

**FOR INFORMATION**

FIRST ITEM ON THE AGENDA

Resolutions in the International Labour Conference: Additional considerations**Introduction**

1. At its 297th Session (November 2006), the Governing Body considered an information document prepared by the Office regarding the main features of the procedures that apply to resolutions at the International Labour Conference.¹ After discussion, the Governing Body requested the Office to prepare a second document, following consultation with the tripartite constituents, on the subject for the next session of the Governing Body, taking into account the scope of the discussion in the Committee on Legal Issues and International Labour Standards (LILS).² Accordingly, the purpose of this paper, which follows such consultations, is to complement the information provided in the previous document with a particular focus on the rules and practice pertaining to the receivability of resolutions relating to an item on the agenda of the Conference.³
2. Since 1919, the International Labour Conference has adopted a great number of resolutions relating to an item on the agenda, both on matters of substance and of a more administrative nature,⁴ such as those to place a standard-setting item on the agenda of the next session of the Conference for second discussion. The focus of this paper is on

¹ GB.297/LILS/4/1.

² GB.297/12 (Rev.), para. 48.

³ It is recalled that the Standing Orders of the Conference distinguish two main categories of resolutions: (a) those relating to an item placed on the agenda of the Conference as that item was determined by the Conference or the Governing Body; and (b) those relating to matters not included in the agenda of that session of the Conference. The latter are governed by article 17 of the Standing Orders of the Conference, which provides for an early submission deadline and a clear procedure to deal with their receivability. Resolutions not relating to an item on the agenda are not the subject of this paper.

⁴ A full list of 1,229 resolutions of all types that have been adopted up to and including the 95th Session of the Conference (2006) may be found on the ILO web site (www.ilo.org/public/english/bureau/leg).

resolutions proposed on substantive matters, chiefly within the context of technical committees.⁵

A. Conditions of receivability of resolutions relating to an item on the agenda

3. In accordance with the Standing Orders and established practice, the factors taken into account for the receivability of a resolution “related to an item on the agenda” are essentially the observance of time limits for its submission, the relation of the subject matter to the agenda item – both of which questions are discussed below – as well as the eligibility of the sponsor to propose a resolution,⁶ the requirement that a resolution be seconded,⁷ and the language of the resolution (English, French – as the official languages of Conference committees, or Spanish).⁸

1. Time limits for submission

4. Time limits for submission are set by the Standing Orders so as to ensure advance notice and a period for consideration.
5. **Resolutions submitted to the Conference (plenary).** In accordance with article 15(4) of the Standing Orders, any resolution relating to an item on the agenda that is submitted to the Conference (i.e. not to a committee of the Conference) must be handed in to the secretariat of the Conference at least two days before the sitting at which it is moved and is to be distributed on the following day.
6. **Resolutions submitted to a committee.** In accordance with article 63(4) of the Standing Orders, resolutions submitted directly to a committee of the Conference must be handed in to the secretariat of the committee before 5 p.m. to enable the resolution or amendment to be discussed at a meeting to be held on the following morning, or before 11 a.m. to enable the resolution or amendment to be discussed at the meeting to be held in the afternoon of the same day. In practice, however, when establishing their plan of work, committees often set somewhat different, often earlier, time limits for submitting amendments and, in some cases, also specifically for submitting resolutions.
7. The time limits provided in the Standing Orders for resolutions submitted in a committee reflect the minimum time necessary to process a resolution, i.e. to translate, reproduce and distribute it (roughly half a day). While the time limits provided for resolutions not relating to an agenda item – 15 days before the opening of the session of the Conference – are longer, such time limits for technical preparation of the discussion are apparently not considered necessary because the resolution relates to subject matter that is already under discussion at the Conference. When a committee sets earlier deadlines for the submission of resolutions, however, this can both facilitate the planning of the work of the committee and of its secretariat and allow more time for additional preparation and consultation.

⁵ These represent roughly 30 per cent of all resolutions adopted.

⁶ See article 3(7) of the Constitution and articles 1(3) and (4) and 56 of the Standing Orders.

⁷ See article 63(1) of the Standing Orders; a resolution submitted by a group is considered seconded.

