



## FIRST ITEM ON THE AGENDA

**Possible improvements in the standard-setting activities of the ILO****(a) The preparation of international labour Conventions: Questionnaire and code of good drafting practices**

Any new or revised instrument should be meaningful, realistic and, in the case of a Convention, ultimately ratifiable. This implies certain considerations in various stages of the preparatory work, in the course of negotiating the instrument, and at the drafting and adoption stages. GB.277/LILS/2, para. 16.

1. At its 283rd Session, the Governing Body examined measures taken to make certain improvements to standard-setting activities, made necessary by the major changes occurring worldwide since the late 1980s. Given that improvement is a continuous process and at no time can it be considered to be completed, the Governing Body has specified what remains to be done, taking account of the subjects covered in the last eight years, and has drawn up a timetable to examine the points raised. It accordingly decided to examine the following three topics at this session:
  - (a) *final provisions of Conventions*, in particular examining different options as regards the requirements for entry into force and the conditions for denunciation of Conventions;
  - (b) the advisability and cost of preparing a *code of good drafting practices* for use by the Office, the members of technical committees and drafting committees throughout the entire drafting and editing process to improve the quality and consistency of texts. This code could be submitted to the Governing Body for approval; and
  - (c) the preparation and formulation of the *questionnaires* provided for in articles 38(1) and 39(1) of the Standing Orders of the Conference, which are sent out to the constituents at the beginning of the process of preparing new standards, and which broadly determine the final structure and content of the text.

2. This paper examines the issues relating to the questionnaire provided for in articles 38 and 39 of the Standing Orders of the Conference<sup>1</sup> and the “code of good drafting practices”. The points relating to the standard final provisions are presented in document GB.286/LILS/1/2.
3. Although these three topics are independent of one another, the responses on these issues will affect the final outcome of the process of adopting standards, as recalled in the citation from the Governing Body report at the head of this paper. To enable the Governing Body to assess their impact and consequences, it was considered necessary to place these aspects in the context of the procedure for the adoption of standards established by the Standing Orders of the International Labour Conference.

## I. Background: Procedure for the adoption of international labour standards

4. The period of time which elapses between the Governing Body’s decision to include an item on the adoption of a Convention or Recommendation in the agenda of the International Labour Conference and the adoption of the instruments by the Conference is normally 40 months (double-discussion procedure). This period can be reduced to 28 months if the Governing Body avails itself of the provisions of article 10, paragraph 5, of its Standing Orders (single-discussion procedure). The consultation of Members, notably through the questionnaire, takes place during this period.
5. Whether the procedure chosen is that of double or single discussion, it consists of two distinct stages:
  - the preparatory stage, in which the Office is responsible for holding consultations with the ILO’s constituents on the form and content of the future instruments (articles 38 and 39 of the Standing Orders of the Conference). The Office sends governments a report on the subject, accompanied by a questionnaire, intended to gather Members’ views on the form and content of the future instruments. Governments are invited to reply and communicate the views of the most representative employers’ and workers’ organizations. On the basis of the replies received, the Office prepares proposed conclusions (double discussion) or a draft instrument (single discussion) to be submitted to the Conference for consideration;
  - the stage of consideration of the texts, at the end of which the Conference proceeds with the adoption, on a tripartite basis, of one or more instruments, a Convention or a Recommendation (article 40 of the Standing Orders of the Conference). A limited amount of time is spent on this stage; a maximum of 19 sittings are available at each session of the Conference (excluding night sittings) for committee work, in addition to around 12 hours for the drafting committees of the committee and of the Conference.
6. The technical committee set up by the Conference to examine the subject with a view to the adoption of a Convention or a Recommendation considers the proposed texts prepared by the Office on the basis of the constituents’ replies to the *questionnaire*, as well as amendments to those proposed texts presented by its members. It proposes a text to the Conference for adoption, after submitting it to the committee drafting committee (article 59 of the Standing Orders). The committee drafting committee has the task of preparing

<sup>1</sup> These provisions are contained in the appendix.

the English and French texts, both versions being equally authoritative, solving drafting problems specifically referred to it by the committee and ensuring that both texts are legally and linguistically consistent, where necessary informing the committee of the legal and drafting problems encountered and the solutions proposed to overcome them.

