



FOURTH ITEM ON THE AGENDA

**Possible improvements in ILO  
standards-related activities**

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## Introduction – Background

1. The question of possible improvements in ILO standards-related activities has been discussed for many years within the Organization, both by the International Labour Conference<sup>1</sup> and by the Governing Body.<sup>2</sup>
2. The results of this considerable effort of reflection and updating have so far been especially persuasive in relation to the work of examining, promoting and pruning existing standards. Those results are reflected in the campaign for the ratification of the fundamental Conventions launched in 1995,<sup>3</sup> the establishment in the same year of the LILS Working Party on Policy regarding the Revision of Standards,<sup>4</sup> and the adoption in 1997 of an amendment to the ILO Constitution<sup>5</sup> and to the Standing Orders of the Conference<sup>6</sup> with a view to enabling abrogation or withdrawal of obsolete Conventions and Recommendations. The campaign for the ratification of the fundamental Conventions was given a considerable boost by the adoption of the Declaration on Fundamental Principles and Rights at Work and its Follow-up. The total number of ratifications of the eight fundamental Conventions now stands at more than 1,000. These Conventions include the Worst Forms of Child Labour Convention, 1999 (No. 182), which will come into force on 19 November 2000 and which at the time of drafting this document had already received 38 ratifications. In accordance with its mandate, the Working Party on Policy regarding the Revision of Standards has for its part examined almost all the Conventions and Recommendations adopted before 1985, with the exception of the fundamental and priority Conventions. This process has made it possible, among other things, to classify these instruments into different categories, depending on whether they are up to date, in need of revision or obsolete. It has shown that, of a total of 183 Conventions and 191 Recommendations, the actual number of Conventions identified so far by the Governing Body as being up to date,<sup>7</sup> and therefore suitable for promotion on a priority basis, was in fact around 70. This has made it easier to identify subject areas on which attention should

<sup>1</sup> The Conference discussions have been based on the following reports of the Director-General: *Defending values, promoting change – Social justice in a global economy: An ILO agenda*, International Labour Conference, 81st Session, 1994; *ILO standard-setting and globalization*, International Labour Conference, 85th Session, 1997; and *Decent work*, International Labour Conference, 87th Session, 1999.

<sup>2</sup> See in particular documents GB.261/LILS/3/1 and GB.261/5/27, GB.262/LILS/3 and GB.262/9/2, GB.270/3/2, GB.273/4, as well as GB.277/LILS/2 and GB.277/11/1.

<sup>3</sup> Documents GB.264/LILS/5 and GB.264/6. See also document GB.279/LILS/4 which is before the present session.

<sup>4</sup> Documents GB.262/LILS/3 and GB.262/9/2, para. 53.

<sup>5</sup> *Instrument for the Amendment of the Constitution of the International Labour Organization*, International Labour Conference, 85th Session, 1997. This constitutional amendment, which has not yet entered into force, has thus far received 61 ratifications (of the 117 required for it to enter into force), including ratifications by four member States of chief industrial importance.

<sup>6</sup> Article 45*bis* of the Standing Orders of the Conference. Five obsolete Conventions that had not entered into force were withdrawn at the 88th Session (2000) of the Conference. The question of the withdrawal of 20 Recommendations is on the agenda of the 90th Session (2002) of the Conference.

<sup>7</sup> See document GB.279/LILS/WP/PRS/5.

be focused and revision activities be undertaken. This “pruning” obviously also has implications in terms of monitoring the application of instruments.

3. While considerable progress has thus been made with regard to existing standards, more difficulties were encountered in attempts to determine a policy for future standard setting. There are three possible reasons for this. First, it has become clear that it would be difficult to make improvements on a case-by-case basis. Following discussions during the Conference in June 1997, the Office had endeavoured to identify specific improvements that might be made (basically with regard to the procedures followed by certain supervisory bodies, the methods of revising Conventions and the questionnaires used in the preparation of standards).<sup>8</sup> However, it quickly became clear that in many cases it would be pointless to attempt to deal with specific difficulties without also considering general causes, or without taking into account the interdependence of different aspects of standards-related activities. Furthermore, many voices have been raised since then against limiting discussions to the “production” of standards and in favour of considering the Organization’s standards-related activities in all their aspects, including monitoring and promotional procedures. Lastly, and more fundamentally, it has become clear that, in order to strengthen the consensus that is essential for standards-related activities, any improvements that might be made need to be conceived within an overall vision of the role of those activities in promoting the Organization’s objectives.
4. One very important development has made it possible to focus this overall vision more effectively and thus to steer the discussions in a viable direction. This is the concept of “decent work”, which has enabled us to update the ILO’s constitutional objectives on the basis of four strategic objectives (standards, fundamental principles and rights at work; employment; social protection; and social dialogue). The Organization’s activities have been restructured around those four objectives in order to enable it to target its activities more effectively and direct its resources towards the fundamental goal of decent work for all.
5. It is clear that the standards-related activities have a crucial role to play in turning this vision, which is shared by all constituents, into reality. In this regard, as the Director-General recalled in his report, *Decent work*:

