International Labour Conference
70th Session 1984

Report of the Director-General

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The Appendices to this Report are printed in a separate volume.
INTRODUCTION

This Report is made up of two Parts. The second corresponds to the obligation of the Director-General of the ILO to submit a report on the activities of the Organisation to the Conference each year.

Part I deals with the ILO's standard-setting activities. The Conference will recall that at the 69th Session, in June 1983, I informed it of my intention to put this question before it as the subject for discussion. Why?

The first reason is that, since the ILO was set up, the standard-setting activities have been the essential instrument for promoting social justice as part of a general movement in which all member States without exception participated, regardless of when they joined the ILO or of their level of development or economic and political system.

From the beginning, the ILO's tripartite structure served as a strong incentive for this legislative work since its purpose has always been to protect workers and improve their situation through the combined action of the authorities and the social partners. In other words, the ILO's standard-setting activities stem from the very essence of the institution, its structure, its aims, its ambitions: the promotion of social justice under conditions capable, moreover, of checking the consequences of unfair competition between nations.

The work that has been carried out for 65 years, unique in the United Nations system and impressive in its scope, is beyond dispute remarkable for the range and diversity of the prescriptions contained in the 159 international labour Conventions and 168 international labour Recommendations.

This work of "sedimentation", carried out at an average rate of five instruments per year, has been directed by the Governing Body, which is responsible for fixing the agenda of the Conference, and by the Conference itself with its determination to meet the needs of the working world as effectively as possible.

Over the years, the Governing Body and the organs that come under it, as well as the Conference, have on many occasions assessed the work accomplished and decided on or planned measures for improving it.
There is general agreement that the results achieved by the ILO in the vast field for which it is responsible are a credit to all who have devoted their intelligence, skill and faith to the cause of social justice in this extraordinarily troubled period we are going through. If, on the whole, the results can be considered good, does that mean that there are no imperfections? Certainly not.

Although some Conventions have received broad support, reflected in an impressive number of ratifications, their implementation often leaves much to be desired and at times is marred by flagrant violations of the principles involved, as sometimes occurs. Other Conventions have not received the necessary number of ratifications to come into force or have been ratified by only a small number of States.

Criticism has been voiced from various sides and numerous questions have been raised with reference to the preparation of standards, their examination by the Conference, their ratification, application and supervision. These criticisms and questions will be dealt with at length in the analysis that is submitted to the Conference in Part I of this Report.

In this analysis we have tried, on the basis of facts, to draw lessons for the future from past activities. I trust indeed that this report is oriented towards the future and answers the question of what the ILO can and should do through standard-setting activities (as well as through other instruments at its disposal) to improve the conditions of the workers — of all workers, in factories, on the land and in services, whatever their race, sex and political, religious or other beliefs. Expressed in these terms, the question involves the entire international community but does so in the historic perspective marked by the enormous gap between rich and poor countries (what is known as the North-South problem), by the crisis which is widening this gap and, finally, by the technical and structural changes whose consequences are barely beginning to be perceived, particularly in labour matters and for the working community. In this perspective what line should the ILO follow?

As regards our past activities, although certain Conventions may be deemed outdated or ineffective, the vast majority have lost none of their value. An appreciable number, particularly those dealing with the protection of workers, employment policy and human resources development, the conditions of the most vulnerable groups, fundamental freedoms (right of association and collective bargaining, discrimination, etc.), should be ratified by all States and strictly applied. If their implementation continues to present the developing countries with problems — as is the case — it should be recalled that the ILO’s entire activities, especially its research work and its technical co-operation and advisory services, are designed to afford them the help they need.

As regards the future, the ILO’s activities should unfailingly draw inspiration from the principles of justice and freedom laid down in its Constitution and in the Declaration of Philadelphia. The texts are clear. The discussion the Conference is about to embark on should not lead to any concessions in respect of the principles on which the ILO’s activities are based or the tripartite framework within which these activities have been developed over the past six decades.
Nevertheless in the future the ILO's activities must take greater account of the growing interdependence of the countries making up the international community in East and West, North and South. This means that the ILO must take up the double challenge involved in meeting the basic needs of the greatest number and in mastering the consequences of technical change in both social and labour matters. It is the ILO's duty to recall that human needs must shape the economy and cannot be subordinated to it. The economy is not an end in itself. This must mark the ILO's entire approach and all its means of action must be committed to this purpose. Among these means, standard-setting activities can play a major role, probably greater than in the past, which already witnessed impressive legislative achievements.

For our future activities to have the desired impact, it will be necessary to choose carefully the items to be placed on the agenda of the Conference and to ensure the broadest participation not only of all States but also of the social partners in the preparation, discussion and adoption of international standards. Furthermore it will be necessary to bring greater resources into play to provide member States with the assistance they need to overcome the difficulties that may well arise in implementing certain texts. The Office should increase direct contacts, particularly in situations of disagreement or dispute. The ILO's role would thus consist not only in supervising compliance with obligations assumed by member States as regards standards but also in helping in their implementation. Recourse to the complaints and representations procedures would then be called for only in serious situations affecting compliance with Conventions on human rights and workers' rights.

In view of the foregoing, the ILO's standard-setting activities should also command the attention of the other international agencies especially those responsible for economic, financial or monetary questions such as the International Monetary Fund and the World Bank. These agencies have had, and continue to have, a major impact and, in the short term, the International Monetary Fund in particular is undertaking essential work in helping the States which apply to it to redress particularly difficult situations. But what really matters, in both the medium and the long term, is to construct a world founded on solidarity, a world in which the economy alone will not dictate decisions affecting millions of men and women at work or without work. That is the purpose of the ILO's work, including the standard-setting activities which are the subject of this Report.

Though the preceding considerations may appear to some to go beyond the scope of this Report, they are not in fact alien to it. For the ILO, the standard-setting activities remain the favoured means of achieving its objectives of economic progress and social justice and of exerting a growing influence in the international community. It is for this role, this responsibility that it must prepare itself. The discussion on this Report will, I trust, make a contribution.

Allow me to add two observations:

1. While the Conference offers a suitable framework for the wide-ranging reflection to which this Report will give rise, it cannot exhaust the subject through a discussion in plenary sitting of the Report of the Director-
General. I therefore intend, immediately after the Conference, to have an analysis made of the discussions and to make a careful study of the views expressed. It will then be possible to determine how consideration of these matters may be continued by the appropriate bodies of the Conference and of the Governing Body. The latter, on the basis of proposals by the Office, might decide to set up a working party to examine some of the questions raised which call for solution.

2. It would consequently be desirable for delegates taking part in the Conference to refrain from submitting draft resolutions under article 17 of the Standing Orders of the Conference on the theme of the present Report.¹

1 March 1984

FRANCIS BLANCHARD

Note

¹ It is recalled that while it is usual for the Conference to be seized of the Report of the Director-General, it is not an item on the agenda within the meaning of article 17 of the Standing Orders.
PART I

INTERNATIONAL LABOUR STANDARDS
INTRODUCTION

The development of a system of international labour standards was the principal purpose behind the creation of the International Labour Organisation. Today, this remains one of the essential activities of the Organisation. Over 300 instruments have been adopted. A network of more than 5,000 ratifications of ILO Conventions has come into existence. A comprehensive system of supervisory procedures has been developed over the years with a view to evaluating and ensuring compliance with ILO standards. Countless instances have been recorded where, on the basis of ILO standards and as a result of the work of supervisory bodies, improvements have been brought about in social conditions and in the protection of working men and women.

The significance of ILO standard setting stems from the Organisation's aims and purposes. By its Constitution, the ILO is committed to seeking the realisation of certain normative objectives, with a view to ensuring that all human beings, irrespective of race, creed or sex, are able to pursue their material well-being and their spiritual development in conditions of freedom and dignity, economic security and equality. All member States, by virtue of their membership, have a common responsibility to work towards the attainment of these goals. The Conventions and Recommendations adopted by the Conference provide a means of translating the constitutional objectives into more specific rules and guide-lines. They also provide a unity of vision for ILO action. Technical co-operation, research and other practical activities undertaken by the Organisation ought to be guided by the standards and policies defined in these instruments. In turn, such activities can be used to promote the implementation of ILO standards, and may serve also to ascertain the extent of the realisation of standards, their suitability in changing conditions, and the opportunities and needs for reviewing existing instruments or drawing up new ones.

ILO member States have recognised the role which ILO standards can play as a means of ensuring balanced economic and social development and in securing recognition of the need for improved living and working conditions.
both as a contributing factor to and as the ultimate purpose of economic development.\(^1\)*

The ILO's standard-setting activities also have important implications for strengthening tripartism, both internationally and nationally. Employers and workers play a major role in the drawing up of standards and in the procedures for supervising their application. ILO instruments contain many provisions requiring tripartite involvement in their implementation at the national level. Beyond this, the tripartite Conference discussions tend to exert a general influence on the climate of relations between governments and employers and workers in their own countries.\(^2\)

A concomitant of the importance attached to ILO standard-setting activities is the concern to ensure their effectiveness, both in terms of the relevance of ILO instruments to the current problems of member States and as regards the impact of ILO supervisory mechanisms in helping to bring about improved conditions of work and life. It is therefore necessary to review periodically the way in which the standard-setting system is operating. These questions have in fact been regularly discussed. In 1963 and 1964, within the framework of a general review of ILO programmes, the Conference had occasion to consider the future of standard setting. In 1968 the Conference discussion of the ILO's work in the field of human rights necessarily touched on issues concerning standards and supervision. Over a period of five years as from 1974 the Governing Body was engaged in an in-depth review of international labour standards, which led both to adaptations in the supervisory arrangements and to a systematic examination of all existing Conventions and Recommendations with a view to identifying those standards whose implementation should be regarded as priority objectives and in order to plan ahead in the selection of items for future standard setting. Revised standing orders for the examination of representations under article 24 of the Constitution were adopted by the Governing Body in 1980. The review of the ratification and application of Conventions within the different regions has constituted a regular feature of the work of regional advisory committees and regional conferences. In 1982 the Office innovated by holding a tripartite seminar for countries in Asia and the Pacific on procedures for formulating international labour standards.

The ILO supervisory bodies have likewise kept their methods under review. The Committee of Experts on the Application of Conventions and Recommendations last undertook a general examination of its methods of work in 1977. In 1978 it reviewed the means available to it for assessing the practical application of Conventions, and in 1979 it analysed the experience gained in the first ten years of operation of the direct-contacts procedure. The Conference Committee on the Application of Conventions and Recommendations re-examined its methods of work in 1979 and 1980, and as a result adopted certain changes in the latter year. The Governing Body Committee on Freedom of Association has

\* The footnotes will be found at the end of this Part.
repeatedly considered its procedures and made proposals to the Governing Body for their adaptation and development, last in 1979.

While there has been strong and continuing support for the standard-setting and supervisory work from the broad range of the Organisation's constituents, a number of preoccupations have been voiced in recent years concerning the functioning of the system.

Spokesmen for governments of developing countries have expressed concern that greater account should be taken of their countries' needs, priorities, aspirations and possibilities in the choice of subjects for the adoption of standards and in determining the contents of instruments. They have stressed the importance of drafting instruments in a sufficiently flexible manner, and of ensuring that Third World countries enjoy adequate opportunities to make known their views at the preparatory stages and in the course of the Conference discussions. These various concerns were recalled, for instance, by the Union Minister for Labour and Rehabilitation of India in his address to the Conference in 1983, in which he welcomed the trend in recent years towards greater flexibility in ILO standards and suggested that "the process of consultations needs to be improved and the opinion of the developing world to be better reflected in the formulation of the standards". Similar views found expression at the Regional Tripartite Seminar on Practice and Procedures in Formulating Labour Standards, held in Bangkok in April 1982.

Employers' spokesmen have called for improvements in the procedures for drawing up ILO standards and for measures to ensure greater participation in the process by employers and workers. They have particularly stressed the desirability of reducing the number of items brought before the Conference for the adoption of standards, of improving arrangements for prior consultations of member States, including employers' and workers' organisations, and of organising the work of Conference committees in a manner which would permit a more thorough examination of proposals, with full regard to actual conditions in the world.

Criticism of the functioning of ILO supervisory mechanisms has been voiced over a period of years by representatives of socialist countries. In 1983 a memorandum was presented to the Conference on behalf of a number of socialist governments which, while emphasising their support for ILO standard-setting activities as one of the most effective instruments for protecting the rights of workers in all countries, called for re-examination of the Organisation's supervisory procedures. These governments considered that the ILO supervisory bodies had failed to take account of the objective realities of the contemporary world and had thus been led to make tendentious and one-sided assessments of the law and practice of socialist and developing countries. They called for reform of the composition, powers and procedures of the ILO supervisory bodies.

Apart from particular currents of thought of the kind mentioned above, there is a wider background against which the future role and direction of ILO standard setting should be considered. What are the implications for ILO standard setting of the substantial changes in the world economic scene and of the
continuing rapid changes in technology and social structures? In the current fluid and precarious setting, what contribution can international standards make in providing basic guarantees of social policy and social protection while also producing answers to newly emerging problems?

These various considerations suggest that the time is ripe for a new discussion of the ILO’s standard-setting work. The present Part of the Report is aimed at providing a basis for such a discussion. In the light of the views which will find expression at the Conference, the various organs which determine the course of the standard-setting and supervisory processes will be better placed to see what aspects may call for re-examination and how best to proceed to any such re-examination.

Part I consists of four main sections. The first deals with the preparation and contents of international labour standards. The second concerns the system of supervision of the implementation of these standards. The third examines promotional measures in the field of standards. A final section considers measures for collaboration between the ILO and other international organisations in the drawing up and implementation of international standards.

A question which has been the subject of considerable discussion for a number of years is whether, on the basis of ILO Conventions and Recommendations, agreement could be reached on a body of minimum labour standards which all States would be expected to implement concurrently with their efforts to promote economic development and international trade and which could contribute to the establishment of a new international economic order. This matter was extensively discussed in the Governing Body some ten years ago. It has been considered in connection with negotiations between the European Economic Community and the developing countries in Africa, the Caribbean and the Pacific which are parties to the Lomé Convention, and was also raised in the report of the Brandt Commission. The question has been the subject of further careful study within the ILO in recent years, in the light of which informal consultations have been initiated with a view to further discussion in the Governing Body. It is a complex issue which requires detailed discussion as a distinct problem, on the basis of a detailed analysis of all relevant elements. In all these circumstances, it has been considered preferable not to take it up in the context of the present report.

THE PREPARATION AND CONTENTS OF INTERNATIONAL LABOUR STANDARDS

The main questions to be examined in this section are whether the existing body of Conventions and Recommendations is adapted to the current needs of the ILO’s membership, and what can and should be done in future to make ILO standards fully responsive to those needs. This requires consideration not only of the type of subjects to be treated and the manner of dealing with them but also of the procedures by which ILO standards are drawn up, since those procedures will
determine the extent to which the membership as a whole (including the large number of Third World countries) can effectively participate in the process and thus influence its outcome, the adequacy of tripartite consultation and participation, and more generally the adequacy of opportunities for full discussion and mature reflection on proposals.

Principal characteristics of ILO standard setting

At the outset, it seems useful to recall certain significant characteristics of ILO standard setting. It represents a regular and major part of the work of the Conference which follows an established procedure. As a result, ILO Conventions and Recommendations are not a haphazard collection of instruments but constitute a comprehensive body of standards covering most areas of ILO concern. This enhances their influence because, even in the absence of obligations arising out of ratification, it becomes normal for those concerned with social problems to refer to them for guidance, as reflecting the considered views of a representative world assembly. The drawing up of ILO instruments in accordance with a clearly established procedure also ensures that the process is carried out with an economy of means. In other organisations lacking such a procedure, the elaboration of international instruments is often a drawn-out process involving a long succession of meetings.

A further special feature of ILO standard setting is, of course, that it is based on tripartite discussions and decisions. This has a significant influence on the content of ILO instruments, on their authority, and on the attention which they receive in the formulation of policy at the national level. That influence is the result not only of the voting strength of employers' and workers' representatives, but also of government exposure to their views in the course of tripartite consultations and deliberations.

In the past 65 years the Conference has adopted a total of 159 Conventions and 168 Recommendations. Looking at this body of standards, one is led to ask a series of questions. Can the Organisation go on adopting standards in the same manner as hitherto? What scope is there for meaningful new standards? To what extent are the older standards still relevant, and what need is there for revising them? Are ILO instruments sufficiently flexible? Should priority in the years ahead be given to seeking wider and better implementation of the existing standards rather than the adoption of new ones?

Some of these issues were considered by the Governing Body Working Party which from 1977 to 1979 made a systematic review of existing instruments and of possible items for revision or new standards.\textsuperscript{9} It identified 19 topics for possible revision of existing instruments and 43 subjects on which new standards might be contemplated. Five of the topics identified for possible revision have either been dealt with in the intervening years or are currently before the Conference. In two other cases, after consideration by the Governing Body of reports prepared by the Office and consultation of member States, it was concluded, in the absence of agreement as to the nature of revision, that it would be inappro-
appropriate to initiate such action. On the other hand, revised instruments have in the meantime been adopted on three subjects in respect of which revision had not been suggested by the Working Party. Of the subjects listed for possible new standards, only three have been selected to be brought before the Conference.

It was understood that the conclusions of the above-mentioned Working Party should be reviewed from time to time in the light of changing circumstances. The Programme and Budget for 1984-85 provides for initiation of such a review during that period. It is appropriate to note certain limitations in the results of the previous review. Many items were included as possible subjects for new standards on which prior study was still needed and which might not in fact easily lend themselves to standard setting or on which it would be difficult to secure a sufficient measure of consensus. Moreover, no indication was provided as to a possible order of priority. It is therefore my intention, on the occasion of the forthcoming re-examination, to provide a series of annotations to the earlier lists which would enable a stricter, more realistic selection of topics to be made.

The prospects for standard setting cannot be divorced from the world economic outlook. In the present adverse conditions one notices a reluctance in many quarters to discuss innovative social measures which would arouse new expectations at a time when the maintenance of existing levels of protection is beset by difficulties. Questions which deserve consideration in this connection are how to ensure observance of basic social guarantees in a period of recession and how far standard setting could contribute to adaptation to change, for example on such issues as the relationship between working time and employment or the function of social security amid changing patterns of population and employment structures.

It may be instructive to recall the questions which have been the subject of standard setting by the Conference in recent times. In the period 1971-83 it adopted 25 Conventions and 26 Recommendations. All but two of the Recommendations were instruments supplementing Conventions. A number of instruments have dealt with workers' organising and bargaining rights (rural workers, workers in public service, protection and facilities of workers' representatives in the undertaking, collective bargaining, and tripartite consultation in regard to ILO standards and activities). The concern for equality and the special needs of disadvantaged groups has found expression in instruments on migrant workers, older workers, workers with family responsibilities and disabled persons. Employment security has been dealt with in instruments on termination of employment at the initiative of the employer and in instruments to promote employment stability for particular categories, such as seafarers and dockworkers. A number of instruments have addressed problems in the field of industrial safety and health, both as regards the general policy and institutional framework and as regards particular hazards (benzene, occupational cancer, air pollution, noise and vibrations, safety in dock work). Others have concerned conditions of particular categories of workers, such as seafarers, dockers, nursing personnel,
International labour standards

and workers in road transport (hours and rest). There have also been instruments dealing with labour administration, vocational guidance and training, minimum age for employment, paid educational leave, and migrants' social security rights.

Without seeking to evaluate the merits of the individual instruments, it may be observed that the above list covers a significant range of concerns, many taken up for the first time, others approached from new perspectives. The question nevertheless arises whether an indefinite accretion to the body of ILO standards is desirable, or whether the sheer mass of instruments may not in the end obscure the more pressing objectives.