7. Lastly, the Conference Drafting Committee (article 6 of the Standing Orders of the Conference) prepares the definitive texts to be proposed to the Conference for adoption, including the *standard final provisions*.

## II. The questionnaire provided for in articles 38 and 39 of the Standing Orders of the Conference

8. The questionnaire is one of the means of seeking the views of the ILO's constituents on proposed Conventions or Recommendations that the Governing Body has decided to include in the Conference agenda. At the 81st Session of the International Labour Conference, during the discussion of the Report of the Director-General to the Conference,<sup>2</sup> some comments referred to the questionnaires, with some speakers agreeing that their preparation should be improved. Essentially, it was felt that the questionnaires prepared by the Office were often too long and too detailed, and that the large number of replies resulted in excessively detailed proposed instruments. It was also suggested that questionnaires be confined to general principles and essential considerations, leaving it to the recipients to suggest additional elements, should they so wish. Lastly, the Employer members of the Conference Committee on the Application of Standards suggested that the authors of questionnaires carry out unofficial consultations. These should identify where views diverge, and it could also be envisaged that items to be included in the questionnaire be debated in the Governing Body.<sup>3</sup>
9. Some of these remarks and suggestions have been taken into account by the Office in the preparation and drafting of questionnaires sent to Members in recent years. It would be desirable nonetheless for the Governing Body to give the Office some clear indications of the steps to be taken to improve consultation with Members through the questionnaire so as to carry them out in a more systematic manner.
10. In a subsequent report, the Director-General recalled that "the Office, in accordance with article 39 of the Standing Orders of the Conference, is often left to its own devices to prepare a report and questionnaire which already give a fairly detailed outline of the structure and content of the instrument. This responsibility is, of course, entirely within the constitutional functions of the Office. But it is regrettable that it does not have a chance to benefit from some sort of preliminary guidance on issues deemed essential".<sup>4</sup>
11. Everyone agrees that the content of a Convention is one of the conditions determining whether it is widely ratified by member States. While it is unlikely that a Convention can be universally ratified at the time of its adoption – barring exceptions, of which the Worst

<sup>2</sup> *Defending values, promoting change*, Report of the Director-General, ILC, 81st Session, Geneva, 1994.

<sup>3</sup> GB.261/LILS/3/1, para. 21.

<sup>4</sup> *The ILO, standard setting and globalization*, Report of the Director-General, ILC, 85th Session, Geneva, 1997, Annex, p. 73.

Forms of Child Labour Convention is the most outstanding – given different levels of economic and social development, the aim is for a Convention to be as widely ratified as possible shortly after its adoption. Hence the need to gather the views of all member States. It is important to note in this respect that while the questionnaire is not the only means of consulting Members, it is still the least costly way to carry out universal consultation, at least on a formal basis, on future instruments. The question is whether this possibility is being used to the full and what are the results.

12. On average, half the Members reply to questionnaires within the time limit; the table below shows the percentage of replies received within the prescribed time limits over the last five years and the percentage of comments by employers' and workers' organizations communicated with the government replies.

	1998	1999	2000	2001	2002
Replies (%)	62	61	48	51	42
Workers'/employers' comments (%)	37	33	33	34	22

13. The percentage of replies received from governments in previous decades is similar, as shown in the table below:

1972	1982	1992	2002
57	55	44	42

14. It is generally the same Members who reply to all questionnaires under articles 38 and 39 of the Standing Orders. Variations observed in the reply rate may be attributed to the degree of Members' interest in the subject proposed for standing setting: this was obviously the case in 1998 (worst forms of child labour) and 1999 (maternity protection), but also in 1972 (minimum age) and 1982 (disabled persons). Furthermore, it is more than likely that the mobilization of ILO resources both at headquarters and in external offices makes it easier to obtain replies, particularly in the case of countries whose administrative infrastructure or human resources do not always make it possible to carry out the necessary studies to provide relevant replies to the questionnaire. Lastly, it should be borne in mind that the subjects dealt with in Conventions do not always hold the same degree of interest for the ministries with which the Office has established lines of communication and may even concern ministerial departments with a limited knowledge of the ILO's activity. Whether a reply on such instruments will be received depends to a certain extent on that degree of interest or knowledge.
15. The Governing Body's decision to include a standing-setting item on the agenda of the Conference is based on a concise statement setting forth the reasons why the ILO considers a given subject suitable for standing setting.<sup>5</sup> The questionnaires begin by asking Members whether an instrument should be adopted on the subject and what should be the form of that instrument, whereas the law and practice report does not always state explicitly the scope, content and form of the instruments envisaged.
16. Improvements to the questionnaire could be achieved by better integrating it in the normative process, making adjustments to its form or paying more careful attention to drafting its content, with the aim of simplifying it. It would also be useful to consider how