The best guarantee of credibility lies in the effectiveness of the ILO’s normative activities and the integrity of its supervisory and control machinery. The point of departure must be a consensus among all constituents – governments, employers and workers – that nothing should be done to compromise its principles or weaken its functioning. What is necessary is to modernize the process in order to make its work more relevant to all constituents, more practical in its results and more widely known to public opinion. Improving the visibility, effectiveness and relevance of the ILO’s standard-setting system must become a political priority.<sup>9</sup>

6. It goes without saying, in the light of what has been said above and in order to respond to requests made in the Governing Body for a more comprehensive analysis, that any improvements should concern all aspects of the standards-related activities, including the

<sup>8</sup> On the procedure for examining representations under article 24 of the Constitution, see the following documents: GB.273/LILS/1 and GB.273/8/1, GB.276/LILS/2 and GB.276/10/1, GB.277/LILS/1 and GB.277/11/1; as regards methods of revision, see GB.276/LILS/WP/PRS/2 and GB.276/10/2; as regards the questionnaire, see GB.276/LILS/4 and GB.276/10/1.

<sup>9</sup> *Decent work*, p. 7.

promotion of standards and the supervisory mechanisms, not simply the process that leads to the adoption of new or revised standards. For practical reasons, of which more will be said later, the first part of the present document describes the two main aspects of the proposed integrated approach to standards-related activities, namely: efforts to reinforce the coherence and relevance of standards, on the one hand, and efforts to promote and enhance their impact, on the other. Part II contains a schematic outline of more specific improvements in the supervisory system, and part III deals with other aspects that were brought up during previous consultations. The Office proposes to discuss these preliminary considerations in greater detail in March in the light of the directions that might be given by the Governing Body during this session.

## **I. Towards an integrated approach to standards-related activities**

7. This question has a particular urgency, as it is linked to other problems currently before the Governing Body, namely, the future of the portfolio and the consideration of proposals for the agenda of the 91st Session (2003) of the Conference.
8. The rationalization of the standard-setting procedures is not a new issue, however. It was the subject of an agreement on principle in 1993<sup>10</sup> aimed at establishing a certain cycle for the adoption of new and revised standards, which in practice has proved impossible to apply. At the same time, efforts were made to rationalize the criteria for the selection of Conference agenda items relating to the adoption of standards, with a view to ensuring that the agenda items selected more directly reflected real needs and brought genuine “added value” to existing standards. This was the purpose of the “portfolio” introduced at the 268th Session of the Governing Body in March 1997 following a request by the Governing Body which had wanted a more effective method and a longer and more relevant list of items.<sup>11</sup> Since 1997, the portfolio has been submitted to the Governing Body on three occasions. It has benefited from the proposals of governments and employers’ and workers’ organizations, which have been directly consulted on a regular basis. Thus, in November 1999, the portfolio contained more than 30 topics. However, the Office has had neither the resources nor the time to evaluate all these proposals in such a way as to determine their potential for standard setting. Divergent and occasionally strongly opposing views have been expressed with regard to some of the proposed items, and it has been extremely difficult to reconcile those views in the absence of an appropriate analysis, in particular with regard to the expected impact of proposed standards. To summarize, the greater number of topics from which to choose complicated the business of making the choice, since there was no way of ensuring that the items finally chosen by the Governing Body were the most relevant to the Organization’s objectives. It would therefore appear that, despite the good intentions that lay behind it, the portfolio has not lived up to its expectations.
9. A more general conclusion appears to emerge from these two experimental initiatives which were intended to stabilize the standard-setting cycle and widen the choice of topics for future standard setting, respectively. While it is not too difficult to agree in general terms on the need to continue standards-related activities, including traditional activities of this type, it is far more difficult to establish, in abstract terms, viable criteria with regard to the desired outcome of those standards in terms of their objects, level, content and form.

<sup>10</sup> Document GB.258/6/15, para. 15.

<sup>11</sup> Document GB.268/3.

This suggests that the best guarantee of the viability and relevance of standards-related activities lies in more in-depth preparatory work. This would enable the Governing Body to include an item on the agenda once its object, the need to which it responds and the added value which the proposed instrument would bring to existing standards, have been as clearly defined and generally agreed as possible.