It has at various times been suggested that efforts should be made to select a smaller number of instruments to serve as targets for national action and for ratifications. In its previous review of existing standards, the Governing Body identified approximately half the Conventions and Recommendations adopted up to 1978 as "priority instruments". It is of interest to note that the ratifications received in recent years have overwhelmingly related to Conventions of this kind. In the last six years, over 90 per cent of new ratifications (i.e. exclusive of ratifications representing the confirmation of obligations by States joining the ILO) concerned Conventions adopted since the Second World War; 60 per cent of the new ratifications related to Conventions adopted since 1971.

The ratification record

At 31 December 1983 the total number of ratifications of ILO Conventions was 5,137. The average number of ratifications per member State was 34. Average ratifications per State in the various regions were: Europe — 57 (Western Europe — 60, Eastern Europe — 50), Americas — 38, Africa — 26, Asia and the Pacific — 20.

In the ten-year period from 1974 to 1983 a total of 1,177 ratifications were registered. Of these, approximately one-third came from industrialised countries and two-thirds from developing countries. If one leaves aside ratifications representing the confirmation of obligations by States upon joining the ILO, the total number of new ratifications in this period was 786 (a yearly average of 79), of which 45 per cent came from industrialised countries and 55 per cent from developing countries.

It is instructive to examine the ratification record of Conventions adopted in the 30-year period 1951 to 1980. Table 1 shows the average number of ratifications of Conventions adopted during each of the three decades, and the rate at which these ratifications have accrued.

These figures appear to bear out a number of conclusions which also emerge from information available from other sources (such as documents relating to the submission of ILO instruments to the national competent authorities and first reports on the application of ratified Conventions), namely that ILO Conventions set standards which are not just the common denominator of existing national practice, but for most countries require the raising or further develop-
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Table 1. Progress in ratification of Conventions adopted from 1951 to 1980

<table>
<thead>
<tr>
<th>Conventions adopted</th>
<th>Average number of ratifications per Convention at</th>
</tr>
</thead>
<tbody>
<tr>
<td>Conventions adopted 1951 to 1960</td>
<td>20</td>
</tr>
<tr>
<td>Conventions adopted 1961 to 1970</td>
<td>—</td>
</tr>
<tr>
<td>Conventions adopted 1971 to 1980</td>
<td>—</td>
</tr>
</tbody>
</table>

1 Excluding the Final Articles Revision Convention, 1961 (No. 116).

ment of national standards; that efforts are made gradually to attain the protection called for in the Conventions; and that most governments undertake ratification in a cautious and deliberate manner, conscious of the responsibilities flowing from their commitment.

Table 2 shows the extent of ratification of Conventions according to subject-matter.

It will be noted that among the Conventions which have received the largest number of ratifications are the main instruments dealing with freedom of association, the abolition of forced labour and equality in employment, as well as the Conventions on employment policy, employment services, labour inspection in industry and commerce, minimum wage-fixing machinery and protection of wages.

However, only 43 Conventions have received more than 40 ratifications and, of these, a third have been revised and thus no longer represent priority objectives.

At first sight it is disturbing to note that, of the 157 Conventions listed in table 2, as many as 61 have received fewer than 20 ratifications and that for another 53 Conventions the number of ratifications lies between 20 and 40. These figures, however, call for clarification.

In the first place, the Conventions with relatively few ratifications include those adopted in recent years in respect of which the process of ratification is only just starting or is still far from having attained its full potential. This can be said of 20 to 25 Conventions.

Many Conventions have been revised and as a result have frequently been closed to further ratification. Out of a total of 41 revised Conventions, 27 are among those whose ratifications do not exceed 40.

Some Conventions relate to questions of concern only to a limited number of countries. Thus, four Conventions applicable to non-metropolitan territories lent themselves to ratification only by States having responsibility for such territories. Five Conventions concerning recruiting and contracts of employment of indigenous workers were of interest mainly to colonial territories, and are now practically obsolete. Other instruments of relevance to only part of the ILO membership are those concerning seafarers and plantations.
Table 2. Ratifications of ILO Conventions (referred to by Convention numbers and excluding the Final Articles Revision Conventions, Nos. 80 and 116)

<table>
<thead>
<tr>
<th>Subject-matter</th>
<th>Number of ratifications</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Under 20</td>
</tr>
<tr>
<td>Freedom of association and collective bargaining</td>
<td>151, 154</td>
</tr>
<tr>
<td>Forced labour</td>
<td>29, 105</td>
</tr>
<tr>
<td>Equality of opportunity and treatment</td>
<td>156</td>
</tr>
<tr>
<td>Equality of opportunity and treatment</td>
<td>100, 111</td>
</tr>
<tr>
<td>Employment and training</td>
<td>34*, 158, 159</td>
</tr>
<tr>
<td>Social policy</td>
<td>117</td>
</tr>
<tr>
<td>Labour administration</td>
<td>63, 129, 144, 150</td>
</tr>
<tr>
<td>Wages</td>
<td>131</td>
</tr>
<tr>
<td>Hours, rest and leave</td>
<td>20, 31*, 43, 46, 47, 49, 51, 61, 67*, 132, 153</td>
</tr>
<tr>
<td>Hours, rest and leave</td>
<td>14</td>
</tr>
<tr>
<td>Employment of women</td>
<td>60*, 79</td>
</tr>
<tr>
<td>Employment of children and young persons</td>
<td>6*, 10*, 5*</td>
</tr>
<tr>
<td>Migrant workers</td>
<td>66*, 143</td>
</tr>
<tr>
<td>Indigenous peoples and workers in non-metropolitan territories</td>
<td>82, 83, 84, 85</td>
</tr>
<tr>
<td>Plantations</td>
<td>110</td>
</tr>
<tr>
<td>Nursing personnel</td>
<td>149</td>
</tr>
<tr>
<td>Total</td>
<td>61</td>
</tr>
</tbody>
</table>

* Convention revised.
Subject to the preceding observations, the figures in table 2 nevertheless suggest that difficulties in securing extensive ratifications have been marked in certain areas. Thus, in the field of hours of work, eight Conventions applicable to particular occupations have failed to enter into force, and even the Forty-Hour Week Convention adopted in 1935 has received no more than eight ratifications. It is not without significance that the only general instrument on hours of work adopted since 1945 took the form of a Recommendation.

The Conventions in the field of social security also have, for the most part, secured only a limited number of ratifications, and this notwithstanding the efforts made to include a variety of flexibility devices.

Another area with a relatively low ratification record, even allowing for the narrower range of countries affected, is the employment of seafarers.

Ratification is of course not the only measure of response to ILO standards, and there is much evidence that unratified Conventions have influenced the evolution of national law and practice. This has been recognised, for example, in the case of a number of maritime Conventions which, in terms of ratification, have not appeared successful. In such circumstances, the question arises whether Conventions were necessarily the most suitable form for the standards in question. A Convention which is ratified by only a handful of States has, for the bulk of the Organisation’s membership, the same value as a Recommendation.

The question has at different times been raised whether a Government should vote in favour of the adoption of a Convention if it is not in a position to proceed to its ratification. In this connection, reference is made to the figures in table 1 concerning average ratifications for Conventions adopted between 1951 and 1980, which show that States only gradually reach the position where they are able to assume the obligation, arising upon ratification, of full implementation of a Convention. They may therefore legitimately express themselves in favour of the adoption of standards as representing a desirable objective for the world community as a whole or as a goal for the further development of their own social policy and legislation. Should they wish to avoid any misunderstanding as to their position, delegates are free to make a statement in explanation of their vote — as indeed they frequently do.

The preceding general inferences drawn from the figures in table 2 deserve to be borne in mind in reaching decisions as to future standard setting, the identification of subjects for revision, and efforts to promote wider implementation of ILO standards.

Denunciations

Some reference should also be made to the denunciation of Conventions. Leaving aside the 248 cases in which denunciations occurred as a result of the ratification of revising Conventions, and thus merely involved a substitution of obligations, there have been 45 “pure” denunciations leading to the termination of obligations. In the first 50 years of the ILO’s existence there were only 13 such
denunciations, as compared with 32 in the 14 years since then. Concern has
sometimes been expressed at this increasing trend. However, the total of such
denunciations still represents less than 1 per cent of total ratifications. Half of
them relate to Conventions in three fields where changes in outlook or techno-
logy have led to widespread questioning of the continuing validity of the stan-
dards: night work of women (13 denunciations), underground work in mines by
women (3) and night work in bakeries (6). There have also been three denun-
ciations each of the Unemployment Convention, 1919 (No. 2), the Maintenance
of Migrants' Pension Rights Convention, 1935 (No. 48), and the Employment
Service Convention, 1948 (No. 88). The denunciations of Convention No. 48
have come from Eastern European countries and are attributable to the change of
regime subsequent to ratification. In the case of the other two Conventions
mentioned, they have been due to diverse reasons, mostly of a limited, technical
nature.

Since the mid-1930s the general practice has been to provide, in the final
articles of Conventions, for the possibility of denunciation at ten-yearly intervals
from the date of their first coming into force. Earlier practice had been to permit
denunciation at any time after ten years had elapsed from first entry into force
(Conventions Nos. 1 to 25); a limited number of Conventions, mainly dating
from the 1930s, are open to denunciation at five-yearly intervals. The rate of
"pure" denunciations in relation to total ratifications has been 1.1 per cent for the
early Conventions, which for most of their existence have been open to denun-
ciation at any time; 0.9 per cent for Conventions with five-year intervals
between denunciation periods, and 0.8 per cent for Conventions with ten-year
intervals. These figures suggest that the ten-year interval provided for in the
majority of Conventions represents a reasonable balance between the concern
for stability of obligations and the need to allow for changes of outlook or
national situations, particularly if regard is had to the fact that the ratifications
of the earlier Conventions containing more flexible denunciation clauses go back
over a much longer period and are liable to have been affected more by changes
of circumstances.

Revision and consolidation of ILO standards

Repeated emphasis has been placed on the importance of revising older
standards in order to ensure their adaptation to current conditions. Over the
years, a considerable effort has been made to this end. Altogether 41 Conven-
tions have been the subject of revision, including half those adopted prior to
1945. As already noted, a number of the Working Party's suggestions concerning
revisions adopted by the Governing Body in 1979 have already been acted upon.
The need for revisions should again receive close attention in the further review
due to be made.

In one case revision represented a significant act of consolidation: the
Minimum Age Convention, 1973, revised ten earlier Conventions with the aim
of gradually replacing them. The question has been raised whether similar action
might not be possible in other fields. Theoretically this would be possible, but one may wonder how far it could bring about a genuine merging of earlier standards — as in the case of the minimum age standards — rather than a stringing together in a global instrument of unwieldy proportions of the provisions of the various earlier Conventions (for example, in such fields as social security or occupational safety and health). Certain Conventions adopted in recent years establish a general framework for policy, regulation and administration, for example as regards occupational safety and health and maritime employment. This may represent an alternative to the more complex process of consolidation, but raises the question of how to relate more detailed standards to them and whether such more detailed standards should be in the form of Conventions or of non-mandatory recommendations or guide-lines. Even in the case of minimum age, the effects of comprehensive revision will make themselves felt only in the longer term, since for the time being the earlier sectoral Conventions remain in force for a significant number of States and some of them may still constitute valid interim objectives.

There exists no procedure for abrogating ILO Conventions. A certain number have been still-born, in that they have not received the ratifications necessary for their entry into force. Some of these have been revised and are no longer capable of ratification. Others, even though in principle still open to ratification, are unlikely to be further ratified (for example, in the fields of hours of work and maritime employment, mentioned earlier). Certain measures of a practical nature have already been taken to reflect this situation: the omission of obsolete instruments from the published compilation of ILO Conventions and Recommendations and the omission of certain Conventions from the chart of ratifications. These measures could now be taken a step further. For example, the chart of ratifications might be further simplified by the omission of selected Conventions which have not entered into force and can be regarded as spent, even though still open to ratification. One might also consider discontinuance of detailed reporting on certain Conventions which have lost their relevance, such as those relating to the minimum age of trimmers and stokers (No. 15), the inspection of emigrants on emigrant ships (No. 21), and indigenous workers (Nos. 50, 64, 65, 86, 104). The Governing Body could decide that, subject to review if necessary, such Conventions should henceforth be covered only in governments' general reports.

Limitations on standard setting

In considering future approaches to standard setting, one should recognise the limitations on this form of action. Not all the social problems which call for attention by the ILO necessarily lend themselves to standard setting. Some involve broad questions of policy where standards of a legal nature can play only a secondary role as tools of implementation rather than as determinants of basic approaches. This appears to be the case, for example, as regards rural development programmes and work in certain unorganised sectors. In such circum-
stances, general discussions aimed at clarifying issues and providing guidance to policy-makers may be preferable to the adoption of Conventions and Recommendations. General discussions will, however, attain their objective only if they involve a genuine exchange of experience and do not transform themselves into a process of pseudo standard setting concentrating on the adoption of defined conclusions rather than on a thorough discussion of substance.

Similarly, while ILO standard setting must be responsive to economic, social and technological changes, it cannot in itself determine the course of these changes. Frequently, extensive research and discussion on the issues emerging from major transformations will be necessary in order to determine on what aspects and in what form standards should be drawn up. The adoption of Conventions and Recommendations is normally undertaken only when, in the light of experience at the national level, the subject appears sufficiently ripe to secure the requisite measure of agreement.

The form of regulation of a question at the national level will also have a bearing on the scope for ILO standard setting. A number of Conventions provide for the possibility of implementation by means of collective agreements, and the supervisory bodies have accepted that even certain Conventions which do not contain a specific clause to that effect may be made effective through collective agreements. This approach however is not free from difficulty, particularly where the coverage of collective agreements falls short of the requirements of the ILO instrument or where individual agreements fail to ensure the observance of its substantive provisions. The extent to which, for example, certain aspects of industrial relations are determined by means of collective bargaining in member States, and the resulting variations in practice, may make it difficult to proceed to the adoption of ILO standards on such questions otherwise than in the form of a Recommendation.

The respective roles of Conventions and Recommendations and the use of “promotional” Conventions

The preceding remarks lead to the consideration of the respective roles of Conventions and Recommendations and the use of “promotional” Conventions.

Over the years, the view of Recommendations as second-class standards has gained increasing currency in the Conference. In earlier times many subjects were dealt with in Recommendations, particularly where matters of general policy or practical programmes were involved or where, in the absence of sufficient development of national experience, standards of an exploratory nature appeared to be called for. That approach is now rare. Whereas in the period from 1951 to 1970 well over half of the Recommendations adopted (i.e. 31 out of 55) were autonomous instruments unrelated to a Convention, since 1971 only two out of 26 Recommendations have been of this nature, the remainder all being instruments supplementing a Convention. There has also been increasing recourse to “promotional” Conventions calling for the pursuit of a national
policy in the field dealt with rather than laying down precise standards. Where the objective to be attained can be defined with relative precision (as was the case with the earlier promotional Conventions on equal remuneration and discrimination in employment and occupation), such Conventions can be a powerful stimulus to national action. Increasingly, however, promotional Conventions have dealt with less clearly defined objectives, at times calling for action over wide areas of public policy, where it becomes difficult both for ratifying States to know what measures of implementation are required of them and for the ILO supervisory bodies to evaluate compliance with international commitments. It is true that the couching of standards in the form of Conventions will, in the event of ratification, lead to more regular review, both nationally and internationally, than can be expected for Recommendations. On the other hand, the lack of certainty in States' obligations is liable to erode the credibility of the Conventions and, more generally, of ILO standard setting.

One of the basic questions for the future is therefore whether greater use should not again be made of non-mandatory instruments, reserving Conventions for important issues capable of precise definition and action.

It is also worth remembering that Recommendations adopted within the constitutional framework are not the only form of non-mandatory instruments available. Certain questions, both of policy and of a predominantly technical nature, can be dealt with effectively and economically through other non-mandatory guide-lines.12

Flexibility of standards

There exists a general consensus that ILO standard setting should continue to be on a universal basis and that differences in national conditions and levels of development should be taken into consideration by the inclusion of appropriate flexibility devices.13 A consistent effort has been made, in the preparation of ILO instruments, to consider the need for flexibility, and a series of “flexibility devices” have been developed. These include the possibility of ratifying Conventions in parts, the acceptance of alternative parts containing more or less strict requirements, limitations on scope, “escalator” clauses permitting the gradual raising of the level of protection or the extension of the scope of protection, temporary exceptions, and flexibility in the methods of application. Promotional Conventions, while stating objectives, generally leave a great deal of freedom in deciding on the methods by which to seek their attainment. Two points nevertheless stand out: only limited use has been made of the flexibility clauses contained in certain Conventions; at the same time, representatives of developing countries frequently consider that ILO standards are not sufficiently flexible.

As regards the former point, reference may be made, by way of example, to the Social Security (Minimum Standards) Convention, 1952 (No. 102). It can be ratified on the basis of acceptance of its provisions for a minimum of three out of a total of nine branches of social security. The Convention has been ratified by 18
industrialised countries and 12 developing countries. The average number of branches of social security for which the Convention has been accepted is the same for both groups of countries, namely six. Only three countries have availed themselves of the possibility for countries with insufficiently developed economies and medical facilities to specify lower levels of protection. The Guarding of Machinery Convention, 1963 (No. 119), has been ratified by 36 countries, 24 of which are developing countries; only one country (Norway) has availed itself of the possibility permitted by Article 17 of limiting its scope. The Minimum Age Convention, 1973 (No. 138), has been ratified by 27 States, including 11 developing countries. Four of the latter have availed themselves of the possibility for countries with insufficiently developed economies and educational facilities initially to specify a general minimum age of 14, instead of 15 years. Only one State has made a declaration initially limiting the scope of the Convention, and only two of the countries which have so far reported on the application of the Convention (one a developed, the other a developing country) have indicated that they have used the power to exclude limited categories of work for which substantial problems of application would arise.

The foregoing indications lead one to ask not only whether countries which ratify Conventions examine sufficiently the possibilities of flexibility offered by them but also whether other countries might not find ratification possible through wider use of the flexibility clauses. This in turn raises the question, considered further on, of the need for more ample information and advice to member States on matters of this kind.

While there is general agreement on the need for flexibility in ILO standards, opinions tend to vary, both among the different groups represented at the Conference and among delegations from different countries, as to the precise degree of flexibility to be permitted in any given case. Ultimately this is a matter of judgement. It must also be recognised that the scope for flexibility will depend on the subject-matter to be regulated. Subject to these qualifications, certain questions would merit discussion. Are some Conventions unduly detailed, and should a greater effort be made in future to limit Conventions to essential principles and to leave matters of detail to be taken up in supplementary Recommendations? Do the procedures for the drawing up of standards provide adequate opportunities for all member States, both at the stage of prior consultations and during discussions at the Conference, to make known their views and special problems? Should the Office do more to initiate suggestions concerning flexibility devices, either in the initial questionnaires or at later stages?

These questions make it necessary to examine the procedures through which ILO standards are drawn up, and possible improvements in those procedures.

Determination of the Conference agenda

The formal point of departure for ILO standard setting is the decision by the Governing Body to include an item on the agenda of the Conference. The
Governing Body bases its choice of agenda items on suggestions presented by the Office, drawing upon decisions and discussions of the International Labour Conference, the Governing Body, regional meetings, industrial committees, and expert meetings, as well as on its own studies and research. In recent years, regard has been had especially to the Final Report (1979) of the Governing Body Working Party on International Labour Standards and to the indicative elements contained in the Medium-Term Plan.