<sup>5</sup> The question of the inclusion of standing-setting subjects on the Conference agenda has been the subject of numerous discussions in the Governing Body. See in particular GB.268/3 (Mar. 1997), GB.270/2 (Nov. 1997).

the response rate could be improved, using the resources of the decentralized offices or information technology.

### **Review the place of the questionnaire under articles 38 and 39 in the normative process?**

17. Consideration needs to be given to the possibility of organizing preliminary consultations prior to the questionnaire stage. The questionnaire could be finalized following a preliminary discussion, either not specifically intended for the purpose (general discussion, discussion based on an integrated approach) but whose results could be used to improve the questionnaire, or one which is held for the specific purpose of providing guidelines to this end (preparatory technical conference or meeting).

### **General discussion**

18. Holding a general discussion preceding the adoption of standards under a single- or double-discussion procedure could lead to better preparation of the questionnaire and hence of the instrument adopted. This method was followed for the first time for the adoption of new standards in 1947. The agenda item for general discussion was freedom of association and industrial relations, and the first point for discussion proposed in the report prepared by the Office concerned the desirability of adopting a proposed Convention on freedom of association. The following year, the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), was adopted under the single-discussion procedure. This general discussion also culminated in the adoption of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), but this time under the double-discussion procedure, a questionnaire having been sent to Members. The questionnaire was based on a list of points prepared by the Office,<sup>6</sup> which was examined and amended by the Conference technical committee,<sup>7</sup> whose report was adopted by the Conference.
19. The Governing Body has had occasion to point out that, in the event that the general discussion led to a decision by the Conference to draft a proposed international instrument on the subject, that general discussion could be considered as a first discussion, with the second discussion with a view to adopting an instrument taking place the following year. While this mechanism, unlike the preparatory conference, has been used, the fact is that few general discussions have been followed by the revision of an instrument. Nonetheless, one could mention the general discussion of 1994 on the role of private employment agencies in the functioning of labour markets, which was followed in 1997 by the adoption of the Private Employment Agencies Convention, 1997 (No. 181), which revised the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96), following a single discussion. The general discussion had been proposed by the Office in view of the controversy around the subject of private employment agencies. That discussion helped to break the deadlock, as a consensus emerged in favour of substantial revision of Convention No. 96, and to specify the objectives that should be pursued by the revised standard.<sup>8</sup> In

<sup>6</sup> ILC, 30th Session, 1947, Report VII, *Freedom of association and industrial relations*, pp. 131 ff.

<sup>7</sup> ILC, 30th Session, 1947, *Record of Proceedings*, Appendix X, "Freedom of association and industrial relations", pp. 563-565 and 576-577.

<sup>8</sup> ILC, 85th Session, 1997, Report IV(2), *Revision of the Fee-Charging Employment Agencies Convention (Revised), 1949 (No. 96)*, p. 129.

this case the questionnaire prepared under article 38 of the Standing Orders expressly took into account the conclusions of the general discussion so as to meet the objectives formulated by the latter.<sup>9</sup>