10. In the light of these considerations, and of the consultations that have been held since the last session of the Conference, a possible consensus appears to be emerging on ways to attain this objective. It is based on three elements:
- (a) *a premise*: standards are not an end in themselves. They are a means for achieving the Organization's objectives. On the other hand, they do have a unique feature which gives them a special place among the means of action available to the ILO: they give concrete expression to the ILO's constitutional objectives in a particular context. For this reason, standards can to some degree give direction to the other means of action available to the Organization in attaining its objectives;
  - (b) a common *objective*, namely, that of enhancing the effectiveness of standards-related activities as a tool for achieving the Organization's objectives (bearing in mind that, in keeping with the decent work strategy, those objectives must be for the benefit of all workers, regardless of their status). This concern to make standards more effective is part of the "shared commitment" – which received much attention during the previous phase of consultations – to the continuation of standards-related activities including traditional activities of this kind. The question is how to crystallize that "shared commitment" with regard to particular instruments. The answer to that question is now becoming clearer. It focuses pragmatically on the level of method, more specifically, on the "integrated approach";
  - (c) *an integrated approach to attaining these objectives*: all this means is that, in order to ensure the greatest possible efficiency in standards-related activities for the attainment of the ILO's constitutional objectives, and to ensure a greater impact in reality, standards must be better integrated with one another and better integrated with other means of action. More specifically, this has implications on two main levels which will be examined in greater detail below: on the one hand, on "upstream" initiatives to reinforce the coherence and relevance of standard-setting activity through in-depth analyses of the situation; and, on the other hand, on "downstream", initiatives to enhance the impact of standards through integrated and systematic promotional and evaluation activities.

## 1. Ex ante: Reinforcing the coherence and relevance of standards

11. While the notion of coherence refers to the relation between existing and future standards, the concept of relevance refers to the degree to which standards reflect the Organization's constitutional objectives, on the one hand, and actual conditions, on the other. Improving the relevance of standards means quite simply enhancing their ability to promote, in concrete terms, the ILO's constitutional objectives, while taking into account the wide variety of circumstances in different countries.
12. There is no established formula for ensuring relevance. The best guarantee of relevance is the broadest possible consensus among the ILO's constituents concerning the utility of the proposed activity. This explains the importance of seeking the widest possible consensus with regard to new or revised standards. There can obviously be no question of achieving some elusive ideal of unanimity: everyone knows that the final versions of instruments are

adopted by a simple majority in the Conference technical committees, before being adopted by a two-thirds majority in the final vote. But the strength of international labour standards in comparison with those of other international organizations lies in the fact that they are normally the result of an effective tripartite dialogue. In a context in which doubts are expressed about the compatibility of labour standards with economic efficiency, this effective tripartite participation seems to be the most concrete guarantee to ensure that a given standard will be viable in economic terms and at every other level. It is therefore crucial that, beyond the rules of procedure and voting, we make sure that our methods and timetable for the preparation of standards are such as to allow the broadest possible consensus to be attained among the three groups and in the various geographical regions. The effort to reach consensus should, in other words, be made an integral part of the preparatory process, rather than being activated only at the final stage of negotiations.

- 13.** As we have already indicated, it has become clear that the most appropriate procedure for bringing about such a consensus at the preparatory stage would be to conduct a preliminary in-depth analysis of the situation in the area examined. This seems to be no more than common sense: an in-depth analysis of the Organization's existing instruments in a given area should be carried out before including any new standard-setting item on the agenda to be sure of the relevance of new or revised standards in that area, and to ensure the overall coherence of the outcome. In keeping with the logic of the decent work strategy, it would be appropriate to determine areas or "families" of standards that are likely candidates for such an in-depth review in the light of the four strategic objectives, bearing in mind that those objectives, especially social protection, can themselves be subdivided into several "families" of instruments. The in-depth analysis in question would logically comprise three stages involving the Office, the Conference and the Governing Body, respectively.
- 14.** The first stage would involve making a complete inventory of existing standards in a given area; this would be undertaken by the Office in accordance with guidelines established by the Governing Body. The inventory would review existing standards in the light of the needs identified in the area under examination, including needs for revision, with a view to determining the objectives. The inventory should take into account all the other means and instruments available to the Organization for achieving its goals and responding to needs, as well as the way in which those means have been applied to implement the relevant standards. The Office should endeavour to collect relevant data, with the aid of the services in the field, to enable the competent bodies to formulate an informed opinion. To summarize, the inventory should lead to a more accurate assessment of the following points: (i) whether and to what extent existing ILO or other international standards in the area examined leave gaps in coverage that need to be filled; (ii) the object of the revisions decided, in principle, by the Governing Body on the basis of the work of the Working Party on Policy regarding the Revision of Standards; and (iii) where applicable, whether and to what extent in the area examined standards would overlap (for example, general standards and sectoral standards) which might call for "consolidation".
- 15.** The next stage would be a general tripartite discussion of that report by a Conference technical committee, within the context of a specific item placed on the Conference agenda by the Governing Body. The Conference discussion would aim at establishing an integrated plan of action which could, in the area examined, identify potential new subjects for standard setting and specify the general objective and form of possible new or revised standards. Recent experience has indeed confirmed that it is not enough to identify needs for revision on the basis of formal criteria with a view to placing items on the agenda; before moving in this direction, it is essential to be absolutely clear regarding the objective and scope of the revision. The choice between Conventions and Recommendations and the matter of determining the appropriate level of protection has, as we know, been the subject

of many discussions over a number of years.<sup>12</sup> However, rather than conducting an abstract discussion on the respective merits of Conventions and Recommendations, the tripartite discussion should aim, before an item is ever included on the agenda, to obtain a clear, if tentative, idea of the type of standard setting best suited to the desired goal (Convention, Protocol or Recommendation, including an autonomous Recommendation, for example to meet a need for consolidation). The discussion could also, if necessary, identify questions which, because of their technical nature or owing to the speed of technological development, are not suitable for treatment in Conventions and Recommendations and should be addressed in other instruments, such as codes of practice or handbooks. The latter do not have the same function as standards per se but are intended to provide reliable and up-to-date assistance to governments, enterprises and workers.