⁸ See articles 58(1)–(3) of the Standing Orders.

2. Relation to an item on the agenda

8. The criteria that are implicit in the phrase “related to an item on the agenda” revolve around the questions of the terms used, the scope of the subject matter under discussion, and the mandate of the body examining the proposal. Given the wide range of topics and contexts in which proposed resolutions arise, the Standing Orders have refrained from including explicit criteria for the determination of receivability. This may be explained in part by the powers given to the Conference itself under the ILO Constitution.

(a) Definition of the item on the agenda

9. To be receivable under article 15 or 63 of the Standing Orders, a resolution must be related to an item on the agenda. As follows from article 17(1)(1) of the Standing Orders, the term “item on the agenda” is to be understood in its constitutional sense as a technical item placed on the agenda by a specific decision of the Governing Body or the Conference, as distinguished from standing agenda items.⁹ In accordance with article 14(1) of the Constitution, the agenda of the Conference is settled by the Governing Body, subject to the right of Members to object to an item (which can, in turn, be maintained by the Conference) and to the prerogative of the Conference to place new items on the agenda of the following session (article 16 of the Constitution).
10. The formulation of an agenda item usually comprises two parts: (1) the item itself, which provides a description of the substantive area to be discussed; and (2) an indication as to whether the item is for standard setting or general discussion. The agenda item can be drawn broadly or narrowly by the Governing Body when it sets the Conference agenda.¹⁰ Since the agenda item itself is the reference point for whether or not a proposed resolution is related to it, the scope of this item becomes a key element in the determination of receivability.
11. To permit adoption of a resolution, the possibility of proposing resolutions does not need to have been mentioned in advance in relation to a particular committee. In accordance with consistent practice, for instance, the usual indication of the proposed result of a standard-setting item (e.g. “with a view to the adoption of a Convention”) without a reference to potential resolutions has not prevented their adoption by either the relevant committee or the Conference.¹¹

⁹ See ILC, 72nd Session (1986), *Provisional Record*, p. 2/1.

¹⁰ For example, the agenda of the 95th Session (2006) of the Conference included the item “Occupational safety and health – *Standard setting, second discussion, with a view to the adoption of a Convention and a Recommendation*”; whereas at the prior session of the Conference the item was entitled “Occupational safety and health – *Development of a new instrument establishing a promotional framework in this area*”. While the purpose of the discussion was worded differently for the two sessions, the item itself (“occupational safety and health”) was phrased in broad terms in both instances. In contrast, at the 90th Session (2002) of the Conference, the agenda item was narrowly drawn: Recording and notification of occupational accidents and diseases, including the possible revision of the list of occupational diseases, Schedule I to the Employment Injury Benefits Convention, 1964 (No. 121), including a mechanism for future updating of the list of occupational diseases – *Standard setting, single discussion, with a view to the adoption of a Protocol and a Recommendation*.

¹¹ See many examples in the collection of resolutions adopted by the Conference, note 4 above.

(b) Determination of whether there is sufficient relation to the agenda item

12. The Standing Orders do not specify the criteria for determining whether a resolution is “related to an item on the agenda”. Although past decisions by the Conference or its committees on the receivability of a resolution have rarely been explicit as regards the reasoning behind them, some general orientations may nevertheless be discerned.

- (i) In the first instance of examining receivability, the understanding attached to a term is that of its use in ordinary technical language. A definition that may have been assigned to a term in the instrument(s) under discussion has not proven decisive.¹²
- (ii) Reference may be made to the scope of the subject matter of both the agenda item and of the proposed resolution. While the scope of the subject matters need not totally overlap, they must intersect sufficiently or have connected aspects in order to be “related”. In this regard, practice has varied to some extent in different circumstances, as illustrated by the following examples:
 - At the 49th Session (1965) of the Conference, one of the items on the agenda was the employment of young persons in underground work in mines of all kinds. Two draft resolutions submitted to the competent committee were considered by the Chairperson as not closely enough related to the work of the committee and were withdrawn by their authors: (a) a resolution concerning minimum standards for safe and healthful working conditions for all persons employed in mines; and (b) a resolution concerning the protection of young persons employed in tunnelling.¹³
 - At the 89th Session (2001) of the Conference, the Committee on Safety and Health in Agriculture had, before it, a draft resolution, which, while seeking to establish a link between safety and health and the terms of trade in agricultural products, requested, inter alia, member States to implement and promote a fair trade policy, reductions in all tariffs and the elimination and prohibition of all types of export subsidies for agricultural products. The resolution was withdrawn after a number of committee members expressed the view that the resolution was outside of the mandate of the Committee.¹⁴
 - At the 90th Session (2002) of the Conference, a very similar resolution, the draft resolution on the informal economy and international trade barriers and subsidies, especially concerning agricultural products, submitted by the same