## The integrated approach

20. The integrated approach could yield a similar result if the plan of action intended to be adopted by the Conference were to contain general guidelines on the content of the instrument or instruments whose adoption could be envisaged at the end of the discussion. Common sense alone would seem to dictate that it is essential, before a new standard-setting item in a given area is included in the agenda, to carry out an in-depth review of the existing instruments in that area, so as to ensure the relevance of any new or revised standard on a given subject and the overall coherence of the outcome. The information gathered during the three stages of the process could be taken into consideration – at least *ex post facto*, i.e. after the Governing Body has taken the decision to include a standard-setting subject in the agenda of the Conference – to refine the questionnaire. For the record, the three stages are outlined below.
21. The first stage consists of making a complete inventory of the situation in the area under consideration, undertaken by the Office in accordance with guidelines established by the Governing Body. The inventory should lead to a more accurate assessment of the following in particular: (i) to what extent existing ILO or other international standards in the area considered contain deficiencies that need to be remedied; (ii) along what lines revision should be undertaken once it has been 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, to what extent, in the area considered, rather than deficiencies in existing standards, there is an overlap between them (for example between general and sectoral standards), which might call for “consolidation”.
22. The second stage would be a general tripartite discussion of that inventory 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 a 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. However, rather than conducting an abstract discussion on the respective merits of Conventions and Recommendations, the tripartite discussion should aim, before an item is 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.

<sup>9</sup> ILC, 85th Session, 1997, Report IV(1). The response rate to the questionnaire was 42 per cent, which tends to lend credence to the idea that the form of the questionnaire counts less than the objective interest that a substantial number of Members might have in this subject.

23. At the third stage, the Governing Body, should the Conference not avail itself of its prerogative under article 16, paragraph 3, of the Constitution, 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.
24. At the end of this process, the relevance of the choice having been established and the desired goal of adopting future instruments clearly identified on the basis of tripartite discussions both at the Conference and in the Governing Body, the Office should have preliminary guidelines to enable it to prepare a more targeted questionnaire. An example of the process outlined above is the Governing Body's decision to include in the 91st Session of the International Labour Conference (June 2003) an item on "ILO standard-related activities in the area of occupational safety and health: An in-depth study for discussion with a view to the elaboration of a plan of action for such activities". In considering the follow-up to this in-depth study, the Governing Body, at its 288th Session (November 2003), could also provide guidelines for the questionnaires to be prepared by the Office under article 38 or 39 of the Standing Orders of the Conference, as well as the adjustment which might need to be made to the preparation timetable.

### **Preparatory technical conference**

25. Unlike the two procedures described above, the two procedures outlined below were intended specifically for the preparation of standard setting. Under article 10, paragraph 3, of the Standing Orders of the Governing Body, when considering placing a question on the agenda of the International Labour Conference the Governing Body may decide to refer the question to a preparatory technical conference with a view to such a conference making a report to the Governing Body before the question is placed on the agenda. The Governing Body may also decide to convene a preparatory technical conference when placing a question on the agenda of the Conference. The date, composition and terms of reference of the Conference are decided by the Governing Body. Examination of the question by a preparatory technical conference would make it possible to clarify the form and content of the instruments envisaged and determine whether standard setting will contribute added value to realizing the objectives of the Organization. It would also help elaborate the necessary guidelines for drafting the questionnaire based on an outline contained in the report, which would not be intended to receive amendments, but only to indicate the points on which a consensus seemed to have emerged.
26. The importance of preparatory conferences was recognized in the Constitution in 1946. Article 14, paragraph 2, of the Constitution considers them as a means "to ensure thorough technical preparation and adequate consultation of the Members primarily concerned" prior to the adoption of a Convention or a Recommendation by the Conference. Article 38 of the Standing Orders of the Conference, on the single-discussion procedure, states in paragraph 4 the outcome of a preparatory technical conference with regard to the preparation of questionnaires and reports: the Governing Body may invite the Office either to prepare a summary report and a questionnaire to be communicated to Members, or itself draw up on the basis of the work of the preparatory technical conference the final report containing the proposed instruments. The latter case provides a radical solution to the problem by eliminating the questionnaire stage.
27. This method has never been used to date. Although it has the disadvantage of prolonging the process of elaborating standards, subject to the possible adjustment of the timetable for preparing reports, it could nonetheless be envisaged in future in cases where the inclusion of an item in the Conference agenda with a view to the adoption of new instruments has not yielded sufficiently clear guidelines on which all three groups agree.