In suggesting items for the Conference agenda with a view to the adoption of standards, the Office has been concerned to ensure that the subjects are ripe for action, in the sense that the matters to be regulated are clearly defined, that there has been adequate technical preparation, and that a sufficient measure of agreement can be secured. In the course of the in-depth review of international labour standards undertaken by the Governing Body, a number of criteria were suggested to guide the choice of items, such as the numbers affected, the extent to which the subject would affect workers in the lower economic stratum, and the severity of the problem. Although no specific decision was taken on these suggestions, factors of this kind would generally be taken into account by the Office when considering proposals for possible agenda items for submission to the Governing Body. Representatives of developing countries have emphasised that particular regard should be had to subjects which correspond to their priority needs. It is a matter for consideration whether under present procedures this concern receives sufficient attention, or whether some wider method of consultation should be contemplated. One possibility would be to replace the present system of consideration of the Conference agenda at two sessions of the Governing Body by a preliminary written consultation of all member States, following which proposals for the agenda would be made to the Governing Body for discussion and decision at one session only. It would also be possible to seek the views of ILO regional conferences on the results of the forthcoming re-examination by the Governing Body of potential items for standard setting.

Although many potential topics for standard setting have been noted, difficulty has been experienced in recent years in presenting to the Governing Body a sufficient range of subjects which were ripe for action in the sense indicated above. This makes it necessary to consider whether, at least for the time being, a somewhat slower rhythm of standard setting might not be desirable. The view has been expressed in various quarters, particularly by Employers’ spokesmen, that a reduction in the number of items on the Conference agenda would permit better preparation of those standards that are adopted.

Measures to facilitate participation by member States in the standard-setting process and to improve procedures at the Conference

One wish expressed in this connection is that more member States would make known their views in the consultations preceding discussion at the Conference. At present, replies to the questionnaires sent out prior to a first discussion are normally received from one-third to one-half of the membership of the
International labour standards

Organisation. It would clearly be desirable to obtain a fuller response, particularly from developing countries. It is also important to allow adequate time for governments to consult employers' and workers' organisations concerning their replies, as they are required to do if they have ratified the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and as has been recommended to States generally by the Governing Body. Possible measures to strengthen administrative and institutional arrangements in these respects will be considered in a later section. One might also envisage a change in the timing of Governing Body decisions concerning the Conference agenda, with final decisions being taken in May rather than in November, subject to the possibility to make minor modifications at the meeting of the Governing Body immediately following the Conference should decisions by the latter make that necessary. Such arrangements would allow additional time for preparation of the first, so-called “law and practice” report by the Office and, if that report were sent to member States at the beginning of the following year, would allow them twice as much time as at present to examine the questionnaire and to prepare their replies. As a result, consultation of employers' and workers' organisations would also be greatly facilitated.

In view of the number of agenda items, countries which are unable to finance large delegations to the Conference find it difficult to follow the discussions in the various committees. This limits especially the contribution which developing countries can make to Conference committee discussions and their influence on the outcome of deliberations on new standards. It may be recalled that the question of facilitating the participation in the Conference of tripartite delegations from member States through the financing of expenses by the Organisation was examined by a Governing Body working party from 1974 to 1976 but was not pursued in view of budgetary constraints. It remains an important question of principle for the balanced functioning of the Organisation, on which renewed discussion ought to be undertaken.

Pending any further action on this general issue, attention has to focus on more specific measures to facilitate the contribution by developing countries to the process of formulating standards. A reduction in the number of Conference agenda items would diminish, but not eliminate, the difficulties experienced by these countries. Among measures which might be taken to improve their situation would be greater efforts to co-ordinate the positions of regional or sub-regional groups or other like-minded groups of countries. Groups such as the European Economic Community and the Nordic countries already seek to act in this manner, and there would be evident advantages in similar action by other groups, both in terms of their ability to make their views felt and in bringing about greater clarity in committee discussions. The governments concerned could communicate to one another the written comments sent to the ILO on agenda items intended to lead to the adoption of standards and, above all, arrange for systematic consultation among their delegations at the Conference with a view to co-ordinating their participation in committees and, wherever possible, adopting common positions.
Another possibility which deserves serious consideration is greater recourse to a single discussion at the Conference, preceded by a technical meeting and consultation of member States within time-limits leaving ample time for consideration of the matter. Such a procedure could reduce both the number of occasions on which member States had to be consulted and the number of items before the Conference at any one time. If it became widely used, it could significantly lighten the workload of the Conference and would strengthen arguments in favour of holding this at two-yearly intervals or of alternating between Conference sessions with a full agenda and sessions with a limited or lighter agenda.\textsuperscript{14}

One problem which has become increasingly acute in recent years is the difficulty for Conference committees to discuss large numbers of amendments in the limited time available. This has inevitably reflected on the quality of the instruments adopted. Amendments tend to be considered in the context of the provision to which they refer without there being time to examine their possible impact on the instrument as a whole. Any difficulties resulting from amendments adopted in the course of a first discussion can be eliminated but this is not so with amendments adopted in a second discussion.\textsuperscript{15}

The volume of work faced by Conference committees has also resulted in problems at the drafting committee stage. The pressure on the secretariat in translating and issuing the multitude of amendments submitted has resulted on occasion in the texts adopted having different meanings in the different languages.

Furthermore, committees sometimes refer to their drafting committee decisions on amendments which raise questions of substance and not merely of drafting. Drafting committees are thus called upon to perform a major task, sitting on average for six or seven hours, at a stage in the Conference when the strain of two weeks' meetings is beginning to be felt, but the Conference timetable does not permit of any delay in the completion of their task.

The above-mentioned difficulties might be reduced to a certain extent by some of the measures suggested above, such as providing more time for prior consultations and more extensive recourse by regional, subregional or other groupings to the adoption and statement of common positions. Another procedure, which has already been used, is for committees to discuss major issues and then to refer proposed amendments to working groups. This leaves actual drafting in the hands of smaller bodies and reduces the number of meetings of the full committee, and consequently also the pressure on smaller delegations. More systematic use of this approach would be desirable.

A further improvement which might be contemplated would be to invite delegations to forward to the Office, in advance of the opening of the Conference, the texts of amendments which they intended to submit. Even though the actual submission would have to wait until the committees had been constituted and proposals could also be made thereafter, up to the time fixed by the committee, this practice would reduce pressure on the secretariat and ensure the early circulation of the texts in question.
While the regular pattern of the procedure for the drawing up of ILO instruments has obvious advantages, one should not regard it as inflexible. The ultimate objective must be to obtain realistic texts which will have the greatest possible impact. Where, therefore, it is found in any particular case that adequate time is not available for the thorough examination of the points or texts before a committee, it could be decided to defer the question for further discussion at the subsequent session of the Conference. The implications of such decisions for the workload of subsequent sessions would of course have to be examined, and consequential changes might have to be made in their agenda.

The general practice in the Conference for items considered under the double-discussion procedure has been to take decisions as to the form of instrument for the proposed standards at the first discussion, so as to allow for the preparation of draft texts and consultation on those drafts prior to the second discussion. On a number of occasions in recent years, a decision taken during the first discussion to adopt a Recommendation has been reversed during the second discussion in favour of the adoption of a Convention supplemented by a Recommendation. Such decisions have the double disadvantage of making it necessary to draft the final texts under great time pressure and of leading to the adoption of instruments which have not been the subject of "adequate consultation of the Members primarily concerned", as required by article 14 of the ILO Constitution and the Standing Orders made pursuant to that article. It would therefore be desirable to revert, as a general principle, to deciding on the form of the instrument at the first discussion. Alternatively, in any case where that decision is changed at the second discussion, the final consideration of the question ought to be deferred to a subsequent session of the Conference, so that the draft instruments can be the subject of the careful preparation and consultation of member States which the rules governing the double-discussion procedure are intended to ensure.

One problem which has recently arisen, as a consequence of the development of consultation of employers' and workers' organisations concerning Government replies to preparatory reports on items before the Conference, is how to reflect the views expressed by such organisations. The most appropriate practice, which is followed by a number of States, is for governments to take these views into account in formulating their replies. Some governments however communicate the organisations' observations separately. The practice of the Office has been not to reproduce such information. Employers' representatives have urged that this practice be changed, and it is proposed, on an ad hoc experimental basis, to summarise comments from employers' and workers' organisations in one of the reports to be submitted to the 70th Session of the Conference (for the second discussion concerning employment policy). However, apart from questions of a legal nature which might arise from the fact that the present Standing Orders provide for the Conference reports to be prepared on the basis of "the replies from governments", the systematic summary of the views of organisations could give rise to practical problems concerning the volume, timely production and cost of Conference reports. As the practice of consultation becomes more wide-
spread, and since in many countries a number of different organisations are involved in the consultation process, these practical problems could assume considerable magnitude. It would therefore be preferable for all governments to take the organisations' comments into account in drawing up their own replies rather than appending them. This procedural matter might usefully be the subject of agreement among the parties to national tripartite consultation arrangements.

Questionnaires included in initial reports for a first discussion always have a section concerning particularities of national law and practice which may create difficulties of application. It is aimed at identifying points on which flexibility may have to be permitted in the proposed instruments. At present, the subsequent treatment of these matters is determined by the majority trends in the replies received. It may be desirable in future to give closer attention to the views on these aspects expressed by developing countries, particularly where there is some imbalance in the number of replies received respectively from developed and developing countries. It may also be desirable to pay special attention to minority views expressed during a first discussion, where this may help to address the question of flexibility during the subsequent consultations and in the course of the second discussion.

"Substantial equivalence" clauses

It has at times been suggested that it would facilitate acceptance of Conventions if it were possible to ratify them on the basis of “substantial equivalence” in the protection provided. Some Conventions already contain clauses of this kind. Recent social security Conventions, for example, permit the exclusion of seafarers and of public servants if they are protected by special schemes which provide in the aggregate benefits at least equivalent to those required by the Convention. The Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147), requires ratifying States to have safety standards, social security measures and conditions of employment substantially equivalent to those laid down in specified earlier Conventions. The most recent Convention on safety and health in dock work (No. 152) permits variations in the technical measures it prescribes if they provide corresponding advantages and the overall protection afforded is not inferior to that which would result from the application of the Convention. While clauses of this kind may be useful in relation to particular technical problems, they are not free from difficulty. They lay a considerable responsibility on the supervisory bodies in determining what can be regarded as substantially equivalent protection, and may lead to controversy and uncertainty. In general, it would appear preferable to introduce flexibility by means of specific alternatives to the rules contained in the various articles. As regards provisions of a secondary character, one should examine in the first place to what extent their inclusion in the Convention is in fact necessary and then seek either to express them in a flexible manner or to envisage alternative means of attaining the desired result. In other words, while “substantial equivalence” clauses may in
some circumstances prove useful, in general it would appear preferable to aim at more precise delimitation of flexibility.

Conditions for entry into force of Conventions

The question has been raised whether the entry into force of Conventions should not be subject to stricter conditions, so that the supervisory system would operate only once a significant network of ratifications had come into being. At present, apart from special cases (such as maritime Conventions), a Convention generally enters into force 12 months after receipt of the second ratification. Examination of the ratifications received in respect of the Conventions adopted in the past 20 years shows that, had the requirement been six ratifications, entry into force would have been delayed only slightly. Even with a requirement of ten ratifications, it would generally have been delayed by only one or two years, except for a few Conventions relating to seafarers, fishermen, social security and migrants. One advantage of early entry into force of Conventions is that problems examined by the supervisory bodies may help to clarify issues for the benefit of States which are still considering the possibility of ratifying them. In the course of the forthcoming review of existing instruments by the Governing Body, special consideration could be given to Conventions which, although adopted already some time ago, have failed to attract an appreciable number of ratifications. In addition to determining the causes of such situations and the desirability of remedying them by means of revision, the Governing Body could examine what general conclusions might be drawn for future approaches to standard setting.

SUPERVISION OF THE IMPLEMENTATION OF ILO STANDARDS

Two points deserve to be highlighted in discussing the arrangements established by the ILO for supervising the implementation of the standards adopted by the Conference. Certain basic provisions of the existing supervisory system — such as the obligation to report on measures taken to give effect to ratified Conventions and procedures for the presentation of complaints and representations — were included in the original Constitution. The system has however been substantially developed over the years. Some of these developments (such as reporting on the measures taken to submit newly adopted instruments to the national competent authorities and the obligation to report, when requested by the Governing Body, on the position in regard to unratified Conventions and Recommendations) were brought about by amendments to the Constitution. Other important developments resulted from decisions of the Governing Body or the Conference, including the establishment of the Committee of Experts and the Conference Committee on the Application of Conventions and Recommendations, and the creation of special machinery to examine complaints of violation of trade union rights. The methods of work of the supervisory bodies have also evolved over the years.
Principal features of ILO supervision

The effectiveness of the ILO supervisory system is influenced by a number of distinctive features.

In the first place, ILO standards — and therefore the obligations resulting from their ratification — are generally defined in a precise manner as compared with a number of instruments adopted both at the universal and at the regional levels.

Secondly, ILO supervision is cohesive. A single set of procedures (routine supervision by a committee of experts and a tripartite conference committee, supplemented by machinery for examining complaints and representations) operates in respect of all Conventions. This approach may be contrasted with the practice of certain other organisations (particularly the United Nations) of establishing distinct and varying supervisory arrangements for each instrument adopted.

Thirdly, as already noted, the ILO system makes provision both for regular supervision on the basis of reports and for the examination of complaints and representations.

Fourthly, ILO supervisory bodies enjoy the technical support of a qualified staff. This permits not only a more thorough analysis of implementation, but also uniformity in the treatment of cases, by making documentation and information available to the supervisory bodies in a systematic manner, as a basis for their decisions.

Fifthly, the ILO system combines technical evaluation by independent experts and tripartite review. The former is designed to obtain an impartial, objective assessment of compliance with obligations. The latter enables those directly concerned to examine the situation, make known their views and suggest solutions to problems.

Sixthly, the ILO system involves the active participation of employers’ and workers’ organisations in the implementation of standards. There are three levels at which this participation manifests itself. Employers’ and workers’ organisations have an important role to play in contributing to the adoption and review of implementing measures at the national level. They can be sources of information for ILO supervisory bodies or initiators of complaints or representations. Their representatives participate directly in the work of supervision, especially in the tripartite Conference Committee.

Lastly, the uniform system applicable to all ILO standards is supplemented by several special procedures in specific areas, such as the freedom of association complaints machinery and the possibility of special studies concerning discrimination in employment and occupation. There is also the general competence of the International Labour Office, under article 10 of the Constitution, to carry out special investigations which has been resorted to in a number of instances as a basis for important ad hoc studies. All these special procedures may be invoked even when the country concerned has not ratified the relevant ILO Conventions.
As already mentioned, ILO supervisory arrangements have not remained static, but on the contrary have been the subject of gradual development and adaptation. Until 1958 reports on ratified Conventions had to be submitted every year. Then the periodicity of detailed reporting was changed to a two-yearly pattern. In 1977 the system was changed again to detailed reporting at yearly, two-yearly or four-yearly intervals according to the subject-matter of the Convention and the nature of any problems of implementation. The Committee of Experts on the Application of Conventions and Recommendations, from an original composition of eight members in 1927, has grown into a body of 20 members, reflecting the widening membership of the Organisation. Since 1957, to focus attention on the more important issues, only part of the Experts' comments have been published in the Committee's reports, the remainder being addressed in the form of direct requests to the States concerned. The Conference Committee on the Application of Conventions and Recommendations, as from 1957, developed the system of drawing special attention in its reports to cases of serious difficulty in complying with obligations. This system has been repeatedly reviewed and adapted, last in 1980. During the past ten years a series of measures have been taken to promote a more active contribution by employers' and workers' organisations to supervisory procedures. Since 1969 the procedure of direct contacts has been developed to provide for discussion, during missions to individual countries, of problems encountered in complying with obligations relating to ILO standards and of means of overcoming such problems. The direct-contacts procedure has been supplemented by less formal advisory missions and, more recently, by the appointment of regional advisers on international labour standards.

Impact of ILO supervision

Much attention has been given to studying the impact of ILO standards and supervision. In 1954 the Committee of Experts made a survey of the effectiveness of its observations. Starting in 1955, a series of articles reviewing the influence of Conventions and Recommendations in individual countries have been published in the International Labour Review, and in 1976 the Office published a general study on this subject. Since 1964 the Committee of Experts has listed in its report the cases in which, following comments, it has been able to note progress in the application of ratified Conventions. The total of such cases recorded in the 20-year period between 1964 and 1983 is over 1,500.

For the purpose of the present Report, the 761 cases of progress in the application of ratified Conventions noted by the Committee of Experts in the past ten years (1974-83) have been analysed. Table 3 shows the regional distribution of these cases and also indicates the regional share of ratifications. In comparing these figures, it must be borne in mind that the number of comments made by the Committee of Experts (and therefore of potential cases of progress) for any given country does not bear a fixed proportion to the number of Conventions ratified by it. Furthermore, the figures do not distinguish between cases
Table 3. Cases of progress in the application of ratified Conventions noted by the Committee of Experts on the Application of Conventions and Recommendations, 1974-83, by region

<table>
<thead>
<tr>
<th>Region</th>
<th>Total number of cases of progress noted</th>
<th>Percentage of total cases of progress noted</th>
<th>Percentage of ratifications of ILO Conventions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Africa</td>
<td>145</td>
<td>19</td>
<td>26</td>
</tr>
<tr>
<td>Americas</td>
<td>274</td>
<td>36</td>
<td>24</td>
</tr>
<tr>
<td>Asia and Pacific</td>
<td>110</td>
<td>14</td>
<td>14</td>
</tr>
<tr>
<td>Europe</td>
<td>232</td>
<td>31</td>
<td>36</td>
</tr>
</tbody>
</table>

according to the importance of the measures taken. They include both cases where the discrepancies in the application of a Convention previously noted by the Committee of Experts have been wholly eliminated and cases of partial progress. Even so, they show responsiveness to ILO supervision in all regions.

Table 4 analyses the cases of progress according to subject-matter, distinguishing between developed and developing countries.

In recording the cases of progress arising out of action taken by governments following comments by the Committee of Experts, that Committee has emphasised that they were not the only instances in which ILO standards have influenced national law and practice. For example, since 1975 the Committee has noted 77 cases (two-thirds concerning developed countries) in which the first report on the application of a ratified Convention showed that new measures with a view to its implementation had been adopted shortly before or after ratification. Evidence of the influence of ILO standards on the adoption of national measures is frequently to be found also in reports on unratified Conventions and on Recommendations made pursuant to article 19 of the Constitution. ILO studies show that in other cases the adaptation of national law and practice to the requirements of a Convention is carried out gradually over a period of time before a decision to ratify is taken. Governments are aware that, in the case of ratification, their compliance with a Convention will be the subject of scrutiny, and most of them are anxious to ensure that such compliance exists already at the time of ratification. The impact of ILO supervision procedures is thus not confined to cases where critical comments after ratification lead to remedial measures. They also exert a significant indirect influence of a preventive character.