¹² See ILC, 82nd Session (1995), *Provisional Record* No. 19, para. 23: Following a debate in the Committee on Safety and Health in Mines, which led to the exclusion of the oil and gas exploration and extraction industry from the proposed Convention and Recommendation on safety and health in mines, a working group was set up to discuss how to deal with the special problems arising in relation to that industry. In this connection, the Legal Adviser referred to the Standing Orders concerning resolutions and stated that “the decision as to whether the exploration and extraction of oil and gas were related to the Conference agenda depended not on the definition ascribed to the term “mine” in the texts of instruments adopted, but on the understanding attached to the term in ordinary technical language. From the description of the term “mine” given in Report V(1) on safety and health in mines ... it could be construed that the exploration and extraction of oil were covered within the definition of a mine, while it appeared less clear whether coverage could be extended to gas.”

¹³ See ILC, 49th Session (1965), *Record of Proceedings*, Appendix VI, paras 37–50 (pp. 632–633).

¹⁴ See ILC, 89th Session (2001), *Provisional Record* No. 15 (Second Part), paras 787–811.

authors, was referred to the Committee on the Informal Economy, although the Selection Committee had noted that the resolution extended beyond the issues before that technical committee.¹⁵ After discussion during which some Committee members expressed the view that the text went beyond the ILO's mandate and expertise, the resolution was withdrawn by its authors.¹⁶

- (iii) In at least one instance, only part of a proposed resolution was referred to a committee for which it was deemed competent as to that part.¹⁷
- (iv) Finally, neither a committee nor the Conference can adopt a resolution which goes beyond its respective competence.

13. Orientations of this type may offer guidance in the wide variety of situations in which proposed resolutions are put forward in committees.

B. Procedure for determining receivability of resolutions relating to an item on the agenda

1. Procedures for discussion of resolutions

- 14. When a resolution is submitted to the Conference with reference to an item on the agenda or to article 15 of the Standing Orders, it is normally referred to the Selection Committee under its duty to make recommendations to the Conference on the proper conduct of its business in accordance with article 4(2) of the Standing Orders. This Committee usually recommends that the resolution be referred to the technical committee dealing with the concerned item on the agenda.¹⁸
- 15. A resolution which is submitted with reference to article 17 of the Standing Orders (or to the Resolutions Committee) may in fact be related to an item placed on the agenda. In such a case, the Selection Committee normally recommends to the Conference to refer the resolution in question to the technical committee within whose competence it comes, in accordance with article 17(3). This practice seeks to ensure coherence in the treatment of matters that are already under discussion in a committee of the Conference.
- 16. In practice, a relatively small number of resolutions have been submitted directly to the Conference in plenary. In contrast, any resolution that has been discussed and adopted by a committee has to be adopted by the Conference plenary in order to become a resolution of the Conference and as such an act of the Organization.
- 17. When a resolution is submitted directly in a technical committee, it is first discussed in that committee. Normally, the committee officers agree on a timetable for the work of the

¹⁵ See ILC, 90th Session (2002), *Provisional Record* No. 4-2, point 21.

¹⁶ See ILC, 90th Session (2002), *Provisional Record* No. 25, paras 210-215.

¹⁷ See ILC, 40th Session (1957), *Seventh report of the Selection Committee, Record of Proceedings*, p. 581: Reference of certain resolutions and of part of a resolution to the Committee of Experts on the Application of Conventions and Recommendations.