## **Preparatory technical meeting**

28. A variation on this solution would be for the Governing Body to convene a preparatory technical meeting, which would be less formal than a preparatory technical conference. The composition of such a meeting, as well as its mandate, would be decided by the Governing Body on an ad hoc basis. It would have essentially the same functions as a preparatory technical conference, but with a reduced composition (for example, tripartite meetings of experts).
29. Neither of these solutions would require amending the Standing Orders of the Conference or the Governing Body inasmuch as the questionnaire is not “superseded”, but the normative process is enriched by the input offered by broad consultation on the main elements of future instruments in order to help the Office to better serve Members’ interests.
30. These different methods of improving the questionnaire and hence the quality of the instruments adopted add a preliminary stage to the procedure for the adoption of international instruments. It should be emphasized at this point that this system does not deprive the Governing Body of its prerogative to include a question in the Conference agenda at its own initiative to meet a specific need. Thus, when an entirely new question arises (elimination of the worst forms of child labour, revision of the seafarers’ identity documents Convention, to cite two recent examples), the Governing Body may proceed with a more rapid examination of this question with a view to including it as a standard-setting item in the agenda of a session of the Conference in the near future.

## ***Improving the form and content of the questionnaire?***

31. As recalled above, efforts have already been made to improve the content of questionnaires. These efforts should be pursued with the aim of drafting the questions more clearly in order to eliminate ambiguities and avoid “closed” replies, while eliciting comments from governments and the most representative organizations of employers and workers. The questionnaire could be produced with two boxes for respondents to indicate whether or not they accept the proposals and provide a space for formulating further proposals. Given the difficulties of obtaining clear guidelines on the content of the instruments envisaged, which the solutions outlined above could overcome, it has not been possible up to now to reduce the questionnaire to general questions, leaving it to respondents to complete it if necessary. Better preparation at the earlier stages should enable the questionnaire to be reduced, focusing only on the points that had not been raised or sufficiently discussed at the preparatory stage.
32. Another approach could be to transform the questionnaire by adopting a consultation procedure that is closer to that used for the negotiation of international agreements in other organizations. The process of drafting other instruments often begins with an outline of their possible content, which is filled out during negotiations with proposed texts which are communicated to the other parties. The practice of the International Labour Organization is different. Proposals are presented in the form of questions, which does not always make it possible to visualize the future instrument. There is no reason why the process should not begin with eliciting responses to text proposals rather than asking questions which must then be converted into a draft instrument. This would give constituents an initial idea of the texts which could result from the exercise, while at the same time offering them the opportunity to propose other formulations before discussion at the Conference, without prejudice to any amendments they might wish to present during the committee’s deliberations.

33. Lastly, if the above approach seems too radical in that it would mean eliminating the questionnaire and would require national civil servants to have competencies in the drafting of legal texts, i.e. those giving rise to rights and obligations, it would be possible to keep the questionnaire approach, with the questionnaire being accompanied by a model instrument in the form of an outline, which would make it possible to visualize the final instrument as mentioned in the preceding paragraph. This solution was first implemented in the case of the questionnaire on conditions of employment of plantation workers, which was accompanied by a set of possible provisions for inclusion in a future instrument.<sup>10</sup> The questionnaire on improving the security features relating to the seafarers' identity document uses the same technique in a more systematic manner, by including after a questionnaire drafted along the lines suggested in paragraph 31, a "preliminary draft of possible provisions" intended to illustrate how the proposals set out as questions might, if they were found acceptable, be translated into possible legal provisions.<sup>11</sup> The replies to this questionnaire will be carefully analysed by the Office in order to assess the impact of this presentation.

## Optimizing the effectiveness of the questionnaire

### *Utilization of Office resources in the service of constituents*

34. Constituents are not always clearly aware of what is at stake when drafting their replies to questionnaires. It is the questionnaire – together with the replies sent to it – which shapes the form and content of future instruments. The standards specialists in the different regions and subregions, in the case of governments, and the specialists in ACT/EMP and ACTRAV, for employers' and workers' organizations, could remind constituents of the issues (and the time limits so that their replies can be taken into account) and provide technical assistance to the persons responsible for drafting replies to the questionnaire in the departments and organizations which they assist. On this point, article 5 of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), provides that employers and workers shall be consulted on government replies to questionnaires concerning items on the agenda of the Conference.

