad consensus was reached in favour of a revision of the Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities. The LILS Committee will consider a revised version of the Memorandum at its present session.⁶⁴

5. Promotion of standards and technical cooperation

5.1. Improving standards-related technical cooperation and promotion

35. Standards-related technical cooperation as well as promotion was the subject of discussions held in November 2002 and in November 2003. In the background papers, the Office recalled a set of ideas for better integration of standards promotion in the technical work of the ILO as well as better follow-up to the comments of the supervisory bodies by specific assistance to resolve the problems of application. The Governing Body endorsed a multi-pronged approach including proposals related not only to standards-related technical assistance and relevant specific targets for such assistance but also certain more general promotional actions.⁶⁵
36. It should also be noted that in the context of the review of standards-related reporting arrangements in November 2001,⁶⁶ it was proposed to make a concentrated attempt to resolve as many of the standards-related problems raised by the supervisory bodies whenever possible on a country-by-country basis. It was considered that in some countries specifically targeted assistance could be instrumental in resolving problems. The Governing Body endorsed this proposal and invited the Director-General to hold further consultations on strengthening tripartite participation at the national level.⁶⁷

⁶² GB.288/LILS/1 (November 2003), para. 16.

⁶³ GB.288/LILS/1 (November 2003) and GB.291/LILS/1 (November 2004).

⁶⁴ GB.291/9(Rev.) (November 2004).

⁶⁵ The proposals addressed: national implementation; follow-up to the LILS Working Party; promotional campaigns; consolidation of practical materials; thematic databases; follow-up to supervisory comments; country-specific projects; integration of standards in country programmes; and tripartite involvement. See GB. 288/LILS/6 and GB.288/10/2, paras. 10-24 (November 2003).

⁶⁶ GB.282/LILS/5 (November 2001), paras. 46-50.

⁶⁷ A pilot project is being studied at present for technical assistance to Bolivia which would aim at solving a number of issues related to the application of Conventions ratified by that country with a country-specific and assistance-based approach.

5.2. The integrated approach and technical cooperation

37. Technical cooperation is one important component of the integrated approach. The objective of this approach is to ensure a better integration of standards with one another and with other means of ILO action including – notably – targeted technical cooperation and promotional activities. In the context of the two first general discussions based on this approach, addressing OSH and migrant workers respectively, the preparatory report, the Conference discussion, as well as the resulting plans of action, focused not only on standards in these areas, but also on technical cooperation and promotional activities.⁶⁸
38. An important premise in the discussions based on the integrated approach has been that effective technical cooperation depends to a large extent on a comprehensive and systematic assessment of the situation in each country. Consequently, considerable efforts were deployed in assembling and streamlining country-specific baseline-data on the situation in ILO member States in relation to occupational safety and health and migrant workers. In the area of occupational safety and health, the data had been streamlined in the form of “country profiles” available on the ILO web site.⁶⁹ These data will be complemented with information on comments by the supervisory bodies of the ILO. The purpose of these country profiles is to provide a “snapshot” of the situation in each country as the basis for developing targeted and potentially more effective technical cooperation.

6. The question of interpretation

39. The question of the interpretation of international labour Conventions has been also raised frequently. A paper⁷⁰ submitted to the Committee on Standing Orders and the Application of Conventions and Recommendations during the May 1993 session of the Governing Body had referred to the background of discussions on interpretation and had explored the possibilities under article 37(2) of the Constitution. It explained how problems of interpretation had been dealt with and examined whether and to what extent the appointment of the tribunal provided for in article 37(2) could offer a useful addition thereto. The question at issue was the role of the Committee of Experts in matters of interpretation. Requests for unofficial interpretations from the Office had pointed to the need for the Governing Body to examine further the question of interpretation of ILO Conventions. Questions on the existing practice as regards the interpretation of standards include the questions of who can request an interpretation, of ILO Conventions, and which bodies have the authority to issue interpretations, and the nature of these interpretations. In the course of the consultations held prior to the 283rd (March 2002) Session of the Governing Body, the view was expressed that the Constitution was clear on the issue of the interpretation of Conventions and that the legal views provided by the Office were not a substitute for the formal interpretations.

⁶⁸ See GB.288/3/1 (November 2003) concerning OSH and GB.291/3/1 (November 2004) concerning migrant workers including references.

⁶⁹ See <http://www.ilo.org/ilolex/english/profileframeE.htm>. As regards migrant workers, the survey responses, including relevant statistical information, were published in book form: *ILO migration survey 2003: Country summaries*, ILO, Geneva 2004. Country profiles, modelled on those developed in the area of OSH, are under preparation.

⁷⁰ GB.256/SC/2/2 (May 1993).

Conclusions

40. The above summary indicates that almost all aspects of the ILO's standards system have been discussed by the ILO Governing Body and the Conference over the last ten years. It appears appropriate to determine whether this review can now be considered complete, whether there are still identifiable gaps and whether the picture presented provides the Organization with a clear and coherent strategy for the future.

- As regards standards, out of its 185 Conventions and 195 Recommendations, the ILO now has a body of some 70 Conventions and 70 Recommendations that are up to date and should be promoted. This number includes the fundamental and priority Conventions as well as other Conventions. What strategy should now be put in place for the effective promotion, ratification and implementation of these standards?
- What further action should be taken to make effective the entry into force of the 1997 constitutional amendment so that the outdated Conventions can be abrogated?
- Concerning the supervisory system, how can its effectiveness continue to be enhanced in the context of the recent increase and high number of ratifications of all the Conventions, particularly the fundamental ones?
- Concerning the reporting mechanisms, how can they continue to be made more effective?
- Concerning the agenda of the Conference, what strategy should be adopted for the future?
- What technical cooperation and assistance strategy should be put in place to better support the promotion, implementation and increased impact of ILO standards?
- If certain Conventions should be the targets for specific promotion (as is presently the case for the fundamental Conventions and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)), how could this be done in a coherent and efficient manner?
- What further action would the LILS Committee consider relevant to pursue at the present stage?

41. *The Committee on Legal Issues and International Labour Standards may wish to take note of the information contained in this document and provide the Office any guidance it may deem relevant in the light of its discussion.*

Geneva, 11 February 2005.

Point for decision: Paragraph 41.