- 16.** At a third stage, the Governing Body would draw specific conclusions from the discussions regarding standards-related or other activities, in particular with regard to when and in what terms a given subject should be placed on the Conference agenda with a view to the adoption of an instrument. It should be emphasized that the system would not remove the Governing Body's prerogative of placing an item on the Conference agenda on its own initiative in response to a particular need. The Governing Body would be able, when an entirely new question was raised (the elimination of the worst forms of child labour or the prevention of major industrial hazards, to take two recent examples), to undertake a more rapid examination of the question with a view to including it on the agenda of a future session of the Conference with a view to a possible standard setting.
- 17.** To summarize, this common-sense method should enable the Governing Body to include on the Conference agenda items whose relevance is clearly established in order to attain an objective that has been identified in the course of tripartite discussions. It should obviously also help to ensure that instruments finally adopted by the Conference are based on the widest possible consensus. This might well improve the ratification prospects of Conventions once they are adopted. The working methods of the technical committees, which will be dealt with below, could also be reviewed as part of this process in order to encourage systematic informal consultations between the groups, where necessary with the assistance of the Office.
- 18.** It is reasonable to ask whether the price of the greater increase in coherence and relevance which should result from a better preparation will not be a slowing down in the production of standards, at least during the initial start-up phase. Two points may be made in this respect:

  - first, in the “maturing” phase of this method (the period during which an in-depth analysis will be undertaken to identify the standards-related activities needed in a given field), the Governing Body will be at liberty to include on the agenda certain items of a technical nature which are relatively independent of existing standards (one recent example was that of corporations). It might also be possible during a future session to initiate a first discussion of maritime questions which might be included on the agenda of future Maritime Conferences, or to begin examination of revisions of a

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<sup>12</sup> A Convention with few ratifications may not be finally ineffective, but its credibility is seriously impaired. A delicate balance has to be struck here. A Convention easily ratified by all member States may be meaningless – if it only confirms an existing state of affairs or records a political desire without specifying how the goal is to be attained. The other extreme is a level which, however desirable, is unrealistic in any foreseeable future due to objective resource constraints. A realistic but still healthily ambitious goal is to adopt standards at a level at which they can be applied by most countries and to provide advice and assistance so that a large number of them can proceed to ratification in a short time.

technical nature; other examples have been submitted to the Governing Body in the portfolio;

- secondly, and most importantly, it is essential to realize that this drawback should in any event be more than compensated by the improvements in the promotion and impact of existing or new instruments which should follow from the proposed new approach and which will be considered in more detail in paragraphs 20 and following below.

***Testing the new approach with an in-depth review of standards-related activities in the area of occupational safety and health in 2003***

19. The proposed approach as it is presented here has the potential for general application. In practical terms, however, it is not possible to conduct several in-depth reviews simultaneously and, in general, it would seem wiser to advance gradually, learning from our experience as we go. The issue of occupational safety and health seemed a suitable subject for an initial trial, for a number of reasons. First, it is a field that is rich in general and sectoral standards that sometimes overlap. It is very diverse in terms of its means of action. Furthermore, following the examination by the Working Party on Policy regarding the Revision of Standards, five Conventions and six Recommendations in this area have been decided to be in need of revision. When the Office began, in the context of proposals for the Conference agenda,<sup>13</sup> to examine possible approaches to some of these revisions, it became clear that these instruments could not be considered in isolation and that a more global approach was required. A detailed proposal for an in-depth analysis, on the basis of tripartite discussion, of standards-related activities in the area of occupational safety and health has therefore been included in the proposals for the agenda of the 91st Session (2003) of the Conference<sup>14</sup> which is before the Governing Body at the present session. If the Governing Body approves the proposed new approach, it may include this question in the shortlist of items which will be submitted to it for final selection in March 2001.

**2. Ex-post: Promoting standards and enhancing their impact by integrated use of all the Organization's means of action**

20. As indicated above, the Conventions and Recommendations give concrete expression to the Organization's objectives in a given context which may change with time. This means that their impact is a very important indicator of the effectiveness of the Organization's activities in attaining its objectives. As regards Conventions, the most apparent indicator of their impact is ratification, as ratification normally means that legislation and practice can be made to conform with the Convention and that action is taken to ensure that there is no conflict with an accompanying Recommendation.

21. However, this is not the only aspect to consider. Over the years there have been observations that the actual numbers of Conventions or, indeed, of their ratifications do not add up to a reliable picture of real improvements in labour conditions. Such observations require a clear response. It might include the following key points:

<sup>13</sup> Document GB.276/2.