### Online questionnaire

35. To facilitate replies to the questionnaire, Members could be allowed to provide their replies and any comments by representative employers' and workers' organizations online. The Office would be able to develop this facility on a trial basis for a future questionnaire, for example that on the fishing sector which is to be sent to Members in the near future. The Governing Body would be informed of the results of this experience and, in the light of such results, decide to put this method to general use, which of course would not exclude replying to the questionnaire in the usual way.
36. *The Committee may wish to recommend that the Governing Body invite the Office to present to its 288th Session (November 2003) proposals prepared in the light of discussions and taking account of current experience.*

<sup>10</sup> ILC, 40th Session, 1957, Report VIII(1).

<sup>11</sup> ILC, 91st Session, 2003, Report VII(1), "Improved security of seafarers' identification", p. 47.

### III. A code of good drafting practices

37. International labour Conventions are legal instruments which will give rise to rights and obligations once they have been ratified by member States. How they are drafted is crucial to their future application. It is equally important to ensure that international labour Recommendations are drafted in a precise and accurate manner, for Members may draw on them when designing and implementing their social policy. Yet, it does happen that the Conference adopts provisions which are difficult to apply in practice or lack legal precision, or diverge in their form in a way that undermines consistency of drafting in the Organization's body of standards or give rise to long and fruitless discussions within the drafting committee.
38. As pointed out above, the drafting of instruments is shaped to a certain extent by the questionnaire and the amendments adopted under article 63 of the Standing Orders of the Conference. The text adopted by the technical committee of the Conference following this amendment procedure is then submitted to the drafting committee of the Conference committee as provided under article 59 of the Standing Orders.
39. Although the function of this drafting committee is defined in the Standing Orders, delegates are sometimes confused about, and even mistrustful of, its role. Their legitimate concern is that the solutions of compromise reached during the technical committee's discussions remain unchanged. These solutions have to be examined by the drafting committees in the wider context of the body of standards which has grown up over the years, in accordance with a certain number of drafting rules designed to preserve the consistency of the instruments as a whole. One of the difficulties lies in the fact that these drafting rules have not been consolidated or widely recognized by the delegates.
40. The drafting committee has to retain the substance of the outcome of the committee's work, while examining it from the standpoint of clarity and form. If the wording of a provision is not very clear, it should be possible for it to be sent back to the technical committee for further discussion. In fact this is difficult or even impossible for practical reasons. The reduction in the length of the Conference means that the technical committee is no longer able to reopen a substantive discussion after the meeting of the drafting committee, since by doing so it might compromise the adoption of its report in time for the Conference to be able to examine it. Moreover, as regards form, it would be useful for the technical committees and their members on the drafting committee to have some basic rules during their work in order to prevent difficulties as far as possible. If they were provided with such information at the outset, this would save time and improve quality.
41. A code of good drafting practices could include indications illustrated by examples from up-to-date Conventions on the following:
- practices concerning the drafting of preambles;
  - the way to refer to international instruments;
  - the way to avoid needless repetitions between a Convention and its supplementary Recommendation;
  - terms to be used (or avoided), in particular in relation to the gender dimension;
  - basic terminology and definitions of frequently used terms;

- translations in the two official languages of a number of common expressions;
  - flexibility clauses.
42. The code of good drafting practices could be submitted to the Governing Body in the same way as the codes of practice adopted by the ILO, so as to be authoritative and put to wide use.
43. *The Committee may wish to propose that the Governing Body request the Office to prepare an assessment of the cost of preparing a code of good drafting practices for international labour Conventions and Recommendations and, in light of the views expressed during the discussions, to present a document concerning the content of the code to the 288th Session of the Governing Body.*

Geneva, 17 February 2003.

*Points for decision:* Paragraph 36;  
Paragraph 43.

## Appendix I

### Standing Orders of the International Labour Conference

#### ARTICLE 6

##### *Conference Drafting Committee*

1. The Conference shall appoint on the nomination of the Selection Committee a Conference Drafting Committee consisting of at least three persons who need not be either delegates or advisers.