The foregoing remarks have a bearing on the spirit in which the whole question of international supervision is approached. ILO procedures can assist member States in understanding the full import of the standards which they have undertaken to observe and prompt them to make good any shortcomings in meeting these requirements. The essential purpose of the system is, however, to ensure that freely assumed obligations are honoured, and thus to maintain the credibility of the act of ratification.
Table 4. Cases of progress in the application of ratified Conventions noted by the Committee of Experts on the Application of Conventions and Recommendations, 1974-83, by subject-matter

<table>
<thead>
<tr>
<th>Subject-matter of the Conventions concerned</th>
<th>Number of cases of progress noted</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Developed countries</td>
</tr>
<tr>
<td>Basic human rights</td>
<td>80</td>
</tr>
<tr>
<td>Employment and training</td>
<td>11</td>
</tr>
<tr>
<td>Labour administration</td>
<td>26</td>
</tr>
<tr>
<td>General conditions of work</td>
<td>12</td>
</tr>
<tr>
<td>(wages, hours, rest, leave)</td>
<td></td>
</tr>
<tr>
<td>Occupational safety and health</td>
<td>9</td>
</tr>
<tr>
<td>Social security</td>
<td>59</td>
</tr>
<tr>
<td>Employment of women, children and young persons</td>
<td>15</td>
</tr>
<tr>
<td>Seafarers, fishermen, dock workers</td>
<td>31</td>
</tr>
<tr>
<td>Others (social policy, migrant workers, indigenous workers, plantations, nursing personnel)</td>
<td>3</td>
</tr>
<tr>
<td>Total</td>
<td>246</td>
</tr>
</tbody>
</table>

While the procedures to secure the implementation of ILO standards have been held up as one of the most far-reaching and effective systems of international supervision, they have also encountered criticism, particularly from socialist countries. The position of these countries was set out in the memorandum which they presented to the Conference in 1983 the substance of which was confirmed in its entirety in a communication addressed to the Director-General on 18 November 1983 by the Government of the USSR on behalf of a number of socialist countries. The adoption in plenary session of the report of the Conference Committee on the Application of Conventions and Recommendations has encountered difficulty on several occasions in recent years, and three times (in 1974, 1977 and 1982) the Conference, for lack of a quorum, failed to adopt the report. The main issues which call for consideration in the light of these discussions concern the composition, powers and methods of work of the supervisory bodies.

Composition of the Committee of Experts

As regards the Committee of Experts, it is to be recalled that, while its members are appointed in their individual capacity from among persons of independent standing, they are drawn from all parts of the world so as to possess first-hand experience of different legal, economic and social systems. The composition of the Committee was last discussed by the Governing Body in March 1983. In my view, following the recent appointment of an additional member from Africa and a member from an Arab country, a reasonable balance has been achieved. Since the aim of having a broadly based committee is to ensure that the members have first-hand experience of the different legal, economic and social
Table 5. Geographical distribution of membership of the Committee of Experts on the Application of Conventions and Recommendations and of ratifications of Conventions

<table>
<thead>
<tr>
<th>Region</th>
<th>Number of members of the Committee of Experts</th>
<th>Percentage of membership of the committee</th>
<th>Percentage of total ratifications of Conventions</th>
</tr>
</thead>
<tbody>
<tr>
<td>Africa</td>
<td>3</td>
<td>15</td>
<td>26</td>
</tr>
<tr>
<td>Americas</td>
<td>5</td>
<td>25</td>
<td>24</td>
</tr>
<tr>
<td>Asia</td>
<td>4 1</td>
<td>20</td>
<td>14</td>
</tr>
<tr>
<td>Western Europe</td>
<td>5</td>
<td>25</td>
<td>26</td>
</tr>
<tr>
<td>Eastern Europe</td>
<td>3</td>
<td>15</td>
<td>10</td>
</tr>
</tbody>
</table>

1 Including a member from a West Asian country.

systems existing in the countries whose legislation and practice they are called upon to examine, it may be of interest to note how the composition of the committee compares with the ratifications from various regions. Figures concerning this matter are given in table 5.

Methods of evaluation used in ILO supervision

As regards the methods used in evaluating compliance with ratified Conventions, one of the principal points of discussion has turned on the extent to which account should be taken of a country’s economic, social and political system. Representatives of socialist countries have consistently urged that it was necessary to take account of these factors, and that the refusal of the Committee of Experts to do so led to tendentious and one-sided assessments of the law and practice of socialist and developing countries and an intolerable interference in the sovereign affairs of States. They have considered that, as a result, the supervisory system was being turned into a kind of supranational tribunal which sought to impose its own interpretation of national legislation, whereas a valid interpretation of legislation could be given only by those who adopted the legislation, namely, the governments of the countries concerned.22

The Committee of Experts has considered this matter. Its position was made clear in the restatement of its fundamental principles and methods of work contained in its report of 1977, in the following terms:

The Committee discussed the approach to be adopted in evaluating national law and practice against the requirements of international labour Conventions. It reaffirms 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. These are international standards, and the manner in which their implementation is evaluated must be uniform and must not be affected by concepts derived from any particular social or economic system.23
A similar position has been taken by the majority of members of the Conference Committee on the Application of Conventions and Recommendations. They have considered that diversity of national conditions was a factor to be taken into account at the stage of drafting ILO standards by introducing a certain flexibility, as required by the ILO Constitution, but that, once a Convention was ratified, there could be no room for flexibility beyond what was expressly permitted by the Convention. They have insisted that evaluation of observance of ratified Conventions must be according to uniform criteria for all countries, and that any other approach would be incompatible with the principle of equality of States and would leave every State free to interpret its obligations as it saw fit. Every State was free to decide whether or not to ratify a Convention, but once it did so it had to accept the obligations arising from ratification and could not invoke questions of sovereignty as an obstacle to implementation.24

Methods of the Conference Committee

Another major issue concerns the methods adopted by the Conference Committee in drawing special attention in its general report to some of the cases discussed by it, particularly as regards the application of ratified Conventions.

The terms of reference of the Committee, in this respect as defined in article 7, paragraph 1, of the Standing Orders of the Conference, are "to consider 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". According to article 7, paragraph 2, of the Standing Orders, the Committee is required to submit a report to the Conference.

The practice of the Committee, in view of the limited time at its disposal, is to select for discussion a number of cases in respect of which observations have been made by the Committee of Experts. When the discussion of a case is completed, the Chairman makes a statement summing up the discussion, in which note is generally taken of explanations and assurances given by the government concerned and the hope expressed that such measures as may be necessary to ensure compliance with the Convention under consideration will be adopted. Sometimes a specific form of wording for the Committee's conclusions is proposed by members of the Committee, particularly by spokesmen for the non-governmental groups. The record of the discussions of individual cases is included in the Committee's report.

In 1957 the Conference Committee decided upon the inclusion of a new feature in its report to the Conference. While continuing to include its conclusions in the record of the discussions of cases, the Committee felt that "in some instances the discrepancies noted are of such a basic character or are of such long standing that the special attention of the Conference should be drawn to this unsatisfactory state of affairs. The Committee has therefore decided to highlight certain of these cases."25

It was from that decision that the present system of giving special mention to certain cases was developed. At various times the system has been reviewed by
the Conference Committee. In 1979 and 1980 it was examined in detail by a working party established by the Committee. As a result, certain changes of form were adopted. However, the system has continued to be the subject of controversy. The main issues around which the debate revolves concern the legal basis for the Committee's practice, its effectiveness and its fairness.

On the one hand, it has been argued that the highlighting of problems in the application of ratified Conventions by the mention of cases in a special list or in special paragraphs constitutes a sanction for the imposition of which there is no constitutional basis, that it discourages States from ratifying Conventions, that the system has been used for improper political ends, and that it diverts the supervisory system from its true purpose of assisting member States to improve their national legislation on the basis of dialogue, exchange of experience and co-operation.26

On the other hand, the majority view in the Conference Committee has been that the use of the special list and special paragraphs does not constitute a legal sanction, since it has no effect beyond its moral force as an expression of the view of the Committee and of the Conference that the Committee has the right and the duty to state conclusions on the cases considered by it and that, without such appraisal, Conventions and ratifications were liable to lose all meaning.27

A first point to note is that the Committee's long-standing practice of stating conclusions on the cases considered and of including them in the record of the discussions embodied in its report has not given rise to objections. The debate concerns the practice of selecting certain cases for special mention in the Committee's general report. The nature of the decisions taken pursuant to this practice is indicated by the Committee in its reports. It remains the same today as when this method was first introduced in 1957, namely to draw the attention of the Conference to the discussions concerning certain cases.28 The adoption of this practice thus constitutes a decision as to the form in which to report to the Conference, in pursuance of the requirement stated in article 7, paragraph 2, of the Standing Orders.

A further aspect which it appears useful to examine relates to the character and functions of the Committee of Experts and the Conference Committee.

The Committee of Experts is called upon to examine compliance with obligations in regard to ILO instruments, and in particular with the obligation, laid down in article 19 of the ILO Constitution, to make effective the provisions of ratified Conventions. The Committee has pointed out that, in order to carry out its functions, it has to consider and express views on the meaning of provisions of Conventions. At the same time, it has noted that competence to give interpretations of Conventions is vested in the International Court of Justice by article 37 of the Constitution.29 While, on account of the standing and expertise of the members of the Committee of Experts, the Committee's views merit the closest attention and respect and in the great majority of cases find acceptance from the governments concerned, they do not have the force of authoritative pronouncements of law. The Committee is not a court able to give decisions binding upon member States.
The Conference Committee, in contrast to the Committee of Experts, is composed not of independent experts, but of representatives of those directly interested in the application of Conventions. The Committee's proceedings provide an opportunity for democratic participation of the ILO's membership in reviewing the effect given to the Organisation's instruments. Its assessments, as well as any assessments adopted by the Conference on the basis of the Committee's report, likewise are not legal pronouncements and have no binding force. They are expressions of views of persuasive, moral value.

It is thus evident that a State cannot be compelled to accept and to act upon the views of either the Committee of Experts or the Conference Committee. It would however not be satisfactory, either for the Organisation or for the State concerned, to leave unresolved important issues affecting the implementation of ratified Conventions when, after full consideration, a government rejects the conclusions stated by those Committees. The ILO Constitution provides avenues for dealing with such situations, through its provisions regarding commissions of inquiry and reference of questions to the International Court of Justice. Article 26 of the Constitution permits the initiation of the complaints procedure in respect of the observance of a ratified Convention, inter alia, by the Governing Body, action which it could take even at the request of the State concerned. Under articles 31 and 32, the International Court of Justice has the competence to give final decisions, as regards both findings and recommendations, in cases where a government concerned in a complaint does not accept the recommendations of a commission of inquiry. Under article 37, the Court has competence to decide any question or dispute relating to the interpretation of ILO Conventions. It is a matter for consideration whether recourse should be had to these mechanisms for persisting unresolved major issues concerning the application of ratified Conventions.

The preceding remarks have been concerned with the legal nature of the work of the supervisory bodies. It is necessary also to consider the practical and political aspects of these questions. In particular, notwithstanding the full discussion in 1979 and 1980 of the methods of work of the Conference Committee, differences of views persist as to whether the use of special listing and special paragraphs to highlight shortcomings in the application of ratified Conventions acts as a stimulus to improved implementation or, on the contrary, is counter-productive by indisposing governments towards the ILO's endeavours to secure the widest possible acceptance and implementation of its standards. Reference has been made, in this connection, to the non-adoptions by the Conference of the Committee's report on three occasions in the past ten years.

The Conference may find it useful to have an analysis of the extent to which action to improve the application of ratified Conventions has been taken in cases which have been the subject of special listing or special paragraphs since the Conference Committee started this practice in 1957. Tables 6, 7 and 8 contain indications on this matter.

Table 6 shows global results, grouped by eight-year periods, plus a final period covering the last three years. It will be seen that, while the number of
Table 6. Progress in the application of ratified Conventions noted by the Committee of Experts in cases which had been the subject of special listing or special paragraphs by the Conference Committee, 1957-83

<table>
<thead>
<tr>
<th></th>
<th>1957-64</th>
<th>1965-72</th>
<th>1973-80</th>
<th>1981-83</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Number of countries given special mention</td>
<td>23</td>
<td>17</td>
<td>23</td>
<td>11</td>
<td>45</td>
</tr>
<tr>
<td>Number of cases given special mention</td>
<td>55</td>
<td>53</td>
<td>54</td>
<td>27</td>
<td>161</td>
</tr>
<tr>
<td>Partial progress</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- number of countries</td>
<td>3</td>
<td>11</td>
<td>18</td>
<td>14</td>
<td>22</td>
</tr>
<tr>
<td>- number of cases</td>
<td>3</td>
<td>33</td>
<td>31</td>
<td>22</td>
<td>49</td>
</tr>
<tr>
<td>Total progress</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- number of countries</td>
<td>4</td>
<td>10</td>
<td>13</td>
<td>3</td>
<td>20</td>
</tr>
<tr>
<td>- number of cases</td>
<td>4</td>
<td>23</td>
<td>28</td>
<td>3</td>
<td>58</td>
</tr>
<tr>
<td>Number of cases of progress after direct contacts</td>
<td>-</td>
<td>4</td>
<td>25</td>
<td>4</td>
<td>33</td>
</tr>
<tr>
<td>Denunciations</td>
<td>2</td>
<td>1</td>
<td>-</td>
<td>-</td>
<td>3</td>
</tr>
</tbody>
</table>

N.B. The number of countries and of cases are given for each of the periods indicated. As some countries and cases were the subject of special mention during more than one of these periods, the totals shown in the final column are less than the aggregate of the preceding figures.

Some cases were the subject of partial progress on more than one occasion. Others were the subject initially of partial progress and subsequently total elimination of the discrepancies concerned. The overall total of cases of partial progress is therefore less than the aggregate of the preceding figures.

countries affected has varied somewhat from one period to another, the number of cases mentioned has been more or less the same in each period. The table also shows a steady record of action resulting in partial or total elimination of shortcomings in the application of ratified Conventions, if account is taken of the time lag which appears to have affected the first period covered and the fact that in the final period, which is of limited duration, the progress noted has resulted partly from special mentions in earlier periods. Altogether, since 1957, 161 cases have been the subject of special listing or special paragraphs. In 58 (or 36 per cent) of these cases, the discrepancies giving rise to such mentions were eliminated. In 49 cases (or 30 per cent), partial progress has been noted. A total of 45 countries have been involved. In 20 countries cases of total elimination of shortcomings have been noted. In 22 countries partial progress has occurred. In some countries there have been both cases of total elimination of shortcomings for some Conventions and partial progress in regard to others. Altogether, there has been some progress (total or partial) in 33 of the 45 countries affected by special listing or special paragraphs.

Two further points deserve to be noted. In a substantial number of cases, progress occurred after direct contacts missions, a procedure in use since 1969. Most of these (29 out of 33) concerned countries in the American region. In three cases Conventions which had been the subject of special listing were denounced. These denunciations occurred between 1961 and 1965. Two concerned the Night
Table 7. Progress in the application of ratified Conventions noted by the Committee of Experts in cases which had been the subject of special listing or special paragraphs by the Conference Committee, 1957-83, in developed countries and developing countries

<table>
<thead>
<tr>
<th></th>
<th>1957-64</th>
<th>1965-72</th>
<th>1973-80</th>
<th>1981-83</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>A. Developed countries</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of countries given special mention</td>
<td>8</td>
<td>3</td>
<td>4</td>
<td>4</td>
<td>12</td>
</tr>
<tr>
<td>Number of cases given special mention</td>
<td>8</td>
<td>4</td>
<td>8</td>
<td>5</td>
<td>20</td>
</tr>
<tr>
<td>Partial progress</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- number of countries</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>- number of cases</td>
<td>3</td>
<td>1</td>
<td>1</td>
<td>-</td>
<td>1</td>
</tr>
<tr>
<td>Total progress</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>- number of countries</td>
<td>2</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>7</td>
</tr>
<tr>
<td>- number of cases</td>
<td>2</td>
<td>3</td>
<td>3</td>
<td>1</td>
<td>9</td>
</tr>
</tbody>
</table>

| **B. Developing countries** |         |         |         |         |       |
| Number of countries given special mention | 15      | 14      | 19      | 7       | 33    |
| Number of cases given special mention | 47      | 49      | 46      | 22      | 141   |
| Partial progress          |         |         |         |         |       |
| - number of countries     | -       | 10      | 17      | 14      | 21    |
| - number of cases         | -       | 32      | 30      | 22      | 48    |
| Total progress            |         |         |         |         |       |
| - number of countries     | 2       | 7       | 11      | 2       | 13    |
| - number of cases         | 2       | 20      | 25      | 12      | 49    |

N.B. See notes in table 6.

Work (Women) Convention, 1919 (No. 4). The third concerned the Maternity Protection Convention, 1919 (No. 3). However, in this instance the country in question ratified the revised Convention (No. 103) four years later.

Table 7 analyses the figures for developed and developing countries respectively. The number of countries affected in each group roughly reflects their numerical importance in the membership of the ILO. The number of cases concerning developing countries is proportionately much greater. This is due to the fact that developing countries have more often been the subject of special listing or special paragraphs in respect of a series of Conventions. For developed countries progress has been noted in half the cases mentioned, almost all of which involved total elimination of the shortcomings in question. For developing countries the proportion of cases having led to some action is higher (69 per cent), but only half of these have involved total elimination of shortcomings.
Table 8. Progress in the application of ratified Conventions noted by the Committee of Experts in cases which had been the subject of special listing or special paragraphs by the Conference Committee, 1957-83, by subject-matter of the Conventions concerned

<table>
<thead>
<tr>
<th></th>
<th>1957-64</th>
<th>1965-72</th>
<th>1973-80</th>
<th>1981-83</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>A. Conventions concerning basic human rights (freedom of association and collective bargaining, forced labour, discrimination in employment and occupation and equal remuneration)</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of cases given special mention</td>
<td>7</td>
<td>15</td>
<td>31</td>
<td>14</td>
<td>48</td>
</tr>
<tr>
<td>Partial progress</td>
<td>—</td>
<td>2</td>
<td>8</td>
<td>7</td>
<td>13</td>
</tr>
<tr>
<td>Total Progress</td>
<td>—</td>
<td>1</td>
<td>6</td>
<td>1</td>
<td>8</td>
</tr>
<tr>
<td>B. Other Conventions</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Number of cases given special mention</td>
<td>48</td>
<td>38</td>
<td>23</td>
<td>12</td>
<td>113</td>
</tr>
<tr>
<td>Partial progress</td>
<td>3</td>
<td>31</td>
<td>23</td>
<td>15</td>
<td>36</td>
</tr>
<tr>
<td>Total progress</td>
<td>4</td>
<td>22</td>
<td>22</td>
<td>2</td>
<td>50</td>
</tr>
</tbody>
</table>

N.B. See notes in table 6.

Table 8 contains a breakdown of the figures according to the subject-matter of the Conventions concerned, distinguishing between instruments dealing with certain basic human rights and other Conventions of an essentially technical nature. It shows that over the years there has been a gradual increase in the number of cases of special listing or special paragraphs concerning basic human rights Conventions, accompanied by a decline in cases concerning other Conventions. In respect of the former group of Conventions, the shortcomings concerned have been eliminated in one-sixth of the cases and there has been partial progress in just over a quarter of the cases. For technical Conventions, the results have been greater: total progress in 44 per cent and partial progress in 32 per cent of the cases. The extent to which cases concerning technical Conventions have been the subject of progress in application may partly explain the decline in their number. The figures also reflect the more complex nature of the problems encountered in the application of the Conventions dealing with freedom of association, forced labour and discrimination.