<sup>14</sup> Document GB.279/5/2.

- first, standards-related activities may have an impact by means other than ratified Conventions. Recommendations and unratified Conventions can influence national priorities and legislation; they may serve as a reference for collective bargaining; they can even influence private initiatives or voluntary codes of conduct; and they guide the ILO's technical cooperation activities;
- secondly, that impact can obviously be reinforced through systematic promotional activities. Experience in the area of fundamental rights has shown the extent to which such promotional activities can be effective in overcoming the difficulties which governments face or believe they face in implementing them. This promotion can take different forms but presupposes, by the very logic of an integrated approach, a coordinated and systematic use of all the means of action available to the ILO. For example, it must involve the dissemination of information to the widest and most diverse public (through easy-access websites, publicity brochures and handbooks, etc.); raising awareness among the actors most directly concerned (social partners, politicians, intellectual and academic circles) through the decentralized structures and participation in seminars, symposia and meetings; technical cooperation with the competent authorities with a view to examining the practical or legal obstacles which impede the implementation of standards or, at least, make it more difficult to attain their objectives, and finding possible solutions; and research (for example, to identify the sometimes disputed benefits in terms of job creation that may be derived from efforts to promote quality of work, in keeping with the strategy of decent work and, more generally, the link between observance of standards and economic efficiency);
- thirdly, these promotional activities go hand in hand with a more precise assessment of the obstacles to implementation or factors which limit their impact, with a view to defining appropriate promotional or other action. These factors vary greatly in nature. They may be due to the projection at national level of reservations expressed at international level during the drafting process (the integrated approach should overcome this problem). They may be of a more structural nature (such as difficulties in covering the informal sector or the fact that a State lacks administrative capacity). They may derive from obsolescence or, in some cases, from a lack of real understanding of the standards in question or, in certain cases, from a certain image or interpretation of the standards. They call for action, as the case may be, in terms of promotion and assistance, revision, research, or in other areas;
- fourthly, the ensuing question is how to give concrete expression to this integrated evaluation and promotional activity with regard to the impact of standards, drawing on all the ILO's available means of action. Going beyond words and intentions, which in any case are not really new, the credibility of this approach might be greatly enhanced if a framework or procedure could be defined to allow a more systematic and regular assessment of: (i) the limits or obstacles encountered by Members in implementing standards or the attainment of their objectives; and (ii) the different types of support and promotional activity undertaken by the ILO to assist its Members, and their effectiveness.

22. Although such a framework has hitherto been lacking, it is reasonable to think that it could be put in place without very much difficulty. For example, one possibility would be a new type of General Survey which would focus on different "families" of standards at regular intervals. Until recently, with rare exceptions, such General Surveys have dealt with individual instruments and concentrated mainly on legal aspects rather than practical obstacles to implementation. However, under article 19 of the Constitution, the Governing Body has a certain freedom of action and is entirely at liberty to broaden the subjects of its surveys and focus them on "families" of instruments or reinforce their promotional nature. It would thus be perfectly possible to go beyond an examination of the efforts made by

States to give effect to these instruments; the new General Surveys could also cover the Organization's activities to assist them in those efforts, including an analysis of the successes and failures of those activities. On the basis of the results of these General Surveys and their examination by the Conference, the Governing Body would then, in the light of the difficulties encountered by Members and the Office's own activities, be able to define priorities and draw up a plan of assistance which would draw in a coordinated way on all of the ILO's means of action, while also enhancing the transparency of the ILO's standards-related activities.

23. However, it might be premature at this point to enter into a more detailed examination of the practical aspects of such a new type of General Survey. The Governing Body can already broaden the frame of reference and the object of the General Surveys as and when it sees fit to do so. It may be easier to determine the extent to which this frame of reference is necessary or appropriate when we come to applying the new integrated approach in practice for the first time in the area of occupational safety and health standards. On the other hand, the Office may also return to this particular aspect in the light of the discussions in March, if that appears to be useful in the light of the discussions held.

## II. The supervisory mechanisms and their efficiency

24. The ILO rightfully prides itself on its system to monitor the application of international labour Conventions, which, while being the oldest, is also one of the most advanced in the universal organizations. Two significant elements go towards achieving this:
- (i) the wealth and diversity of the procedures that it comprises: the system consists, on the one hand, of a procedure under article 22 based in principle on dialogue (enhanced by advice, assistance and technical cooperation) which combines an independent technical body (the Committee of Experts) and a political body (the Conference), and, on the other, of litigation procedures specifically stipulated in articles 24 and 26 of the Constitution;
  - (ii) the role taken by non-governmental participants, who can act either individually or collectively, and in the framework of the regular review; to set in motion the examination of a contentious situation or procedure, and whose representatives also participate in the deliberative bodies called on to debate and, as appropriate, decide on the action to take.
25. These elements do not signify that the system is perfect and beyond improvement. It has not been developed according to any predetermined plan but rather in a very pragmatic fashion over the years according to the circumstances and needs of the times. A case in point is the establishment of the Committee of Experts which came into being to complement the article 22 procedure – and which is now an essential part of the system in place today. The same observation applies to the creation and development of the procedure governing the Committee on Freedom of Association. Consequently, it is hardly surprising that this process of layering has at times resulted in confusion in the minds of users who should not be reproached for being unaware of the origins and specific details of these procedures; this development process has also, of course, led to a certain degree of overlapping. For these reasons, a number of themes arose during the course of the discussions: transparency, objectivity, impact, administrative burden, etc.
26. This section will provide a brief overview of these various themes. Three points would however appear to be useful to make as regards the perspective and scope of this review. Firstly, it goes without saying that its principal objective is the overall strengthening of the