¹⁸ See, e.g., ILC, 90th Session (2002), *Provisional Record* No. 4-2, point 21.

Committee, including fixing deadlines for submission of amendments and resolutions, recommending to set up a working party, etc. In all cases, it is for the Chairperson to decide on the timing of the discussion, which is usually scheduled for after the instruments to be examined (Convention/Recommendation) have been adopted.¹⁹

18. There is no specific procedure for the examination of the receivability of a proposed resolution in a committee, although logically this issue must be addressed before any discussion on its merits. As noted above, in order to give priority to the main task of the technical committee (adopt a proposed Convention, Recommendation or conclusions), resolutions are usually discussed at a late sitting of the committee.
19. In practice, resolutions have been withdrawn by the authors in the face of doubts expressed by other committee members as to receivability, particularly after it had been agreed that some of the concerns expressed in the draft resolution would be reflected in the report and/or the conclusions of a general discussion.²⁰ Furthermore, instead of itself deciding on the receivability of a resolution, a committee may decide to “refer the matter back” in accordance with article 63(2)(a) of the Standing Orders. This would theoretically allow the resolution to be sent to the Conference as a whole for decision on the receivability and substance. If the committee only wishes to refer back the matter concerning the receivability of the resolution, it will rather refer the resolution to the Selection Committee.²¹ However, there may be practical problems of referral that are linked to the schedule of work of the Conference: if a resolution is taken up by the technical committee in one of its last sittings, there will normally be no time for it to be examined by the Selection Committee, which would need to be specifically convened (since normally it has no meeting scheduled during that period), and for its recommendation to be adopted by the plenary.²² Similarly, referral to a plenary sitting of the Conference would assume that one has been scheduled at the relevant time.
20. The Standing Orders lay down the same time limits and procedures for proposed resolutions as for amendments (see article 63). Committees themselves, directly and through their officers, control their work schedules within the time available. Within the existing framework, for example, the officers of a committee could set an early deadline for resolutions and if possible make a unanimous recommendation to the committee as to their receivability, with a view to facilitating a decision of the committee based on consensus. In the absence of consensus, decision would be by simple majority vote of the committee. Whether additional specific rules for examining resolutions (for instance an earlier deadline, with the possibility of waiver by the committee officers) would be desirable or not is of course a matter for the Conference itself to determine. This would be preceded by recommendations to this effect made by the Governing Body, after

¹⁹ See ILC, 86th Session (1998), *Provisional Record* No. 16, p. 16/50, para. 153.

²⁰ This was the case for the abovementioned draft resolution on the informal economy and international trade barriers and subsidies, especially concerning agricultural products, discussed by the Committee on the Informal Economy in 2002. See ILC, 90th Session (2002), *Provisional Record* No. 25, p. 25/45, para. 185. For another example, see ILC, 72nd Session, *Provisional Record* No. 30, p. 30/8, para. 65.

²¹ A referral to the Selection Committee was suggested as one possible option in the case of the resolution submitted to the Committee on Safety and Health in Agriculture, but the committee chose to deal with the resolution itself (see ILC, 89th Session (2001), *Provisional Record* No. 15, p. 15/94, para. 792).

²² This difficulty existed also in the case of the resolution concerning asbestos in 2006 where a referral to the Selection Committee was determined as not practicable in light of time constraints (see ILC, 95th Session (2006), *Provisional Record* No. 20, p. 20/49, para. 306).

examination in the LILS Committee, should this Committee as a whole make a request to the Office to submit specific proposals.

2. Role of the different bodies in determining receivability

21. There is no provision designating a responsible body in respect of resolutions relating to an item on the agenda. The three bodies involved that may have a role to play in determining the receivability of a resolution are the Conference (in plenary), the Selection Committee (when available) and the technical committee concerned.

(a) Conference (plenary)

22. The Conference is sovereign to decide on questions of competence over matters relating to items placed on its agenda. Therefore, when the Selection Committee recommends referring a resolution to a technical committee or when a resolution emerges from a technical committee proposing its adoption, the Conference may always reject the committee's recommendation on the grounds that it considers the resolution outside of the mandate of the Conference. Any delegate to the Conference may question the receivability of a resolution by making a motion to that effect, which must be decided before the question of substance is debated. It is also possible to hold a record vote rather than the usual procedure of adopting resolutions by consensus.