The figures set out in the above-mentioned tables should not be taken as expressing the sum total of experience in the functioning of the system of highlighting employed by the Conference Committee. The Committee has frequently deferred a decision to give special mention to a case after receiving an undertaking that action would be taken to deal with the shortcomings in the application of the Convention under discussion. Members of the Committee have also given warning at various times that, failing improvement in the situation when a case was next discussed, they would propose special listing or a special paragraph. The possibility of special mention thus constitutes an inducement to adopt remedial measures.
The preceding analysis leads to the conclusion that the method of highlighting employed by the Conference Committee has had an impact in leading to improved application of ratified Conventions, particularly when it is borne in mind that it has been used mainly for cases in which the comments of the supervisory bodies had not been acted upon over a considerable period of time. There nevertheless remains the fact that a number of member States feel that the system does not give guarantees of fair and equitable application and that decisions are largely influenced by political considerations. There are two ways of looking at these arguments. One would be to consider that, while expert evaluation is an essential part of ILO supervision, review of compliance with Conventions should not be the affair solely of experts, and that the governments, employers and workers who make up the Organisation's constituents should also have an opportunity, in the light of the experts' conclusions, to examine and state their position on the problems encountered. Delegates and advisers who attend the Conference no doubt feel that they should have a say in these matters. Another view would be that, even though the Committee's conclusions have no binding force, they constitute an assessment of compliance with obligations and that the making of such an assessment by means of a majority decision in a politically composed body does not square with the notion of due process of law.

A related matter to be taken into account concerns the difficulties which have been encountered on several occasions at the stage of consideration of the Conference Committee's report by the Conference. As already recalled, there have been three occasions when, for lack of a quorum in plenary session of the Conference, the report was not adopted. Although this did not prevent the Committee's discussions from remaining part of the record nor in any way affect the conclusions of the Committee of Experts, such occurrences, when repeated, tend to weaken the moral thrust of the supervisory system.

Having regard to these various factors, it is a matter for consideration by the Conference Committee and by the Conference itself whether it would be desirable and potentially fruitful to examine the Committee's methods further.

One point which it may be well to remember in this discussion is that the different parts of the ILO supervisory system do not operate in isolation, but constitute complementary components. Although the discussions in the Conference Committee and in the Conference mark the final stage of what we term regular supervision, any failure to reach a consensus there or to secure acceptance of the views of the supervisory bodies by the government concerned need not be left as the final outcome of ILO supervision. There remains the possibility (already mentioned) of having the issue considered under the constitutional complaints procedure and by the International Court of Justice. Recourse to those procedures would obviate the fear of conclusions determined by political considerations and provide all parties with the guarantees inherent in a quasi-judicial or judicial process.

Recourse to the many procedures set forth in the Constitution or developed over the years by the Governing Body should clearly be backed by all necessary
guarantees of objectivity. These procedures should be resorted to only in the most responsible manner in clear cases of violation of fundamental Conventions, particularly those relating to human rights. Approached in this manner, recourse to these procedures offers the only genuine means of respecting the rules of due process of law. It would give its true meaning to the work of the Conference Committee on the Application of Conventions and Recommendations, which retains an essential role, for, by reason of its tripartite composition and through the information it receives from the Committee of Experts, the questions it addresses to governments and the replies which it obtains, this Committee is particularly well placed to appreciate the conditions in which international labour Conventions are applied. Over the years the Committee has reported on its discussions with increasing care, recording progress as well as expressing its concern at cases of failure to comply with the requirements of ILO Conventions or at the refusal or omission of governments to supply the reports due from them. The tripartite debates in the Committee ought to be as thorough-going as possible and they should be reported with the greatest care. An opportunity remains for delegates to make comments in plenary sitting at the Conference not only on the report of the Conference Committee but also on the report of the Committee of Experts, which must remain the essential instrument for critical evaluation of the application of Conventions. The work thus performed by the Conference Committee and carried forward, where necessary, in plenary sitting at the Conference, should make it possible to project each year, for the benefit of all governments, of employers and workers, and of public opinion, a complete image of the situation with respect to international labour Conventions, progress in their ratification and application, and the difficulties encountered.

On this basis, it would be for the Conference, when adopting or noting the report submitted by the tripartite Committee, to include in its record the comments made in plenary sitting by delegates who wished to express their views. Beyond this, in critical situations, particularly with respect to fundamental Conventions, there would remain the possibility, to which I have referred above, to have recourse to the complaints procedure and, in what I would presume to be exceptional cases, to seek an interpretation from the International Court of Justice.

The preceding remarks have concerned the Conference Committee's manner of highlighting serious problems in the application of ratified Conventions. The Committee also draws attention to various cases of failure to supply reports and information, by reference to a series of factual, objective criteria. It decided in 1980 no longer to enumerate these cases in a composite list, but to set them out in the corresponding sections of its report. It also decided to mention any explanations of difficulties encountered in meeting their reporting obligations provided by the governments concerned. These changes have generally been welcomed. Only a relatively limited number of countries have been mentioned in recent years under the criteria in question. Almost all were least developed countries suffering from administrative difficulties or countries suffering dis-
ruption due to natural calamities or armed conflict. Sometimes the mentions refer to shortcomings of a rather limited nature, such as the non-supply for two years of a single first report (even when other first reports due have been submitted) or the failure to reply to one or two comments by the Committee of Experts if they happen to be the only ones calling for a reply. Such cases are hardly comparable in gravity to such shortcomings as failure for five years to provide any of the reports requested on unratified Conventions and on Recommendations or failure to provide indications regarding submission to the competent authorities of the instruments adopted at seven consecutive sessions of the Conference. The Conference Committee may wish to consider whether some further refinement of the so-called objective criteria used would be justified, in terms of their quantitative or qualitative importance.

When it revised its methods in 1980, the Conference Committee decided to introduce an additional factual criterion for countries which in the preceding three years have failed to indicate the representative organisations of employers and workers to which, in accordance with article 23 (2) of the ILO Constitution, copies of the reports and information supplied to the ILO under articles 19 and 22 have been communicated. It is of interest to note that so far no country has had to be listed under this criterion.

One aspect of the work of the Conference Committee which has continued to be a source of complaint by certain countries is the fact that States which have not ratified a particular Convention and thus are immune from criticism may nevertheless participate freely in discussions and in reaching conclusions concerning its application by States which have ratified it. The legal position in this respect appears clear. All delegates and advisers are on an equal footing regarding participation in the work of Conference committees. Furthermore, the work of the Committee is concerned with reviewing the manner in which States fulfil their obligations in respect of ILO standards towards the Organisation as a whole. The fact that a State has not itself ratified a Convention under discussion affects the moral and political credibility of any criticism which it directs at other States rather than its legal rights of participation in the work of the Conference. The only legal disability to which a government is subject is that it cannot file a complaint under article 26 (1) of the Constitution in respect of the application by another State of a Convention which it has not itself ratified.

Complaints and representations

As has already been recalled, the regular or routine supervision procedures are supplemented by the possibilities of having particular problems in the application of ratified Conventions examined under the constitutional procedures of representations or complaints. Under article 24 of the Constitution, a representation may be made by any employers' or workers' organisation, whereas under article 26 the complaints procedure may be initiated by another State which has ratified the Convention concerned or by the Governing Body,
acting on its own initiative or on a complaint from a delegate to the Conference. When the Governing Body undertook its in-depth review of international labour standards in 1974, it was pointed out that, although only limited recourse had been had to these procedures, they provided a useful means for thorough examination of important cases which it had not been possible to resolve within the framework of regular supervision. The only proposal then made in regard to the constitutional procedures was to update the standing orders for the examination of representations. That action has since been taken.

Although the total number of complaints and representations submitted (respectively 14 and 20) is not great, there has been increasing resort to them, particularly — though not exclusively — in respect of Conventions concerning basic human rights. The first 40 years of the ILO's existence saw only one complaint (settled without reference to a commission of inquiry) and seven representations. Since 1961 there have been 13 complaints and 13 representations (seven of the latter lodged in the past three years). Of the 13 complaints, seven were referred to a commission of inquiry, three were referred to the Committee on Freedom of Association, one was settled to the satisfaction of the parties, and two related complaints were the subject of direct contacts by agreement between the parties, followed by an ILO technical co-operation mission. Of the 13 representations received since 1965, two were found irreceivable, two led to denunciation of the Convention concerned, one was settled to the satisfaction of the organisation which had submitted the representation, one was referred to the Committee on Freedom of Association, and two are currently under examination. In the remaining five cases, following conclusion of their consideration by the Governing Body, the issues involved have continued to be the subject of examination by the regular supervisory bodies. In only one case did the Governing Body decide, in accordance with article 25 of the Constitution, to publish the representation and the reply received.

The increasing resort to the constitutional procedures suggests not only a growing awareness of the possibilities of more comprehensive investigation offered by them, but also that their functioning in previous cases has been considered by the ILO's constituents to have yielded useful results. Reference has been made earlier in this section to the role which the complaints procedure may play as a means of dealing with unresolved major issues in the application of ratified Conventions and as a further stage of supervision beyond the discussions in the Conference Committee. In view of the composition of commissions of inquiry and their powers of investigation (including the taking of formal evidence and on-the-spot inquiries), they are particularly well placed to assume such responsibilities. The representations procedure, on the other hand, offers less extensive possibilities as a means of impartial fact finding and adjudication. Under the standing orders governing this procedure, when a representation has been communicated to the Governing Body, the latter may at any time initiate the complaints procedure in respect of the matters raised, that is, refer them to a commission of inquiry in exercise of its powers under article 26 (4) of the Constitution. Where a representation involves complex matters of fact or law,
it would be desirable for the Governing Body to examine carefully whether its reference to a commission of inquiry would not be the appropriate course.

It should also be remembered that employers’ and workers’ organisations may submit comments for consideration by the Committee of Experts. In recent years, following action by the Office to acquaint the organisations better with the opportunities open to them and to inform representative national organisations of the comments of the Committee of Experts relating to their country, there has been a considerable increase in the number of such comments. Any observations received by the ILO from employers’ or workers’ organisations regarding the implementation of ILO standards are brought to the attention of the Committee of Experts at the next session, even when a detailed report on the Convention is not due from the government concerned. Organisations might usefully consider the communication of comments for examination by the Committee of Experts as a simpler and frequently more expeditious alternative to lodging a representation.

There are also other means for seeking solutions to unresolved issues in the application of ratified Conventions relying on discussion and mediation rather than adjudication. The direct-contacts procedure is aimed at providing an opportunity, through dialogue with the governments concerned, to examine more fully issues raised in the comments of the Committee of Experts. In practice, in the many cases where a government has recognised the validity of the comments but wished to have advice on the best way of removing the discrepancies concerned, direct contacts have assumed the character more of technical assistance. In some instances, however, they have been used for the purpose of clarifying the considerations underlying the comments made by the supervisory bodies, enabling the government to explain its view of the situation in greater detail and exploring ways of complying with the Conventions in question which would at the same time take account of national concerns. A particularly interesting example is provided by the suggestion made by the representative of the Netherlands trade unions at the Conference in 1983, and subsequently accepted by the Government of the Netherlands, to request direct contacts in respect of the Freedom of Association and Protection of the Right to Organise Convention to consider the restrictions on free collective bargaining resulting from wage limitation measures which have been in force for a number of years and to which objections have been voiced by Netherlands employers’ organisations as well as by the trade unions.

Special machinery for examining allegations of violation of trade union rights

Following the adoption of Conventions relating to freedom of association, the right to organise and collective bargaining in 1948 and 1949, the Governing Body decided in 1950 to establish special machinery for the examination of allegations of violation of trade union rights. It was clearly understood that this machinery would operate not as a substitute for, but as a supplement to, the general procedures for supervising the application of ratified Conventions.
system of regular supervision through the Committee of Experts and the Conference Committee on the Application of Conventions and Recommendations, as well as the constitutional provisions relating to complaints and representations, apply to the Conventions dealing with trade union rights in the same way as to other Conventions. The special machinery was seen particularly as affording facilities for the impartial and authoritative investigation of allegations concerning questions of fact.

Two essential concerns underlie the special machinery for the protection of trade union rights. On the one hand, there is recognition of the major contribution which free and effective organisations can make to the promotion of social progress and development. The affirmation in the ILO Constitution that "freedom of expression and of association are essential to sustained progress" has been echoed on many occasions by the International Labour Conference and other ILO meetings. In the second place, there is the importance of freedom of association for the functioning of the ILO itself, as a tripartite organisation.

Although the freedom of association complaints machinery was created by decision of the Governing Body, subsequently endorsed by the Conference, its basis is to be found in the commitment of all member States to the constitutional objectives of the ILO which include recognition of the principle of freedom of association. During consideration of the procedure at the 33rd Session of the Conference in 1950, it was observed that, when accusations were made against a member State regarding trade union rights, "it is the duty of the Organisation to examine the foundation of these accusations". The Committee on Freedom of Association, in its first report, emphasised that the ILO "must not hesitate to discuss in an international forum cases which are of such a character as to affect substantially the attainment of the aims and purposes of the International Labour Organisation as set forth in the Constitution of the Organisation, the Declaration of Philadelphia and the various Conventions concerning freedom of association".

The special complaints machinery was established in agreement with the United Nations, whose Economic and Social Council decided in 1950 to accept the services of the Fact-Finding and Conciliation Commission on behalf of the United Nations. Consequently, on occasion, cases concerning States which at the time were members of the United Nations but not of the ILO have been referred to the Commission, with the consent of the governments concerned. Following the establishment in 1951 of the Governing Body Committee on Freedom of Association, the Economic and Social Council also decided, in 1953, that allegations of infringements of trade union rights received by the United Nations which related to member States of the ILO should be forwarded to the Governing Body.

The scope for investigation offered by the special machinery is, in several respects, wider than under the general system of supervision applicable to ratified Conventions. Since the procedure has its basis in the constitutional principle of freedom of association, it can be invoked whether or not the country concerned has ratified the relevant Conventions. Furthermore, although the Com-
International labour standards

committee on Freedom of Association and the Fact-Finding and Conciliation Commission draw upon the provisions of those Conventions in examining cases and take account of any obligations existing as a result of ratifications, they have also had occasion to consider and to reach conclusions on aspects of the exercise of trade union rights which are not specifically dealt with in existing Conventions.

To date only five cases have been referred to the Fact-Finding and Conciliation Commission. The main responsibility for the examination of complaints has fallen on the Committee on Freedom of Association, which over a period of 30 years has dealt with more than 1,200 cases. Incidental to its primary role of seeking to clarify and to suggest solutions for the situations brought before it, the Committee has been instrumental in building up an important body of decisions indicating the manner in which the principles of freedom of association should apply in many varied circumstances. These decisions can exert a useful preventive influence in enabling governments and organisations to take account of the relevant standards and principles in their activities and relations and in encouraging them to resolve problems without the need for recourse to the ILO.

In the great majority of cases the governments concerned have co-operated in the examination of complaints, although not always as expeditiously as would have been desirable. It has been stressed that, while the procedure is aimed at protecting organisations against infringements of trade union rights, it is also designed to protect governments against unfair or unsubstantiated accusations. It is therefore in the interest of governments to provide detailed replies to complaints. The extent to which they have collaborated in the operation of the procedure shows the confidence which it has secured among member States.

There has been a marked increase in the number of cases submitted to the Committee on Freedom of Association in recent years. Before 1980 they averaged around 30 a year. Since then the numbers have been as follows: 1980 — 66 cases; 1981 — 88 cases; 1982 — 70 cases; 1983 — 76 cases. This increase reflects both an overall aggravation of the problems encountered by occupational organisations at a time of considerable economic and political instability and a greater awareness of the opportunities afforded by the ILO machinery for impartial international examination of national conflicts and difficulties. In the past seven years, complaints have been considered in respect of 72 of the 150 member States. An increasing number of complaints are being submitted in respect of countries where trade union freedom in general is not at stake. While the issues raised in these cases tend to be relatively narrow in scope, they are often also of considerable complexity. These cases suggest that authoritative guidance from the Committee is seen as a useful contribution to the development of industrial relations in the countries concerned.

As has already been recalled, when the procedure was established, particular emphasis was placed on the means it would provide for examining issues of fact. Although the Committee on Freedom of Association is regularly called upon to examine matters relating to legislation, the greater part of its work is concerned
with allegations of a factual nature or arising from the application of law. In the past five years, 45 per cent of the cases examined have involved questions of life and liberty (arrests, detention, persecution, exile, deaths or disappearances). In 30 per cent there have been allegations of government interference in the activities of trade unions. Thirty per cent have involved issues of unfair labour practices (dismissals, transfers and other forms of anti-union discrimination, recognition questions, etc.) Twenty-five per cent have involved issues concerning collective bargaining and strikes.

The Committee on Freedom of Association has constantly endeavoured to develop its methods, particularly with a view to accelerating the consideration of cases and in order to obtain clear information on the issues before it. In its 193rd report, in 1979, the Committee reviewed improvements in its procedure made in the past and put forward a series of further recommendations, which the Governing Body approved in May 1979. The matters reviewed included quicker communication with complainants and with governments, on-the-spot missions including preliminary contact missions immediately following the receipt of a complaint, and arrangements for hearing parties to a complaint.

It may be useful to indicate the extent to which various procedural formulas have been used since the beginning of 1980. On three occasions a representative of the government concerned has appeared before the Committee on Freedom of Association. There have been 19 direct contacts or other on-the-spot missions, two of which took place as a matter of urgency very shortly after the receipt of the complaint. Seven of these missions were accepted by the government concerned in response to a request by the Committee. In two other cases, a similar request has not so far received an answer. In six cases, the Chairman of the Committee had discussions during sessions of the Conference with representatives of governments from which replies to complaints or to requests for information had been outstanding for a considerable time. In five of these cases the government concerned subsequently sent information. In five cases, the Committee has addressed urgent appeals to governments which had failed to submit information or observations, indicating that, if no reply was received by its next session, it would nevertheless examine the substance of the complaints. In 30 cases, following such appeals, the governments concerned provided information. On the other hand, in two cases the Committee has had to examine the complaints without a reply from the government.

The Committee's procedure provides for the possibility of inviting governments to indicate the action taken on recommendations approved by the Governing Body. The Committee has been making increasing use of this power, which enables it to maintain the thrust of its work and to ascertain the impact of its recommendations. Among the positive developments noted by the Committee in recent years in cases which had come before it have been the release of a substantial number of trade unionists from arrest or detention or their return from exile, the reinstatement of workers dismissed as a result of labour disputes, the cancellation of decisions dissolving an organisation or removing trade union leaders from office, the grant or restoration of the legal personality of trade
unions, the restoration of the right to strike, the ending of government supervision of trade unions, and in some instances major changes in trade union legislation, particularly in connection with changes in a country's political regime.\textsuperscript{39}

The great increase in the number of complaints coming before the Committee on Freedom of Association and their growing complexity have imposed strains both on the staff responsible for servicing the Committee and on the Committee itself. It will be important to ensure that adequate resources and time are made available to permit the satisfactory operation of this important procedure.

As has been noted, complaints have been submitted to the Committee on Freedom of Association in recent years in respect of roughly half the ILO's membership. The cases have related to countries in all parts of the world, with varied political, economic and social systems. Notwithstanding this diversity in the coverage of the Committee's work, a proportionately larger number of complaints has continued to be received in respect of countries in Latin America and the Caribbean than for other regions. In the past five years, 46 per cent of cases have concerned these countries. From the information available from other sources, including the examination of reports by the Committee of Experts, it is evident that this is not a true reflection of the relative gravity of the difficulties encountered by trade unions in that region as compared with countries elsewhere and that serious restrictions on trade union rights are also to be found in a number of countries which have not been the subject of complaints. The lack of recourse to the ILO complaints procedure may at times reflect the weakness or vulnerability of trade union movements. The geographically uneven utilisation of the procedure may be regretted, but it is not a matter which the ILO as such can correct. By definition, a complaints procedure is a facility whose activation depends on the initiative of outside parties. While the ILO can take measures to promote the widest possible knowledge and understanding of its standards and procedures (a question further examined later in this section), it is not the task of the Organisation to promote the presentation of complaints. For an evaluation of the extent of enjoyment of freedom of association among ILO member States as a whole, reliance has to be placed rather on the regular supervision procedures, including the general surveys made by the Committee of Experts. It will be recalled that in 1983 such a survey was made in respect of freedom of association and collective bargaining.\textsuperscript{40}

There has always been concern to make the freedom of association complaints procedure operate more quickly and more incisively. The developments in the procedure introduced over the years have been directed essentially to these ends. Two considerations need to be borne in mind in this connection.