efficiency and impact of the supervisory mechanisms, in other words, of their ability to achieve the desired results. This does not, however, imply the need to make them more restrictive; just as for improvements in the impact of standards in general, additional efficiency could very well be gained from a judicious use of methods of dialogue and promotion and, in particular, of technical cooperation, notably in the framework of the procedure under article 22. Secondly, this is a preliminary review, whose purpose is to enable the Governing Body to lay down broad guidelines. Depending on the results obtained, more detailed documents will subsequently be prepared which will, as appropriate, be submitted to the technically competent LILS Committee. Thirdly, if, in the light of the guidelines set forth by the Governing Body, it appears that specific aspects deserve more in-depth study, it will be important not to lose sight of the links and complementarity that exist between the various procedures nor the need to maintain, in keeping with the rationale of the integrated approach, the overall consistency of the system, without which it would be unrealistic to aspire to greater efficiency.

## 1. Transparency/consistency

27. The theme of the “transparency” of the supervisory system has frequently arisen during earlier discussions and recent informal consultations. It appears to be inextricably linked to the problem of the overlapping of procedures which, as we have just said, can lead to a certain lack of clarity for users. Consequently, it is extremely important, with regard to this point in particular, to seek possible solutions in an integrated manner. An examination of the following factors may provide valuable input in this regard.
28. *Knowledge of the supervisory machinery.* As indicated above, the entire scope and functioning of the ILO supervisory machinery as it has developed over the last eight decades are difficult to understand fully even for long-serving delegates to ILO meetings and experienced officials. The Office should examine, together with the Governing Body, how to make information on the systems more easily accessible, especially during the discussions in the Governing Body and the Conference on the standards-related activities of the Organization, in order especially to ensure that all concerned in discussions on them have all the details available to them. Measures to address this could be occasional brief informal presentations of the ILO’s supervisory procedures, and making more written material available.
29. *Relation between supervisory bodies.* There is a perception among some constituents that there is an overlap of supervisory bodies – a perception that may be considered at various levels. From a practical standpoint the principal risks associated with competition and contradictions have been dealt with. First, the problem does not arise for the Committee of Experts and the Conference Committee on the Application of Standards. These form a continuum, with the Committee of Experts’ report serving as a basis for the Conference Committee’s discussions. As regards the Committee of Experts and article 24 committees established by the Governing Body, the most immediate problem has however been solved by the understanding that the Committee of Experts will not examine aspects of a Convention’s application that are addressed in a pending representation before the procedure for the examination of the representation is complete. Similar issues have occasionally been brought before the Committee on Freedom of Association and the Committee of Experts at more or less the same time, but these are dealt with in the framework of the complementarity of the two different mechanisms and the timing of their respective meetings. When a complaint concerning the legislation of a country having ratified relevant freedom of association Conventions can be examined by the Committee on Freedom of Association prior to its examination by the Committee of Experts, the former draws its conclusions and refers the legislative aspects to the latter for follow-up. Similarly, when the timing permits a first examination by the Committee of Experts, the

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Committee on Freedom of Association draws on the conclusions of the Committee of Experts in its analysis. No practical difficulties have been encountered in this respect.