2. The Committee Drafting Committee appointed by each committee under article 59(1) of these Standing Orders shall form part of the Conference Drafting Committee when any proposed Convention or Recommendation is submitted to the Conference by the committee concerned.

3. The Conference Drafting Committee shall have the functions entrusted to it by the rules concerning Convention and Recommendation procedure (Section E) and the rules concerning the procedure for the amendment of the Constitution of the Organisation (Section F) and shall, in general, be responsible for expressing in the form of Conventions and Recommendations the decisions adopted by the Conference and for ensuring agreement between the English and French versions of the texts of all formal instruments submitted to the Conference for adoption.

#### ARTICLE 38

##### *Preparatory stages of single-discussion procedure*

1. When a question is governed by the single-discussion procedure the International Labour Office shall communicate to the governments, so as to reach them not less than 18 months before the opening of the session of the Conference at which the question is to be discussed, a summary report upon the question containing a statement of the law and practice in the different countries and accompanied by a questionnaire drawn up with a view to the preparation of Conventions or Recommendations. This questionnaire shall request governments to consult the most representative organisations of employers and workers before finalizing their replies and to give reasons for their replies. Such replies should reach the Office as soon as possible and not less than 11 months before the opening of the session of the Conference at which the question is to be discussed. In the case of federal countries and countries where it is necessary to translate questionnaires into the national language the period of seven months allowed for the preparation of replies shall be extended to eight months if the government concerned so requests.

2. On the basis of the replies received the Office shall draw up a final report which may contain one or more Conventions or Recommendations. This report shall be communicated by the Office to the governments as soon as possible and every effort shall be made to secure that the report shall reach them not less than four months before the opening of the session of the Conference at which the question is to be discussed.

3. These arrangements shall apply only in cases in which the question has been included in the agenda of the Conference not less than 26 months before the opening of the session of the Conference at which it is to be discussed. If the question has been included in the agenda less than 26 months before the opening of the session of the Conference at which it is to be discussed, a programme of reduced intervals shall be approved by the Governing Body; if the Officers of the Governing Body do not consider it practicable for the Governing Body to

approve a detailed programme it shall be in their discretion to agree on a programme of reduced intervals with the Director-General.

4. If a question on the agenda has been considered at a preparatory technical conference the Office, according to the decision taken by the Governing Body in this connection, may either:

- (a) communicate to the governments a summary report and a questionnaire as provided for in paragraph 1 above; or
- (b) itself draw up on the basis of the work of the preparatory technical conference the final report provided for in paragraph 2 above.

## ARTICLE 39

### *Preparatory stages of double-discussion procedure*

1. When a question is governed by the double-discussion procedure, the International Labour Office shall prepare as soon as possible a preliminary report setting out the law and practice in the different countries and any other useful information, together with a questionnaire. The report and the questionnaire requesting the governments to consult the most representative organisations of employers and workers before finalizing their replies and to give reasons for their replies shall be communicated by the Office to the governments so as to reach them not less than 18 months before the opening of the session of the Conference at which the question is to be discussed.

2. The replies should reach the Office as soon as possible and not less than 11 months before the opening of the session of the Conference at which the question is to be discussed. In the case of federal countries and countries where it is necessary to translate questionnaires into the national language, the period of seven months allowed for the preparation of replies shall be extended to eight months if the government concerned so requests.

3. The Office shall prepare a further report on the basis of the replies received indicating the principal questions which require consideration by the Conference. This report shall be communicated by the Office to the governments as soon as possible and every effort shall be made to secure that the report shall reach them not less than four months before the opening of the session of the Conference at which the question is to be discussed.

4. These reports shall be submitted to a discussion by the Conference either in full sitting or in committee, and if the Conference decides that the matter is suitable to form the subject of Conventions or Recommendations it shall adopt such conclusions as it sees fit and may either:

- (a) decide that the question shall be included in the agenda of the following session in accordance with article 16, paragraph 3, of the Constitution; or
- (b) ask the Governing Body to include the question in the agenda of a later session.