In the first place, the ultimate success of the procedure depends on securing the co-operation of the States concerned. The methods employed must accordingly maintain an appropriate balance between the moral pressure exerted by the Organisation in favour of observance of freedom of association and the realisation by the governments concerned of their own interest in collaborating in the
procedure. Governments, as well as complainants, must be convinced that all cases will be examined with the utmost thoroughness and fairness. Consequently, the need to secure the greatest possible knowledge of the facts from all the parties may have to take precedence over the speedy disposition of cases.

The second point relates to the adequacy of the measures at the disposal of the Committee on Freedom of Association to reach conclusions on questions of fact. Essentially, the procedure is still based on written submissions. Where the Committee is presented with contradictory statements as to the facts, it faces great difficulty in reaching decisions. In such cases, more direct methods of fact finding are called for. It would be desirable in the years to come to promote greater use of such methods. They could take the form of direct contacts and other on-the-spot missions which are carried out by a representative of the Director-General who can be either an ILO official or an independent person. Consideration might also be given to referring certain complaints to the Fact Finding and Conciliation Commission or to a Commission of Inquiry appointed under article 26 of the ILO Constitution, if the issues involved the observance of a Convention ratified by the State in question.

It is of course the duty of complainants to substantiate their allegations. In cases requiring urgent action, this may not always be immediately possible, but even then every effort should be made to provide full information in support of the complaint at the earliest opportunity. In other cases, it would be desirable for complainants to present all relevant information at the time of submitting their allegations, so as to enable both the government concerned and the Committee on Freedom of Association to have a clear understanding of the issues and to facilitate rapid consideration of the case.

It does not appear necessary to envisage any changes in the rules governing receivability of complaints. Like other ILO complaints procedures — and in contrast to many other international procedures of investigation and settlement of disputes — the freedom of association complaints procedure does not impose any requirement to exhaust local remedies before submitting a complaint, although the Committee on Freedom of Association may defer consideration of a case where proceedings are pending in a national court and has also in certain cases in its examination of substance taken account of failure to have recourse to national remedies. Leaving aside the legal aspects of the question, organisations should as a matter of practice, at least in cases of a more limited or technical character, seek to resolve their difficulties through discussions or other action at the national level before invoking the ILO procedure.

The foregoing remarks have been concerned with procedural questions. A more general issue, concerning the composition of the Committee on Freedom of Association, also calls for comment. Spokesmen for socialist countries have complained that they are not represented on the Committee, and have called for re-examination of its composition on the basis of equitable representation of various regions and socio-economic systems. This is a matter for consideration by the Governing Body, as the authority which determines the membership of its committees.
In any case in which it is felt that the procedure of the Committee does not afford a sufficient opportunity for the government’s position to be justly assessed or where a government feels that the Committee’s conclusions and recommendations are misconceived, it may, apart from providing clarification to the Governing Body itself, request the latter to refer the case for further examination of all the issues to the Fact-Finding and Conciliation Commission or, as appropriate, to a Commission of Inquiry.

The question has at times been raised whether, in cases of serious violations of trade union rights in which the recommendations made by the Committee and the Governing Body remain unimplemented, measures such as the withholding of technical co-operation might be taken. It has been recognised that it would be difficult to lay down any general rule in this respect, each case having to be considered in the light of its particular circumstances. There may be situations in which serious obstacles would stand in the way of effective implementation of certain technical co-operation projects, and where therefore the question of their feasibility has to be carefully examined. There are others in which ILO projects would still contribute to the improvement of living and working conditions, and where an ILO presence and the opportunity which it offered for contacts with local organisations and institutions could also help to prepare the ground for a more positive response to the Organisation’s endeavours to ensure the enjoyment of trade union freedom. It is appropriate to recall the discussions which took place in the Governing Body in 1968 on the relationship of technical co-operation and observance of human rights. The Governing Body decided, in particular, that “it is the policy of the ILO to take decisions concerning requests or proposals for aid to or co-operation with any member State on the basis of the extent to which the request or proposal will further the aims and purposes of the ILO and in particular the central aim defined in the Declaration of Philadelphia 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’”. The Governing Body at the same time made it clear that the grant of assistance was “subject to the normal supervision and control that the ILO exercises over all its technical co-operation programmes in the interest of its Members”.

The promotion of freedom of association should not be seen solely in terms of the procedures for supervising the implementation of the Conventions in this field and of the examination of violations of trade union rights. It should be recalled that one of the purposes of the latter procedure was to provide facilities for conciliation in the event of disputes. While this aspect of the complaints procedure has tended to be obscured against the background of the treatment mainly on a documentary basis of a large volume of allegations, direct contacts missions have frequently provided an opportunity, through discussions with the various parties, to explore possible solutions. It would clearly be desirable to develop further all forms of action through which the Organisation can contribute to the settlement of conflicts in this vital area.

It is also in the perspective of measures to promote freedom of association
that it appears appropriate to review the programme of special studies concerning the trade union situation and industrial relations in selected countries in Europe which was initiated during the 1982-83 budget period.

Special studies of the trade union situation and industrial relations system in selected countries in Europe

These studies were undertaken in response to resolutions adopted by the Second and Third European Regional Conferences held in 1974 and 1979. Their aim is to provide an objective analysis of the trade union situation and industrial relations in the countries concerned and to consider the basic issues which arise in these fields in the light of the relevant ILO standards. So far two studies, relating to Norway and Hungary, have been completed. Two more, in respect of Yugoslavia and Spain, are in progress. A fifth study is provided for in the budget for 1984-85, with a sixth contemplated for the following biennium.

It is appropriate to recall that this is not the first occasion on which the ILO has undertaken studies in the field of freedom of association outside the framework of its supervision procedures. Comprehensive studies were undertaken in the 1920s. In the 1950s there was the inquiry into the freedom and independence of employers' and workers' organisations undertaken by a committee under the chairmanship of Lord McNair. Between 1959 and 1962 missions were undertaken to a number of countries to make factual surveys of freedom of association.

The current studies concerning European countries are carried out by ILO officials. They are based on a thorough examination of all available documentary material concerning the legal situation (including judicial decisions and legal literature) and practice, as well as visits to the countries for discussions with a wide range of persons involved in or having specialised knowledge of the operation of the trade union and industrial relations system. The studies are reviewed by a tripartite working group of the Governing Body before being presented to the Governing Body. They are due to be brought to the attention of the next European Regional Conference.

These studies are not intended to replace or in any way prejudice the functioning of the various supervisory and complaints procedures. They differ significantly in purpose and nature from those procedures. The latter, by reason of their function, necessarily concentrate on identifying shortcomings, in terms of legal principles and obligations. Where called upon to examine complaints, supervisory bodies must deal with the specific issues submitted to them, without making any general evaluation of the trade union situation; furthermore, as has been noted, in the absence of complaints, they are unable to intervene, even if the exercise of trade union rights in a given country encounters serious problems. The studies, on the other hand, are undertaken in the absence of any complaint, and indeed would be difficult to carry out in a situation where serious tensions existed in relation to ILO standards on freedom of association and industrial
relations. The discussions during the missions to the countries concerned are wide-ranging and, since they are unrelated to any conflictual situation, can more easily permit a frank and calm examination of problems and difficulties. The resulting reports seek to give an overall indication of the situation which is not purely descriptive but also involves critical analysis. The reports, as indeed the whole process leading to their preparation, can serve to clarify and suggest improvements in policies and practices, in the light of the relevant ILO standards. Their value in promoting a wider knowledge and understanding of ILO standards and in stimulating new thinking on the best means of implementing these standards has been acknowledged by both governments and organisations in the countries which have been the subject of studies.

In two resolutions adopted by the Sixth African Regional Conference in October 1983, relating respectively to international labour standards and to freedom of association, the Governing Body was invited to undertake studies analysing the labour relations systems in Africa as a basis for frank and objective exchanges of ideas and experience.

There may thus be an opportunity in the years to come to extend to selected African countries, and indeed to other regions, the kind of studies already undertaken in Europe.

PROMOTIONAL MEASURES IN THE FIELD OF INTERNATIONAL LABOUR STANDARDS

Since the beginning of 1960, the membership of the ILO has almost doubled, rising from 80 to 150. Most of the new Members were newly independent countries, almost all of them developing countries. Generally, their labour administrations were not well prepared to deal with all the questions arising out of membership of the ILO, including those concerning the adoption, ratification, implementation and reporting on the application of ILO standards. They looked to the ILO to provide advice and assistance on ways of meeting these new responsibilities. The Office accordingly found it necessary to intensify its activities in this field, in addition to technical co-operation aimed generally at the improvement of labour administration and social legislation. The range of measures available today includes direct contacts and less formal advisory missions; the appointment of regional advisers and other forms of advice on questions relating to international labour standards, seminars, training and manuals, measures aimed at securing more active involvement of employers’ and workers’ organisations and the promotion of tripartite consultations at the national level on questions concerning ILO standards; regional discussions concerning the ratification and implementation of ILO standards, and measures aimed at closer integration of standards in operational activities. ILO regional meetings have repeatedly emphasised the value of these measures and called for their intensification. It is appropriate to review the various forms of action and to examine how far they might be strengthened or supplemented.
Direct contacts, advisory missions, regional advisers

The procedure of direct contacts was originally proposed by the Committee of Experts on the Application of Conventions and Recommendations as a means of permitting more direct and thorough discussion of cases in which its normal procedure, based on the exchange of written reports and written comments, had not led to the elimination of difficulties in the application of ratified Conventions. The procedure started to operate in 1969. Ten years later it had been resorted to by 28 countries concerning 222 cases of application of ratified Conventions, involving 68 different Conventions. By then, progress had been noted by the Committee of Experts in 23 of the countries concerned, affecting 115 cases and relating to 56 of the Conventions in question.46

In practice, direct contacts have been used for much more varied ends than originally envisaged. In regard to the application of ratified Conventions they have served, according to circumstances, three main purposes: in some cases, to clarify and seek solutions to unresolved issues; in others, to ascertain facts in relation to the observance of Conventions; in yet others, where the substance of the comments made by the supervisory bodies was not contested, to examine and provide advice on the best means of eliminating shortcomings. The scope of direct contacts was also widened to include questions relating to the discharge of other obligations, such as the submission of Conventions and Recommendations to the competent authorities and reporting obligations, as well as questions concerning measures to be taken with a view to ratification of particular Conventions. In one instance, in 1976, direct contacts missions were carried out in a group of States (the Andean Group) to assess the possibilities of applying and ratifying 25 selected Conventions as a means of harmonising their labour legislation; since then, the total number of ratifications of the selected Conventions by the States concerned has increased from 51 to 83. The direct contacts procedure has also been used extensively within the framework of the examination of complaints of violation of trade union rights by the Committee on Freedom of Association.

The practice of less formal advisory missions by ILO officials was also developed, permitting a general review of questions concerning the implementation and ratification of Conventions and of arrangements for meeting reporting requirements. During both direct contacts and less formal missions, advice and training have frequently been provided on administrative arrangements to deal effectively with matters concerning the adoption and the implementation of ILO instruments.

The benefits of these various activities to member States and the Organisation itself were widely recognised and led to the suggestion, particularly at regional meetings, of the appointment of regional advisers on international labour standards. As from 1980, arrangements were made for part-time detachment of officials from the International Labour Standards Department to provide such advisory services in Africa, Asia and the Pacific, and Latin America. In 1983 full-time regional advisers were appointed for the last two of these regions.
For Africa the system of part-time detachments of headquarters staff has continued to operate; the budget for 1984-85 provides the same level of resources for this purpose as in the other regions. In Western Asia the regional adviser on labour administration is also providing advice on questions concerning ILO standards.

The regional advisers have been assigned the following responsibilities:

1. To advise governments in all matters relating to the carrying out of their obligations under ratified Conventions or under the ILO Constitution in respect of international labour standards. This includes: advising governments on their replies to questionnaires concerning items on the agenda of the International Labour Conference as well as their comments on proposed texts to be discussed by the Conference; clarifying the nature and scope of the various reporting obligations; explaining the comments made by the ILO's supervisory bodies; advising on measures to be taken in order to overcome difficulties encountered, including assistance in the drafting of necessary legislative amendments, etc.; assistance, where necessary, in the drafting of government reports; advice in connection with the submission of Conventions and Recommendations to the national competent authorities; advice in respect of the ratification of further Conventions; promoting tripartism in matters relating to ILO standards, in particular the establishment of procedures for tripartite consultations along the lines set out in Convention No. 144.

2. To provide information as regards matters arising under the special complaints procedure in cases of alleged violations of trade union rights and, in particular, to approach governments which delay in transmitting the information or observations requested from them.

3. To establish and maintain the closest possible relations with employers' and workers' organisations, informing and advising them in matters relating to ILO standards and procedures.

4. Within the context of 1 to 3 above, to carry out informal advisory missions to countries of the region concerned as well as more formal missions (direct contacts) as appropriate.

5. To convey systematically to the International Labour Standards Department, to the Regional Director and to other ILO offices in the region all pertinent information arising out of the performance of functions as described above.

6. To assist in the preparation and carrying out of standards-related meetings (seminars, symposia, etc.) to be held in the region, as well as of any direct contacts missions which may be carried out from headquarters.

7. To contribute to the preparation of reports on standards-related matters for submission to meetings of regional advisory committees and regional conferences and to participate in such meetings.

8. To advise staff of ILO offices and technical co-operation experts on all aspects of standards having a bearing on their work, with a view to ensuring that
relevant ILO standards are taken fully into account in ILO action in the region.

Other advisory services

Advice on questions concerning international labour standards may be obtained from the Office in various ways other than in the course of visits by ILO officials to individual countries. At sessions of the International Labour Conference and also at regional conferences there is a special service to provide information on such questions, which may concern substantive problems encountered in seeking to give effect to Conventions, both before and after ratification, the clarification of comments made by supervisory bodies, or procedural questions arising out of the constitutional obligations of member States. Where necessary, discussions also take place with the relevant technical departments of the Office. Contacts at conferences may also provide an opportunity for examining the needs for further assistance, whether through technical co-operation projects, advisory missions or fellowships for training in procedures relating to Conventions and Recommendations.

Governments frequently seek guidance from the Office on the meaning of particular provisions in Conventions, either when they are contemplating ratification or, after ratification, when implementing measures are under consideration. It has always been the practice of the Office to respond to such requests, while making it clear that the ILO Constitution does not confer any special competence upon it to give authentic interpretations of Conventions and that, in the event of ratification, compliance with the standards in question would be subject to the established supervisory procedures. Office opinions on the meaning to be attached to Convention provisions seek to draw attention especially to relevant elements in the preparatory work leading to their adoption and to views already expressed by the supervisory bodies.47

Seminars

Since 1964 the ILO has organised a series of regional seminars for the purpose of familiarising officials from labour ministries with procedures relating to ILO Conventions and Recommendations and reviewing problems that arise in their application. Initially these seminars were arranged in rotation for English-speaking African countries, French-speaking African countries, Latin American countries, and countries in Asia and the Pacific. Subsequently, the programme was extended to include seminars for countries in the Caribbean, for Arab countries and for countries in the South Pacific. More recently, a number of tripartite seminars have also been organised. Some have been on a regional or subregional basis, such as those held in Bangalore in 1981 and in Bangkok in 1982 (the latter devoted to practice and procedures in the drawing up of ILO standards). Others have been held on at the national level.
Altogether, in the three-year period 1981-83, the ILO has organised or participated in a total of 20 seminars dealing with international labour standards: seven were regional or subregional seminars for government officials, three were tripartite regional or subregional seminars, six were national tripartite seminars, three were national seminars for government officials, for trade unions and for employers respectively, and one was a national seminar for a wide audience including public officials, academics, employers and trade union representatives.

In addition, during the 67th Session of the International Labour Conference, in 1981, a tripartite seminar was held on national procedures for implementation of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), and its supplementary Recommendation (No. 152). Immediately prior to the Sixth African Regional Conference in Tunis, in October 1983, the ILO organised a tripartite seminar there on freedom of association for participants from Africa to review problems in the region in the application of the relevant ILO standards and ILO procedures for the protection of trade union rights.

Training and manuals

The regional and subregional seminars for officials from labour ministries referred to above aim at training of officials responsible for dealing with matters relating to the adoption and implementation of standards. They provide an opportunity for a complete review of the relevant procedures, including practical work, for discussion of certain substantive problems, and for a useful exchange of experience among the participants.

The ILO also provides individual training to officials during stays at its headquarters offices. In the period 1980-83 officials from 34 countries benefited from such training.48

To provide systematic information on the relevant rules and practices, as a guide principally for government officials called upon to deal with these questions, a Manual on procedures relating to international labour Conventions and Recommendations was published in 1965. It has been periodically revised, last in 1980.

Following the holding of the Regional Tripartite Seminar on Practice and Procedures in Formulating Labour Standards, in Bangkok in 1982, a book on the proceedings of this Seminar, including working papers and conclusions, was published under the Asian and Pacific Project for Labour Administration (ARPLA), as well as a brochure to provide guidance on these questions for delegates attending the International Labour Conference.

A memorandum has also been prepared by the Office to provide guidance on the establishment and functioning of national tripartite consultation arrangements in accordance with Convention No. 144 and Recommendation No. 152.
Measures aimed at securing more active involvement of employers' and workers' organisations and the promotion of tripartite consultations at the national level on questions concerning ILO standards

Reference has been made earlier to the various ways in which employers' and workers' organisations are called upon to participate in the functioning of ILO supervisory mechanisms. The importance of their contribution to the implementation of Conventions and Recommendations has been repeatedly stressed by the supervisory bodies and also by the Conference, more particularly in the resolutions calling for the strengthening of tripartism adopted in 1971 and 1977. The Committee of Experts has examined closely the manner in which States fulfil the requirements in Conventions regarding the association and consultation of employers' and workers' organisations in their implementation. The Office has adopted various measures to inform employers' and workers' organisations of the opportunities available to them for participating in supervising the implementation of Conventions, as well as of the position of individual countries with regard to ILO standards. Each year it sends letters to central employers' and workers' organisations in member States, informing them of the instruments on which reports are currently due from their government, together with copies of any comments made by the Committee of Experts on the Conventions concerned. In response to requests from Workers' delegates at the Conference, the Office has organised study courses on ILO standard-setting and supervisory procedures for worker representatives attending sessions of the International Labour Conference and regional conferences.

These measures — together with regular discussions at regional meetings concerning the implementation of standards — have led to a more active interest in the implementation of ILO instruments among occupational organisations. This has found reflection, for example, in a marked increase in the number of comments from employers' and workers' organisations brought to the attention of the Committee of Experts. In the period 1979 to 1983 an average of 65 such comments were noted by the Committee of Experts each year, a fivefold increase as compared with the situation ten years earlier. Three-quarters of the comments came from workers' organisations, one quarter from employers' organisations.