- 30.** The issue of transparency nevertheless brings a more general aspect into play: the sometimes random use of procedures. The procedures under article 22, article 24 and those relating to freedom of association have different origins and different purposes, but are, however, often used in similar situations and with comparable results or impact (publicity, including all its consequences). The proliferation of representations (which have recently diminished slightly) has brought this situation into sharper focus. In itself, the influx of representations is a good thing, particularly in so far as it demonstrates a new ability of the workers' and employers' organizations directly involved to take control of the defence of their interests when the situation prevailing in their country does not conform to the commitments it has made. But it does beg the question of whether the global effectiveness of the system could be improved by placing greater emphasis on the complementarity of these various procedures. The question arises of how to strengthen the "promotional" purpose of tripartite dialogue in the framework of article 22 in order better to distinguish this mechanism from specifically contentious procedures in the framework of articles 24 and 26. This question might deserve more in-depth review; it is also of a certain relevance to the following theme.
- 31.** *Choice of cases for the Conference Committee on the Application of Standards.* The methods of work of the Conference Committee, discussed in depth and adopted at the 66th Session of the Conference in 1980, allow for the Committee to adopt a list of cases for discussion on the basis of the report of the Committee of Experts on the Application of Conventions and Recommendations. In practice, this list is drawn up on the basis of proposals made by and discussed between the Employers' and Workers' groups of the Committee, and submitted to the plenary of the Committee for approval. However, the Government members have not evolved any method for making their own proposals for cases to be discussed. Generally they have not made comments on the list. In addition, the criteria for including cases on the list are not explicit, though the two groups have regularly spelled out their own criteria for making proposals for inclusion in the list (see, for example, paragraph 7 of the General Report of the Conference Committee on the Application of Standards at the 87th Session (2000) of the Conference, for the criteria used by the Workers' group). In June 2000 the representative of the Secretary-General of the Conference requested the Committee members to communicate, in the coming weeks and months, their ideas and suggestions to allow an appropriate solution to be found which would satisfy all parties concerned (see paragraph 11 of the same report).
- 32.** The problem nevertheless involves a more general aspect which relates to the balance and overall efficiency of the supervisory system. It is important to note that the overlap between the abovementioned procedures is duplicated to a certain extent as far as the nature and the purpose of the "cases" examined by these procedures is concerned. A considerable proportion of situations examined both in the framework of representations and by the Conference Committee on the Application of Standards relate in fact to fundamental rights.<sup>15</sup> This type of concentration could well become increasingly apparent with the progressive implementation of the follow-up to the 1998 Declaration on Fundamental Principles and Rights at Work (although this is a promotional procedure and not a supervisory mechanism). Of course, a concentration of this type is consistent with the fundamental importance of the rights in question, but the fact remains, nevertheless, that

<sup>15</sup> Almost half the Conventions that have been subject to representations (187 up until 1999) are the seven fundamental Conventions (66) adopted prior to June 1999 and the four priority Conventions (25).

other very important issues, such as safety and health concerns, which may occasionally surface, for example, through representations, should also be accorded the high degree of attention they deserve. Without, of course, questioning the prerogatives of the Committee on the Application of Standards, which is responsible for establishing its own working methods, it would perhaps be useful to ask in this regard whether, in order to achieve as satisfactory a balance as possible, the Committee might perhaps consider earmarking, on a rota basis, a predetermined portion of its cases each year to a “family” of instruments related to the objectives of decent work.

33. The issue of transparency has also been raised by some to include how the Conference Committee’s conclusions are drafted, and whether sufficient account is taken of the explanations and information offered by Government representatives invited to appear before the Committee. While the Conference Committee’s working methods are up to the Committee itself, an exchange of views in the Governing Body could assist that Committee in an examination at an early session of the questions relating to its working methods.
34. Another point that has been raised is the method of appointment of members of the Committee of Experts, which since 1926 has been done by means of proposals by the Director-General to the Governing Body, and Governing Body approval, for terms of three years. The Governing Body has, on occasion, exercised its own power to refuse his nominations. This method was adopted to ensure the independence, objectivity and impartiality of the experts. Apart from the method of appointment, some Employer members have suggested that terms be limited to two five-year appointments.

## **2. Impact and effectiveness of the supervisory procedures**

35. The concern has been expressed that the supervisory bodies’ comments do not produce a sufficient response from States, and that there should be more effective and efficient means of following them up. The implementation of the recommendations resulting from the examination of representations (article 24) and complaints (article 26) is followed up by the Committee of Experts. But the fact remains that there is no overview or periodic appraisal of these results at appropriate intervals.
36. The supervisory bodies’ work in fact has an appreciable impact, part of which is indicated in each report of the Committee of Experts, the Conference Committee and the Committee on Freedom of Association. In the case of the Committee of Experts, this has been done by an annual list of cases of progress where developments have been noted with satisfaction (see, for example, paragraph 99 of the report of 1999), and as of its next session the Committee has decided also to publish a list of expressions of interest, which constitute a lower level of progress. Nevertheless, no in-depth study of the impact of the ILO’s supervisory work has been carried out for many years. It is also clear, however, that many comments do not produce an effect within a reasonable time period. The paper in March 2001 might explore the reasons for this, as well as possible solutions.
37. Finally, the issue of how to follow up on the comments of the supervisory bodies through assistance and interventions in a more effective and timely manner should be discussed. This would of course cover the work of the MDT specialists on international labour standards. It might also examine whether the other technical departments of the Office, which are responsible for the substance of many of the ILO’s Conventions, take the supervisory comments as a basis for the assistance and advice that they provide to member States; and the response by member States if this is done. In addition, it could examine

whether the social partners make systematic use of the ILO's supervisory comments as the basis for action in their own countries.