(b) Selection Committee

23. In accordance with the functions of the Selection Committee under article 4(2) of the Standing Orders, it has regularly had to deal with resolutions. Before the Resolutions Committee was created in 1932, and more recently in certain special circumstances,²³ when no other committee was competent or available, the Selection Committee has examined the substance of resolutions. Usually, however, its role in respect of resolutions is limited to recommending that they be examined by a particular committee. The Selection Committee exercises a certain degree of discretion as to the appropriateness of transferring a particular resolution to a committee in the light of its own mandate which is to ensure a "proper conduct" of the business of the Conference. Nevertheless, before making such recommendation, it necessarily touches upon the question as to whether a resolution relates to matters included in an item placed on the agenda.

24. In a recent case, however, the Selection Committee did not consider itself empowered to block a resolution (i.e. recommend to the Conference not to refer a resolution to a committee for examination) on the grounds that it may not be related to an item on the agenda. In 2002, it referred the draft resolution on the informal economy and international trade barriers and subsidies, especially concerning agricultural products, to the Committee on the Informal Economy, because it understood that it had "no real choice but to refer the resolution to a Conference Committee" and although it "recognized that the substance of the resolution extend[ed] beyond the issues before the Committee on the Informal Economy".²⁴ In addition, the Committee may have taken into account that the examination of receivability in that case could have given rise to a substantive debate on the topic,

²³ For example, resolutions in relation to the question of the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29), adopted at the 87th (1999), 89th (2000) and 95th (2006) Sessions of the Conference.

²⁴ See ILC, 90th Session (2002), *Provisional Record* No. 4-2, point 2.

which would not be within the mandate of the Selection Committee – at least where a committee exists that deals with matters that may at least partially or remotely be related to the substance of the resolution.²⁵

(c) Technical committee

- 25.** Certain aspects of the technical committee render it well-placed to examine a resolution including its receivability in relation to the item on the agenda with which that committee is concerned. As the body composed of the delegates and advisers which are most knowledgeable of the substance of the concerned agenda item, the technical committee has the highest technical knowledge to decide what is covered by the agenda item and what is not. While the determination of a committee's competence is partly a legal question as it touches upon the balance of powers between the Governing Body and the Conference and sometimes on the mandate of the Organization as a whole, as defined in legal texts (Constitution and Standing Orders), it is nevertheless largely a matter of judgement for the committee itself.²⁶ Committees have occasionally asked for the opinion of the Legal Adviser, who may draw the committee's attention to certain elements that could assist it in exercising its discretion.²⁷ If the committee adopts the resolution, it sends the proposed resolution to the Conference plenary for recommended adoption.
- 26.** Another aspect of examining a resolution, including its receivability, in the technical committee to whose mandate it may relate (at least in part) is that, in case of controversy over the resolution there may be room for informal discussions and negotiation of a compromise solution before the text formally comes to the floor. In any event, the final decision as to the adoption of a resolution, including its receivability,²⁸ is taken by the Conference in plenary.
- 27.** The Committee may wish to take note of the information provided in this document.

Geneva, 19 February 2007.

Submitted for information.

²⁵ This argument was already raised at the time of the adoption of the current article 17(3) of the Standing Orders. In the view of some Governments, the responsibility for recommending referral of a resolution to a committee should have been entrusted to the Resolutions Committee rather than to the Selection Committee, as this had been occasionally done before (see ILC, 72nd Session (1986), *Provisional Record* No. 2, p. 2/2).

²⁶ See statement by the Chairperson of a technical committee, based on an opinion by the Office, in 1965 (ILC, 49th Session (1965), *Record of Proceedings*, p. 633, para. 45).

²⁷ The most recent example concerned the resolution concerning asbestos in the Committee on Safety and Health in 2006 (ILC, 95th Session (2006), *Provisional Record* No. 20, p. 20/51, para. 327).

²⁸ An appropriately formulated motion would be required for a decision on this point, since what is submitted to the plenary for adoption is the proposed resolution itself.