If one compares the number of comments from occupational organisations with the total number of reports examined each year and also with the total number of ratifications (since comments may be communicated irrespective of whether a detailed report is then due on the Convention concerned), one is led to wonder whether there would not be much greater scope for using this relatively simple method of bringing problems in the implementation of Conventions to the attention of the supervisory bodies. That question appears all the more pertinent when one compares the position of developed and developing countries. In the past five years the great majority of the comments received from employers' and workers' organisations (namely 78 per cent) have concerned developed countries, and they have involved three-fifths of member States in that category. On the other hand, among developing countries, only one in eight
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member States has been the subject of comments. This raises the question how far occupational organisations in less developed countries are equipped to deal with the range of questions arising in relation to international labour standards.

One of the most important measures taken to follow up the 1971 Conference resolution on the strengthening of tripartism was the adoption in 1976 of the Tripartite Consultation (International Labour Standards) Convention (No. 144) and the Tripartite Consultation (Activities of the International Labour Organisation) Recommendation (No. 152). The Convention has so far been ratified by 34 States, of which 16 are in Europe (all of them in Western Europe), five in Africa, nine in the American region, and four in Asia and the Pacific. The Office has given special attention in its advisory work and other contacts with governments to the establishment of consultation arrangements as provided for in these instruments. As mentioned earlier, a memorandum to provide guidance on the matter was prepared. The functions of the regional advisers on international labour standards include responsibility for promoting the establishment of such arrangements. The General Survey prepared by the Committee of Experts on the Application of Conventions and Recommendations in 1982, following the submission of reports on the above-mentioned instruments under article 19 of the Constitution, served to clarify a number of aspects and to stimulate new efforts to implement these standards. It is evident from that survey and from other sources that in a considerable number of countries which have not yet ratified Convention No. 144 consultative procedures of the kind provided for in the Convention exist.

The operation of effective tripartite consultation on the matters covered in Convention No. 144 offers the best guarantee that questions concerning the formulation and implementation of ILO standards will receive systematic and thorough consideration by those directly concerned. The establishment and strengthening of national arrangements for these purposes must therefore constitute a priority objective for the ILO in the years ahead. The Organisation should seek to increase its assistance to member States in this connection, through advice not only on the form of the consultation procedures but also on the administrative arrangements which are required, both in the responsible government services and within the central organisations of employers and workers, to provide a firm infrastructure for regular and meaningful discussions. Such assistance could extend to questions concerning the organisation and training of secretariat services, documentation, and patterns of meetings or other forms of consultation, having regard to the timing and sequence of the various ILO procedures and activities in relation to which consultation should take place.

Developments on these lines should make it possible to resolve a number of issues through discussions at the national level without their becoming the subject of comments by ILO supervisory bodies and also to determine reasonably rapidly the action to be taken in response to any comments made by such bodies.
In so far as these measures are aimed at assisting employers' and workers' organisations to give systematic attention to questions arising in connection with ILO standards and to participate effectively in national discussions on these matters, they will need to be co-ordinated with the general ILO programme of activities for the benefit of such organisations. A workers' education manual on international labour standards was first published in 1978 and an updated edition issued in 1982. The budget for 1984-85 makes provision for the preparation, within the framework of the workers' education programme, of a training guide on tripartite consultation and of booklets on the involvement of trade unions in the application of international labour standards.

Regional discussions

Since the early 1970s it has become the regular practice of advisory committees and of regional conferences in Africa, the Americas and Asia and the Pacific to review the position in their region as regards the application and ratification of ILO Conventions. The reports presented to these meetings, in addition to outlining the general situation and problems encountered, have also examined the position with respect to the Conventions in particular fields such as freedom of association, forced labour, discrimination in employment and occupation, employment policy, labour inspection, wages and social security. These discussions have led to the adoption of a series of resolutions and conclusions which reveal a number of common preoccupations: insistence on the need for flexibility in the formulation of standards to take due account of the problems faced by developing countries, recognition of the importance of ILO instruments in defining development policy objectives and of tripartite consultation in this connection, and a desire for the development and full use of all forms of ILO assistance to promote the application of the Organisation's standards.

These regional discussions have been an important factor leading to the intensification of ILO practical action in the standards field which has been noted above. There is a clear desire in all the regions for the continued review of these questions by the regional bodies concerned.

As already mentioned, the reports presented to regional meetings on the question of the ratification and application of Conventions have analysed the position in selected fields. However, the limited time available at these meetings has precluded any detailed discussion of such analyses, as distinct from an examination of the general problems encountered by member States in regard to ILO standards. It is only in the framework of the discussion of particular technical items on the agenda of the regional meetings that it has been possible to consider specific substantive questions. It would be useful if, in future, problems arising in the implementation of ILO standards in given fields could be the subject of discussion at separate meetings, such as tripartite seminars. An example of this type of meeting is provided by the tripartite seminar on freedom of association for African countries organised on the occasion of the recent
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Regional Conference. Seminars of this kind might also be organised independently of meetings of the regional bodies.

Regional seminars on questions concerning ILO standards have not so far been organised for European member States. It would be useful to make good this omission in years to come.

ILO standards and technical co-operation

It has been generally recognised that ILO standard-setting activities and technical co-operation should be mutually supporting. Technical co-operation should be one means of promoting the implementation of Conventions and Recommendations. These instruments should be taken into account in the conception of projects, in their execution and in any recommendations which result from a project. The briefing of experts should cover the standards implications of their work, and they should be made aware of the obligations binding the country concerned as a result of the ratification of relevant Conventions as well as of any problems noted in the application of those Conventions. A memorandum for the use of technical co-operation experts defines their responsibilities in regard to ILO standards. It draws their attention to the need to respect the requirements of ratified Conventions, to take full account of Conventions dealing with basic human rights (even when not ratified) and to draw also, as far as practicable, on other unratified Conventions and Recommendations as a source of authoritative guidance. There are also arrangements for the checking by the competent department of draft reports on technical co-operation projects involving standards-related issues.

The responsibilities of the regional advisers on international labour standards include the provision of advice to technical co-operation experts on all aspects of ILO standards having a bearing on their work. The regional advisers can themselves furnish certain forms of assistance to governments, for example advice on the type of measures to be taken to implement Conventions, information on corresponding measures adopted in other countries, and assistance in drafting legislative amendments to eliminate discrepancies or gaps in the application of Conventions. In addition, they can be instrumental in identifying needs and making recommendations for more extensive forms of technical co-operation.

In principle, therefore, the basis exists for a close relation between the ILO's standard-setting and operational activities. The relevance of ILO standards to operational activities, however, varies greatly according to the subject-matter and the nature of projects.

In some instances, an entire activity has as its objective the implementation of particular standards. This is the case with the strengthening and development of rural workers' organisations for which the Convention and Recommendation on this subject adopted in 1975 provide the basic terms of reference, even though many of the actual activities are essentially practical and down to earth in nature.

In general, ILO standards can constitute an important source of guidance for
projects aimed at advising on basic policies, on legislation or on the establish­
ment or improvement of certain types of institutions, such as labour adminis­
tration or inspection services. Many projects, however, involve practical action 
dependent more on technical considerations than on policies and legal stan­
dards.

One sees this distinction, for instance, in technical co-operation in the field 
of social security. One part is concerned with the conception, establishment 
and improvement of social security schemes. Here ILO standards are directly 
relevant and are consistently taken into account. Other activities involve the 
provision of financial and actuarial expertise or advice on the management of 
social security schemes, where questions related to ILO standards are much less 
likely to arise.

One finds a similar distinction in the field of vocational training between 
activities aimed at promoting a systematic and coherent approach to training 
(including measures for the participation of employers' and workers' organisa­
tions in the formulation and implementation of training policies and pro­
grammes) and projects at a lower, predominantly operational level. The Human 
Resources Development Convention and Recommendation of 1975 provide the 
normative framework for the former type of action, for which a continuing need 
is expected to exist in the years to come.

Even in areas where the majority of projects are at a technical, operating 
level, ILO standards may be drawn upon to ensure the observance of certain 
safeguards. Thus the guide-lines for the organisation of special labour-intensive 
works programmes refer to the observance of ILO Conventions and Recom­
 mendations on questions such as recruitment of workers (in particular, to ensure 
that their participation in work programmes is voluntary), minimum age for 
employment, remuneration, hours of work, safety and compensation for em­
ployment injuries. Similarly, under arrangements made with the World Food 
Programme, ILO scrutiny of project requests under that programme is con­
 cerned not only with their technical feasibility but also with their compatibility 
with ILO standards.

The above indications show the manner in which ILO standards and tech­
nical co-operation interact; however, there has been no systematic study of the 
subject. It would be useful to undertake such a study in order to determine more 
precisely the cases in which standards can provide significant guide-lines for 
operational activities, the limitations on this type of influence, the adequacy of 
briefing of technical co-operation experts in regard to standards and the extent to 
which experts actually draw on standards in the execution of projects.

There is also the question of how far governments, in establishing their 
policies and priorities in seeking technical co-operation, see such assistance as a 
means of implementing their obligations under Conventions which they have 
ratified or of attaining objectives defined even in instruments by which they are 
not bound. Could technical co-operation not be used more frequently to over­
come difficulties in the application of ratified Conventions, particularly when 
these arise from major material or institutional shortcomings?
Practical application of Conventions

In view of the foregoing questions, it is appropriate to look at the problems affecting the practical application of Conventions.

The obligation accepted by a State when it ratifies an international labour Convention is to make the provisions of the Convention effective. This requires not merely that the provisions of the Convention find reflection in laws and other formal instruments, but also that in practice the national texts through which it is sought to implement the Convention are applied and observed, which gives rise to problems at two levels. Do countries have the necessary administrative machinery to ensure such effective practical application? Do the ILO supervisory bodies have adequate means to ascertain the extent of practical application of Conventions?

The first of these questions, while raised in relation to the application of ILO Conventions, is of much wider scope. How many States have solidly structured and equipped labour administrations able to discharge efficiently the functions defined in the Labour Administration Convention (No. 150) and Recommendation (No. 158) of 1978, and in the Conventions and Recommendations dealing more specifically with labour inspection? Even in highly developed countries, against a background of constraints on public expenditure and growth in the range and complexity of the problems to be addressed, difficulties have been encountered in maintaining inspection services at a satisfactory level. In developing countries, all too often, their lack of resources permits labour inspection services to play only a marginal role, and one finds a glaring gap between the desired protection written into the statute book and everyday reality. The general survey of the effect given to the ILO’s labour inspection standards, due to be made in 1985 by the Committee of Experts on the Application of Conventions and Recommendations, will provide a timely opportunity to assess these problems and to review the action which the ILO can take to help its member States to improve the situation. One has to realise that in many developing countries the strengthening of labour administrations cannot be divorced from the wider problem of how to maintain the efficiency of the public administration in the face of daunting economic difficulties.

From the very beginning of its work, the Committee of Experts on the Application of Conventions and Recommendations realised the importance of ascertaining the extent of application of Conventions not only in law but also in practice, as well as the difficulty of obtaining adequate information on this aspect. This concern led to the inclusion in the report forms for ratified Conventions of a series of questions aimed at eliciting information of a statistical nature as well as on inspection and other enforcement measures, judicial decisions, observations from employers’ and workers’ organisations and any general documentation throwing light on the manner in which the Convention is applied. The Committee of Experts has from time to time reviewed the means at its disposal to examine the practical application of Conventions, and in each report gives an indication of the extent to which such information has been
available to it (including from such sources as reports on labour inspection services, statistical year books, reports on direct contacts missions, and reports on technical co-operation projects).

The Committee of Experts has realised that the scope for providing information on practical application will vary considerably according to the subject-matter of the Conventions. It concentrates its attention on those instruments for which specific questions on the matter are included in the report forms. In recent years, the proportion of cases in which indications concerning practical application have been available for those Conventions has ranged from two-fifths to one-half. The significance of such information, however, varies enormously. Relatively seldom does it permit a comprehensive view of the extent of practical application. On a number of occasions serious shortcomings of a practical nature have come to light only as a result of special studies, missions or inquiries.59

It would be useful for the Office to consider means of improving the systematic collection and analysis of information bearing upon the implementation in practice of ILO standards, as a basis for further examination of this question by the supervisory bodies.

COLLABORATION BETWEEN ORGANISATIONS IN THE DRAWING UP AND IMPLEMENTATION OF INTERNATIONAL STANDARDS

The ILO is not alone in undertaking the setting of international standards. A great amount of standard setting is taking place in other organisations, both within the United Nations system and at the regional level. The ILO has endeavoured to ensure the greatest possible measure of collaboration and co-ordination in this respect. In 1973 the Administrative Committee on Co-ordination, at the initiative of the ILO, considered this question and defined the fundamental concerns in the co-ordination of the legislative work of international organisations, within and outside the United Nations system as follows:

(a) to prevent unnecessary duplication; (b) to prevent conflict between the obligations undertaken by States under different instruments, as well as in the interpretation of instruments adopted by various organisations; and (c) to ensure that statutory provisions on complex technical subjects are established and supervised by those most competent to do so. The Committee considered, further, that, with a view to achieving uniform interpretation of standards, analysis of compliance should be carried out by those with the greatest competence in the field and that, where more than one organisation was concerned in an instrument, it was desirable to provide for co-operation in the instrument itself, covering both mutual representation and full exchange of information and observations, as appropriate.60

It is proposed to indicate, in the first instance, how the ILO has taken account of these principles in its own standard-setting work. In numerous instances, it has sought the collaboration of other agencies in the United Nations system when preparing standards on subjects which involved aspects of concern to them. Examples are the instruments on indigenous and tribal populations, the
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Convention on basic aims and standards of social policy, and instruments dealing with the safety of seafarers, vocational training, rural workers' organisations, nursing personnel and migrant workers. The Preambles to the instruments in question record the fact that they have been drawn up in collaboration with the other organisations concerned and the intention to seek the continuing co-operation of those organisations in promoting and securing their application. Accordingly, the ILO has made arrangements with the various agencies to transmit to them copies of governments' reports on these instruments as well as the texts of previous comments by the ILO supervisory bodies, inviting them to provide any relevant information in their possession or comments which may assist the Committee of Experts on the Application of Conventions and Recommendations in its work. The other organisations are also invited to be represented at the meetings of the Committee of Experts when it considers the application of the standards in question.61 The United Nations are invited to be represented throughout the Committee's sessions.

The ILO has also sought to collaborate with other organisations in establishing and supervising the implementation of standards in fields of common concern. Examples are the preparation, in co-operation with UNESCO, of the Recommendation concerning the Status of Teachers, which was adopted in 1966; the establishment of a Joint ILO/UNESCO Committee of Experts to examine reports on the implementation of that Recommendation which are requested periodically from the States Members of the two organisations; and the collaboration of the ILO with UNESCO and WIPO in the establishment and implementation of standards for the protection of performers, producers of phonograms and broadcasting organisations (Rome Convention of 1961). The ILO has also collaborated closely with the Council of Europe in the drawing up and implementation of various instruments in the social field, such as the European Social Charter, the European Code of Social Security and its Protocol and the European Convention on Social Security. Apart from the technical contribution made to the drafting of the European Social Charter, the ILO convened, at the request of the Council of Europe, a tripartite Conference to examine the draft. Under the terms of the Social Charter, an ILO representative participates in a consultative capacity in the deliberations of the Committee of Independent Experts which examines the reports of States Parties. The European Code of Social Security was based on ILO Convention No. 102, and in this case the examination of reports from ratifying States is entrusted in the first instance to an ILO body, namely the Committee of Experts on the Application of Conventions and Recommendations.62 The ILO is also participating in the current discussions relating to the updating of the European Social Charter and the revision of the European Code of Social Security.

In the case of standards drawn up by the United Nations, the ILO is entitled, under the UN-ILO agreement, to participate in the meetings of the various organs concerned and also to present written comments. It made a significant contribution, for example, to the drawing up of the International Covenant on Economic, Social and Cultural Rights, and is currently, in accordance with a
policy approved by the Governing Body, taking an active part in the discussions of the working group established by the United Nations General Assembly to draft an international convention on the protection of the rights of all migrant workers and their families. Its participation is aimed at ensuring, in particular, full awareness of existing ILO standards and the avoidance, as far as possible, of conflict or duplication of standards. In this instance, the Office has also, at the request of a group of European countries which have submitted the proposals taken as a basis for discussion, provided them with continuing technical advice.

A series of supervisory mechanisms have been established under United Nations instruments, with varying degrees of involvement by the specialised agencies. In particular, the Covenant on Economic, Social and Cultural Rights makes provision, in Article 18, for arrangements between the Economic and Social Council and the specialised agencies for reporting by the latter on progress made in achieving the observance of the provisions of the Covenant falling within the scope of their activities. In May 1976, by resolution 1988(LX), the Council called upon the specialised agencies to submit such reports. In November 1976, in agreeing to this request on behalf of the ILO, the Governing Body decided to entrust to the Committee of Experts on the Application of Conventions and Recommendations the task of examining reports and other available information on the implementation of the provisions of the Covenant which fall within the scope of the ILO's activities. These relate to questions of employment, conditions of work, trade union rights, social security, the employment of women, and the employment of children and young persons. Since 1978 the Committee of Experts has submitted six reports to the Economic and Social Council under these arrangements. The reports have been brought to the attention of the Governing Body and of the Conference Committee on the Application of Conventions and Recommendations. The ILO has also been represented at meetings of the working group of governmental experts established by the Council to assist it in examining reports on the implementation of the Covenant.

The International Covenant on Civil and Political Rights, although dealing with certain matters within the field of activity of the specialised agencies (in the case of the ILO, the prohibition of forced labour and the right to form and join trade unions) does not contain any specific provisions calling for a contribution to its implementation by the agencies. After the establishment in 1976 of the Human Rights Committee, the supervisory organ elected by the States Parties to the Covenant, the ILO offered its collaboration through the provision of information and documentation, particularly as regards the situation under the relevant ILO instruments. Following a decision by the Committee at its eighth session, in 1979, such information is now regularly supplied, for the information of the members of the Committee, in respect of countries whose reports are due to be examined by it. The Committee has also invited the specialised agencies to attend its meetings, but without the right to intervene unless requested.

Arrangements for the exchange of information and mutual representation at
meetings of their supervisory bodies have been made by the United Nations, the ILO and UNESCO in regard to the United Nations International Convention on the Elimination of All Forms of Racial Discrimination, the ILO’s Discrimination (Employment and Occupation) Convention, 1958, and the UNESCO Convention against Discrimination in Education. In the case of the United Nations Convention, the participation of the ILO and UNESCO in the meetings of the supervisory committee is aimed at providing information on general questions, to the exclusion of comments concerning individual reports.

The United Nations Convention on the Elimination of All Forms of Discrimination against Women, which includes provisions relating to discrimination in fields of concern to certain specialised agencies (such as employment and education), provides, in Article 22, for the right of the specialised agencies to be represented at meetings of the supervisory Committee elected by States Parties during consideration of the implementation of provisions falling within the scope of their activities. The Committee may also invite the specialised agencies to submit reports on the implementation of the Convention in areas falling within the scope of their activities. At its second session, in August 1983, the Committee decided to extend such an invitation to the specialised agencies concerned. The Office has also prepared a note on the compatibility of the provisions of the United Nations Convention and ILO standards relating to the employment of women, for presentation to the Committee.

A working group of the United Nations Commission on Human Rights has for some years been engaged in the preparation of a convention on the rights of the child. The ILO has been concerned to ensure that provisions which are contemplated on such matters as child labour and social security protection in respect of children are consistent with ILO standards, and has presented papers for this purpose to the working group.

Several questions will continue to require attention in attempting to bring about an orderly development of international standards. They concern respect for the division of responsibilities within the United Nations system, the adequacy of arrangements for co-ordination in the formulation of standards, co-ordination in supervisory processes, and the relationship between standard-setting and implementation procedures at both the universal and the regional level.