5. The arrangements referred to in paragraphs 1 to 4 shall apply only in cases in which the question has been included in the agenda of the Conference not less than 18 months before the opening of the session of the Conference at which the first discussion is to take place. If the question has been included in the agenda less than 18 months before the opening of the session of the Conference at which the first discussion is to take place, a programme of reduced intervals shall be approved by the Governing Body; if the Officers of the Governing Body do not consider it practicable for the Governing Body to approve a detailed programme it shall be in their discretion to agree on a programme of reduced intervals with the Director-General.

6. On the basis of the replies received to the questionnaire referred to in paragraph 1 and on the basis of the first discussion by the Conference, the Office may prepare one or more Conventions or Recommendations and communicate them to the governments so as to reach them not later than two months from the closing of the session of the Conference, asking them to state within three months, after consulting the most representative organisations of employers and workers, whether they have any amendments to suggest or comments to make.

7. On the basis of the replies received, the Office shall draw up a final report containing the text of Conventions or Recommendations with any necessary amendments. This report shall be communicated by the Office to the governments so as to reach them not less than three months before the opening of the session of the Conference at which the question is to be discussed.

8. The arrangements referred to in paragraphs 6 and 7 shall apply only in cases in which there exists a period of 11 months between the closing of the session of the Conference at which the first discussion took place and the opening of the next session of the Conference. If the period between the two sessions of the Conference is less than 11 months, a programme of reduced intervals shall be approved by the Governing Body; if the Officers of the Governing Body do not consider it practicable for the Governing Body to approve a detailed programme it shall be in their discretion to agree on a programme of reduced intervals with the Director-General.

## ARTICLE 59

### *Committee drafting committees; subcommittees*

1. Each committee to which the Conference, in accordance with article 40 of the rules of procedure for Conventions and Recommendations, refers as a basis of discussion texts of proposed Conventions or Recommendations shall set up at an early sitting a committee drafting committee consisting of one Government delegate, one Employers' delegate and one Workers' delegate together with the Reporter or Reporters of the committee and the Legal Adviser of the Conference. In so far as may be possible the committee drafting committee shall comprise members conversant with both official languages. The committee drafting committee may be assisted by the officials of the Secretariat of the Conference attached to each committee as experts on the particular item of the agenda concerned. The committee drafting committee shall form part of the Conference Drafting Committee when any Convention or Recommendation is submitted to the Conference by the committee concerned.

2. Each committee shall have power to set up subcommittees after due notice has been given to the three groups in the committee.

3. The Chairman of a committee shall be entitled to attend the meetings of the committee drafting committee and of the subcommittees set up by the committee.

## Appendix II

### Standing Orders of the Governing Body

#### ARTICLE 10

##### *Procedure for placing an item on the agenda of the Conference*

1. When a proposal to place an item on the agenda of the Conference is discussed for the first time by the Governing Body, the Governing Body cannot, without the unanimous consent of the members present, take a decision until the following session.

2. When it is proposed to place on the agenda of the International Labour Conference an item which implies a knowledge of the laws in force in the various countries, the Office shall place before the Governing Body a concise statement of the existing laws and practice in the various countries relative to that item. This statement shall be submitted to the Governing Body before it takes its decision.

3. When considering the desirability of placing a question on the agenda of the International Labour Conference the Governing Body may, if there are special circumstances which make this desirable, decide to refer the question to a preparatory technical conference with a view to such a conference making a report to the Governing Body before the question is placed on the agenda. The Governing Body may, in similar circumstances, decide to convene a preparatory technical conference when placing a question on the agenda of the Conference.

4. Unless the Governing Body has otherwise decided, a question placed on the agenda of the Conference shall be regarded as having been referred to the Conference with a view to a double discussion.

5. In cases of special urgency or where other special circumstances exist, the Governing Body may, by a majority of three-fifths of the votes cast, decide to refer a question to the Conference with a view to a single discussion.

6. When the Governing Body decides that a question shall be referred to a preparatory technical conference it shall determine the date, composition and terms of reference of the said preparatory conference.

7. The Governing Body shall be represented at such technical conferences which, as a general rule, shall be of a tripartite character.

8. Each delegate to such conferences may be accompanied by one or more advisers.

9. For each preparatory conference convened by the Governing Body the Office shall prepare a report adequate to facilitate an exchange of views on all the issues referred to it and, in particular, setting out the law and practice in the different countries.