### 3. Reporting and workload

38. The workload for constituents and for the Office is considerable, and is growing. This has many aspects. First, a paper before the present session of the Governing Body indicates a further wave of ratifications of the fundamental Conventions, which adds to the reports due from member States and the workload of the supervisory bodies and the Office.<sup>16</sup> The fact that more than 215 ratifications of fundamental Conventions have been registered in the last five years (the total number of their ratifications being just over 1,000) has added considerable weight to this concern. Ratifications of other Conventions also continue to rise at a steady pace. The reporting system adopted by the Governing Body in 1993 and implemented as from 1995 is due to be examined after a five-year trial period in the course of 2001, and this question will be an important part of the examination.
39. One question that has been raised is the extent to which the supervisory process should concentrate on the Conventions noted as being up to date by the Governing Body in the process of the review. This will need careful examination, as it is a matter of some legal and practical complexity. Certainly the long-term objective is that most States should replace the ratifications of older and less modern standards by more modern ones. This will diminish the number of Conventions ratified by only a small number of countries, and progressively will make it possible to shelve or abrogate them. In a number of cases, however, while the older standards may no longer be suitable for ratification, they do represent the highest level of protection that a particular State has been able to adopt so far.

### III. Other issues

40. A number of other issues that do not relate directly to the future of "standards production", promotion or supervisory mechanisms, such as the process of instrument preparation (questionnaires, reports, the use of constituents' replies), the discussion methods used within technical committees, the drafting of the definitive instruments (ensuring the consistency and uniformity of instruments and even their "readability"), the entry into force and denunciation of Conventions (the number of ratifications stipulated, rules relating to denunciation) have been raised since 1997 and certainly deserve their share of attention.
41. The implementation of the integrated approach should make it possible to address some of these issues from a different perspective. As one of the characteristics of this approach is better to identify the purpose of standards to be adopted, a certain number of difficulties such as those relating to the preparation of questionnaires with a view to the first discussion should be minimized or even disappear; likewise, the choice of the most appropriate form of instrument would, as we have seen, become easier and would not require a re-examination of the regulatory provisions prevailing on this point. In addition, in some cases the in-depth study of a family of standards that must be carried out before identifying the standard-setting action to be taken in this sphere could be extended, for example, if the subject is entirely new or presents a particular difficulty by way of a "pre-standard-setting" discussion which would allow specific guidelines to be established for

<sup>16</sup> Document GB.279/LILS/4.

the questionnaire, this principle having been very broadly supported during earlier discussions.

42. Furthermore, the adoption of the new integrated approach goes hand in hand with the desire for a broader level of consensus. It is with this in mind that it would perhaps also be appropriate to review certain aspects such as discussion and voting methods which, at present, tend to favour a concern for reaching fast decisions (priority being given to those amendments furthest from the text) over achieving the most broadly acceptable formulation.
43. While it is not possible to go into detail on each of these points in this document, the Governing Body could offer preliminary guidelines for them. As the implementation of the integrated approach moves forward, it would then be called upon to decide on more concrete measures that the LILS Committee could submit to it in order to give effect to them. These guidelines could also be taken into consideration by the technical committees of the Conference. Some of these points fall within the competence of the International Labour Conference and the technical committees, while others might require amendments to be made to the Standing Orders of the Conference which should be examined by the Governing Body before being submitted to the Conference.

## IV. Conclusions

44. In concluding this document it seems useful to briefly take up some of the more salient points. First of all to underline the fact that the aim is not to propose a fully defined solution as regards future standards-related activities but more modestly to propose an approach which is far from wishing to be revolutionary. In short, it is not a matter of changing the remarkably flexible and diverse tools at the disposal of the ILO; the idea is simply to make use of them in a more consistent, efficient manner, and with greater visibility, in order to achieve the objectives of the ILO as recently restated in the strategy of decent work.
45. Secondly, the Governing Body is just invited at this stage to give the green light to the experimental application of this approach in the area of occupational safety and health proposed in paragraph 19 above. This should allow all constituents to see, in a concrete manner, whether this approach holds the promise this document credits it with and gradually to develop its implications, particularly as regards the promotion of the impact of existing and future standards.
46. Thirdly, it is not a question of neglecting the possible and desirable reforms to aspects of standards-related activities other than the production of new standards, but to give them in due time – March 2001 in principle – and in the most appropriate manner, the attention they deserve, without losing sight of the need to also address them in an integrated perspective. In this regard, this document should help the Governing Body to identify the issues on which there should be more detailed consideration and provide the appropriate guidelines concerning the possible solutions that the Office should seek to develop more extensively.
47. *The Governing Body may wish to:*
  - (a) *express its views on the integrated approach presented in part I of this document;*
  - (b) *as appropriate, confirm the experimental implementation of this integrated approach by placing on the agenda of the 2003 session of the Conference*

*the in-depth examination of standards-related activities in respect of occupational safety and health as proposed in paragraph 19 above and developed in document GB.279/5/2;*

- (c) *provide the Office with guidelines as regards the continued examination of the issues raised in parts II and III of this document, including the documents that should be prepared with a view to a more in-depth discussion of certain of those issues.*

Geneva, 16 October 2000.

*Point for decision:* Paragraph 47.