Arrangements have been made by the legal services of organisations of the United Nations system for a yearly exchange of information on proposed legislative activities, and informal consultations also take place periodically among human rights services of international organisations in order to review questions of common interest. These arrangements at secretariat level cannot, however, ensure that the decisions of policy-making organs will always bring about the best division of work or the most appropriate forms of collaboration among organisations.

In recent years, a matter which caused particular concern to the ILO was the decision by the United Nations General Assembly to undertake the preparation of a convention on the rights of all migrant workers and their families. The ILO's
constitutional mandate has always included “protection of the interests of workers when employed in countries other than their own”. In 1947 arrangements were agreed upon between the United Nations and the ILO for co-ordinating action in the field of migration according to which the competence of the ILO was to include the rights and situation of migrants in their quality as workers while the competence of the United Nations would include the rights and situation of migrants in their quality as aliens. The ILO’s activities on behalf of migrant workers have included the adoption of a number of Conventions and Recommendations, particularly in 1949 and 1975. On both these occasions, its action was welcomed by the United Nations. In these circumstances, it would have been desirable to start by analysing the international standards that already existed to protect migrant workers so as to determine on what matters additional standards were needed and in which forum it would be most appropriate to adopt them. Proposals to that effect were however rejected by the United Nations General Assembly.

The draft standards on the rights of migrant workers, now under discussion in the working group of the General Assembly, deal with two types of questions. On the one hand, there are a series of provisions, based on the International Covenant on Civil and Political Rights, which are aimed at guaranteeing protection against arbitrary interference with individual liberty and security of the person and the enjoyment of various freedoms. These are matters which affect migrant workers in their capacity as aliens, irrespective of the exercise of economic activity. They are proper subjects for United Nations action, according to the arrangements agreed upon in 1947. On the other hand, there are a series of provisions which concern the interests of migrants as workers, such as recruitment procedures, access to employment, equality of treatment in employment, exercise of trade union rights and social security. In principle, these are matters for action by the ILO. In relation to them, there will inevitably be overlapping with existing ILO standards and also considerable variations from those standards. Once the United Nations convention is adopted and enters into force, there will thus be two distinct sets of standards on this important question, with separate supervision procedures, in the United Nations and the ILO respectively. Because the new standards will have been formulated in an organisation of purely governmental composition, employers and workers will have been excluded from participation in standard setting in an area of direct concern to them. Likewise, employers’ and workers’ organisations would not be able to participate in the operation of the supervisory arrangements so far proposed for the United Nations convention as they are entitled to do under ILO procedures. Lastly, the existence of the United Nations standards may in practice constrain the exercise by the ILO of its constitutional competence in this field in years to come.

There is also the problem of the relationship between ILO Conventions and comprehensive conventions adopted or in course of preparation by the United Nations, such as the instruments on the elimination of discrimination against women and on the rights of the child. Such instruments tend to be expressed in
terms of general principles, leaving methods of implementation largely to national discretion. Even without expressly contradicting the more precise standards laid down in ILO Conventions, they may erode those standards and obligations accepted in respect of them.

Questions of a somewhat different nature arise in certain areas of interest both to UNESCO and to the ILO. Reference has already been made to joint action by the two organisations in regard to the teaching profession. UNESCO has also adopted Recommendations relating to research workers, translators and artists, and is currently contemplating the adoption of instruments concerning journalists and personnel in higher education. The work of the Joint ILO/UNESCO Committee of Experts on the Application of the Recommendation on the Status of Teachers has given rise to the question whether certain aspects of the conditions of teachers might be the subject of an international convention. All these questions make it necessary to consider the most appropriate organisational context within which to draw up possible standards, the nature and extent of inter-agency collaboration, and the type of instruments best suited for dealing with the various issues. There is the obvious desirability of ILO involvement in the adoption and implementation of standards which affect the interests of workers. There has generally been reluctance to use the ILO constitutional standard-setting process for regulating the conditions of relatively narrow occupational categories. Other forms of guide-lines, such as conclusions of meetings or model regulations, may be indicated in such cases. One could also seek to identify problems common to a number of professional groups which could lend themselves to treatment by means of a Convention or Recommendation.

Reference has been made to the association of the ILO in standard-setting activities by the Council of Europe in the social field. A series of regional human rights conventions have also been adopted, by the Council of Europe in 1950, by the Organisation of American States in 1969, and by the Organisation of African Unity in 1981. None of these conventions specifically provides for collaboration with other organisations in measures of implementation and supervision. Although they deal predominantly with civil and political rights, each of them contains some provisions of direct interest to the ILO. It is therefore necessary for the ILO to follow closely the manner in which these various regional instruments are interpreted and applied. Even though variations of detail have at times led to decisions by the organs of the European Convention that differ from the conclusions reached in relation to ILO standards, no major conflicts of interpretation have so far occurred, and care has been taken to study the relevant ILO instruments, their background and the views of the ILO supervisory bodies.

Apart from convention-based supervisory arrangements, there are also a number of more general investigatory procedures, such as the United Nations procedure for examining communications alleging a persistent pattern of gross violation of human rights, studies of the human rights situations in particular countries by special rapporteurs appointed by United Nations human rights organs, the UNESCO procedure for examination of communications concerning
violations of human rights within UNESCO’s competence, and the general competence of the Inter-American Commission on Human Rights to examine communications addressed to it concerning human rights violations in States which are not parties to the American Convention on Human Rights. There is a risk that human rights principles and standards may be differently interpreted, and particular situations variously evaluated, under these procedures and under ILO procedures. There have frequently been exchanges of information at secretariat level which have sought to reduce this risk. The fact that some of the procedures — such as the United Nations and UNESCO procedures for examining communications alleging human rights violations — are governed by strict rules of confidentiality makes it impossible to know whether issues within the competence of the ILO have been dealt with and, if so, how they have been determined.

Apart from substantive problems which may be encountered in seeking to ensure co-ordination and consistency in standard-setting and supervision by international organisations, the proliferation of instruments and supervisory mechanisms gives rise to resource problems. Already, the range of universal and regional standard-setting activities and supervisory procedures in which the ILO is called upon to collaborate or whose work at least it must follow imposes a substantial workload, particularly on more senior staff. This presents a dilemma. On the one hand, it is obviously desirable to seek the greatest measure of order and co-operation in such activities. On the other hand there is a danger that, increasingly, a disproportionate volume of resources will be diverted from tasks of direct importance for advancing the ILO’s own work. There is also evidence that States are finding the growing number of international supervisory procedures an undue burden, leading to a serious backlog of overdue reports on a number of United Nations instruments.  

The foregoing indications suggest that care will have to be exercised in the years ahead not to bring into existence an unmanageable mass of international standards and procedures. They also underline the importance of efforts to rationalise the legislative work of international organisations in accordance with the principles approved by the Administrative Committee on Co-ordination in 1973. Whenever problems in the application of those principles are perceived, they should be the subject of thorough and timely study and consultation with a view to arriving at the most effective and, if possible, agreed solutions.

CONCLUDING REMARKS

The foregoing review of the functioning of the system of standard setting and supervision has brought out both the efforts which have been made over the years to adapt and to reinforce this essential means of ILO action and the fact that this process can never come to a halt. Also today many questions deserve discussion with a view to seeing how the contents of Conventions and Recommendations can best meet the challenge of changing circumstances and how, through a judicious combination of measures of a promotional nature and of
impartial evaluation of States’ compliance with their obligations, these instruments can best attain their objective of improving the life of ordinary men and women and the solidity of the social fabric of the world community.

All human institutions must find the proper equilibrium between stability and change. This also applies to the system of international labour standards. Accordingly, in discussing the future course of standard setting, one must recognise that, while in many areas new concepts and approaches may need to be contemplated, there are others where Conventions lay down standards of fundamental importance for the establishment and maintenance of a free and just social order. They are among the most widely ratified of ILO instruments, and their continuing and universal validity has been repeatedly affirmed by the principal deliberative bodies of the Organisation. The maintenance and ever-widening acceptance and observance of these standards must remain a priority objective for the ILO.

The Organisation must also continue to seek ways of assisting its member States to give effect to Conventions and Recommendations and to meet their obligations in regard to these instruments. It must always remain attentive to the way in which the various supervisory mechanisms function and how States’ responsiveness to them can be enhanced. Full and frank dialogue must be a central feature of supervision. So must its capacity for objective, independent and fearless evaluation of compliance with freely accepted obligations. Obligations arising out of ILO membership and as a result of ratification of Conventions must retain their credibility as solemn commitments.

I welcome the forthcoming discussion of these questions by the Conference as a further opportunity for constructive development of the ILO standards system. It is my hope that this discussion will help to determine the Organisation’s policies on the main issues which have been reviewed in the present report, such as:

- the general approach to the adoption, revision, consolidation and implementation of standards;
- improvements in the procedures for the adoption of Conventions and Recommendations with a view to ensuring that the subjects chosen for standard setting and the contents of the instruments adopted respond as fully as possible to the needs and aspirations of the entire membership of the Organisation, that the adoption of standards benefits from wide-ranging prior tripartite consultations as well as from thorough discussion at the Conference, and that the right balance is secured between the aim of promoting social advancement and the need to make allowance through elements of flexibility for differences in levels of development;
- clarification of the principles underlying supervision of compliance with the obligations accepted in respect of ILO standards and of the legal nature and effects of the work of the various supervisory bodies;
- means of resolving situations in which the views of the supervisory bodies are contested by the State concerned;
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— measures to assist member States to participate more actively in drawing up Conventions and Recommendations and to promote the implementation of these instruments;
— measures to ensure adequate co-ordination of the standard-setting work of international organisations.

Notes

1 See, for example, the resolution concerning the ratification and implementation of international labour standards in Africa adopted by the Sixth African Regional Conference (Tunis, October 1983), doc. GB.224/6/15, p. 19; the resolution concerning international labour standards in Asia, in particular those relating to human rights and trade union freedoms, adopted by the Eighth Asian Regional Conference (Colombo, September-October 1975), Official Bulletin (Geneva, ILO), 1976, Series A, No. 1, p. 56; and the resolution concerning the role of international labour standards in the countries of the Americas, adopted by the Tenth Conference of American States Members of the ILO (Mexico City, November-December 1974), Official Bulletin, 1975, Series A, No. 2, p. 167.


4 The proceedings of this seminar have been published by the Asian and Pacific Project for Labour Administration (ARPLA). See ILO: Labour administration: Developing countries and ILO standards, ARPLA Series No. 15 (Bangkok, 1983).

5 The Employers' members of the Governing Body addressed comments on these questions to the Director-General in October 1982. Their views were reflected in statements made by several Employer delegates at the Conference in 1983; see, in particular, the statements by Mr. von Holten and Mr. Decosterd in ILO: Record of Proceedings, ILC, 1983, pp. 21/26 and 36/13-14 respectively.


10 ILO Regional Conferences have also, in a number of resolutions, called for priority attention to be given by States in the regions concerned to the application and ratification of selected Conventions.


12 Reference may be made to the numerous model codes, codes of practice, guides and manuals in the field of occupational safety and health, and to the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy.

13 See docs. GB.199/9/22(Rev.), Appendix, para. 15, summarising the main points emerging from the discussion of the in-depth review of international labour standards by the Programme, Financial and Administrative Committee of the Governing Body in February 1976; and GB.215/5/1, Appendix II, para. 7 (conclusions of a working party of the Ninth Asian Regional Conference, Manila, 1980).
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15 An example is provided by the transfer, during the second discussion of the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), of a provision relating to equality of treatment from Part II (which concerns equality of opportunity and treatment) to Part I (relating to migrations in abusive conditions). This has given rise to difficulties of interpretation — see memorandum of the International Labour Office in Official Bulletin, 1979, Series A, No. 3, p. 156 — and appears to have constituted an obstacle to ratification of the Convention by countries of immigration.


19 ILO: The impact of international labour Conventions and Recommendations, op. cit.

20 See, generally, the examples quoted in ILO: The impact of international labour Conventions and Recommendations, op. cit., Ch. 3.


22 See the memorandum presented to the Conference in 1983 on behalf of a number of socialist governments, op. cit. (note 6); see also the statements by the Government delegates of Czechoslovakia and the USSR, in ILO: Record of Proceedings, ILC, 1983, pp. 25/3 and 29/7, and the Report of the Committee on the Application of Conventions and Recommendations, in Record of Proceedings, ILC, 1982, Part One, para. 5, pp. 31/2-3.

23 ILO: Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4A), ILC, 1977, Part One, para. 31, pp. 10-11. This was a unanimous statement by the Committee. However, in dissenting opinions concerning the application of certain Conventions in socialist countries, two members based themselves on the need to take account of the economic and social systems existing in those countries. ibid., pp. 82 and 134-135.

24 See, for example, Report of the Committee on the Application of Conventions and Recommendations, in ILO: Record of Proceedings, ILC, 1982, Part One, para. 6, p. 31/3.


26 See the Report of the Committee on the Application of Conventions and Recommendations, in ILO: Record of Proceedings, ILC, 1980, Part One, paras. 22-23, p. 37/6 and Appendix, paras. 3 and 10, pp. 37/19-20; see also the Memorandum presented to the Conference in 1983 on behalf of a number of socialist countries, op. cit. (note 6).


28 ibid., 1983, Part One, paras. 31/16, paras. 84 and 87.


30 These criteria relate to the following matters: failure during the past two years to supply any reports on ratified Conventions; failure to supply first reports on ratified Conventions for at least two years; failure during the past five years to supply any reports on unratified Conventions and on Recommendations requested under article 19 of the Constitution; failure to provide indications on the steps taken to submit to the national competent authorities the Conventions and Recommendations adopted during the last seven Sessions of the Conference for which such information was due; failure to provide replies to all or most of the observations and direct requests of the Committee of Experts; failure during the preceding three years to indicate the representative organisations of employers and workers to which, in accordance
with article 23 (2) of the Constitution, copies of the reports and information supplied to the ILO under articles 19 and 22 have been communicated; failure, despite repeated invitations by the Conference Committee, to take part in the discussion concerning the country in question.

31 Doc. GB.194/PFA/12/5, paras. 103-109.
33 Article 10 of the standing orders.
36 The Committee on Freedom of Association regularly brings to the attention of the Committee of Experts on the Application of Conventions and Recommendations aspects of cases examined which throw light on the observance of ratified Conventions.
40 ILO: General survey on the application of the Conventions on freedom of association, the right to organise and collective bargaining and the Convention and Recommendation concerning rural workers' organisations, Report III (Part 4B), ILC, 1983.
42 See, for example, 193rd Report of the Committee on Freedom of Association, paras. 33-39.
45 Doc. GB.224/6/15, paras. 44 and 45 and 48, and Appendix II.
46 See ILO: Report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 4A), ILC, 1979, Part One, paras. 42-89. In subsequent years, additional progress resulting from direct contacts has been noted.
47 See the note on Office interpretations of international labour Conventions presented to the Governing Body in November 1982, in doc. GB.221/19/1.
48 These countries were: Bahrain, Bulgaria, Colombia, Czechoslovakia, Democratic Yemen, Egypt, Equatorial Guinea, Ethiopia, French Polynesia, Gabon, Ghana, Guinea, Guinea-Bissau, Indonesia, Kuwait, Malaysia, Mauritius, Mexico, Mongolia, Nigeria, Panama, Peru, Philippines, Poland, Romania, Somalia, Sri Lanka, Sudan, Swaziland, Syrian Arab Republic, USSR, United Arab Emirates, Venezuela and Viet Nam. Similar training was also provided to an official of the Arab Labour Organisation.
49 For a fuller indication of the measures adopted by the Committee of Experts, see the Committee's reports of 1972, 1973 and 1974 respectively, Report III (Part 4A), ILC, 57th Session, Part One, paras. 28-98; ibid., 58th Session, Part One, paras. 56-77; ibid., 59th Session, Part One, paras. 43-51.
50 Of the 14 States concerned, eight were in the American region, three in Africa and three in Asia.
52 See, for example, the reports presented to the Inter-American Advisory Committee in 1982 (doc. AM/AC/VI/3), pp. 17-18, to the Asian Advisory Committee in 1983 (doc. AAC/XVIII/3), para. 98, and to the Sixth African Regional Conference in 1983 (Report of the Director-General, Report I (Part 2)), paras. 106-108.

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55 See E. Costa, S. Guha, M. I. Hussain, N. T. B. Thuy and A. Fardet: Guidelines for the organisation of special labour-intensive works programmes, (Geneva, ILO, second impression with modifications, 1980; mimeographed World Employment Programme research working paper; restricted). These questions have also been given attention in training courses under this programme and at the annual joint UNDP/ILO meetings for support to special public works programmes.

56 See FAO: The application of international labour standards to WFP activities, WFP Intergovernmental Committee, 4th Session, Rome, November 1963 (doc. WM/IGC: 4/10; mimeographed).

57 The Labour Inspection Convention, 1947 (No. 81), has been ratified by 105 States (for industry and commerce by 86 States, for industry only by 19). The implementation of the Convention encounters serious difficulties in many of these States, particularly as regards ensuring sufficiency in the number of labour inspectors, in the material facilities (especially transport) placed at their disposal, and as a consequence in the breadth and frequency of inspections. In many countries the work of the inspection services appears to be confined essentially to the investigation of complaints and intervention in disputes. The Labour Inspection (Agriculture) Convention, 1969 (No. 129), has been ratified by only 23 States.


62 ibid., paras. 23 and 24.

63 Information on the composition, mandate and activities of this working group has been provided to the Governing Body — see docs. GB.211/IO/3/6, paras. 14-19; GB.214/IO/5/3, paras 10-15; GB. 218/IO/2/11, paras. 7-13; GB.221/IO/2/6, paras. 9-13.

64 See docs. GB.205/IO/5/5; GB.208/IO/3/5, paras. 19-22; GB.212/IO/5/7, paras. 10-11.


67 See GB.212/IO/1/8, paras. 14-21.

68 Another working group of the United Nations General Assembly is concurrently engaged in drafting a declaration on the human rights of aliens.

69 The European and American Conventions both prohibit forced labour. The former provides for the right to form and join trade unions, while the latter recognises the right to associate, inter alia, for economic, labour and social purposes. States Parties to the American Convention also undertake to adopt measures with a view to the progressive realisation of the rights implicit in the economic and social standards set forth in the Charter of the Organisation of American States. The African Charter of Human and Peoples’ Rights provides, in general terms, for the right to free association, for the right of every individual to work under equitable and satisfactory conditions and to receive equal pay for equal work, and for the right of all peoples to their economic, social and cultural development. It also prescribes a series of duties for the individual, including the duty to serve his national community by placing his physical and intellectual abilities at its service and the duty to work to the best of his abilities and competence.
For example, the European Commission of Human Rights concluded that the use of convict labour by private undertakings is not contrary to the European Convention since, unlike the ILO's Forced Labour Convention, it does not prohibit this practice. On the other hand, in the case of Young, James and Webster (1981), the European Court of Human Rights considered certain situations resulting from union security agreements to be contrary to the provisions relating to freedom of association of the European Convention on Human Rights, whereas ILO standards neither authorise nor prohibit union security clauses. See Council of Europe, European Court of Human Rights: Case of Young, James and Webster: Judgement (Strasbourg, 13 Aug. 1981).

See, for example, the judgements of the European Court of Human Rights in the case of Young, James and Webster (1981) (note 70 above), and in the case of Van der Mussele (1983), concerning an allegation of forced labour. idem: Case of Van der Mussele: Judgement (Strasbourg, 23 Nov. 1983).