



## NINTH ITEM ON THE AGENDA

**Report of the Committee on Legal Issues  
and International Labour Standards***Contents*

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1. The Committee on Legal Issues and International Labour Standards (LILS Committee) met on 9 November 2004. The following members served as Officers:

<i>Chairperson:</i>	Mr. G. Corres (Government, Argentina)
<i>Employer Vice-Chairperson:</i>	Mr. B. Boisson
<i>Worker Vice-Chairperson:</i>	Mr. U. Edström

## First part: Legal issues

### I. Possible improvements in the standards-related activities of the ILO: Proposals regarding submission to competent authorities and the representation procedure (First item on the agenda)

2. The Committee had before it a paper<sup>1</sup> prepared by the Office containing proposals regarding the obligation of submission to the competent authorities in accordance with article 19 of the Constitution and the procedure for the examination of representations under articles 24 and 25 of the Constitution.

#### (a) *Implementation of the obligation of submission to competent authorities*

3. The Legal Adviser recalled that the main aim of the obligation of submission to the competent authorities was to promote domestic measures for implementing Conventions and Recommendations adopted by the Conference. Governments had absolutely no obligation to propose ratification of Conventions. He explained that section II of the Memorandum was based on verbatim extracts from the observations of the Committee of Experts and the Conference Committee on the Application of Standards. It would thus be possible to delete or add such quotations, but hardly possible to change them in substance. The Questionnaire, on the other hand, could be changed without any particular restriction.
4. The Worker members generally supported the proposals in the revised Memorandum and Questionnaire. They considered that the subject warranted serious treatment and found the new section of the Memorandum on aims and objectives to be absolutely necessary. Nevertheless, they felt that certain revisions were needed and that the documents should be more forward-looking and promote good practice. First, the terms used, including references to Protocols, should be more consistent and streamlined. In section II of the Memorandum, paragraph (c) should be redrafted to directly signal the need for national parliaments to take a decision. More neutral wording in section III(c) should describe the government's obligation upon submission to decide whether or not to ratify a Convention or accept a Recommendation. In section VII, wording should be added to emphasize that, to be effective, consultations with the social partners should be held prior to submission and take the form of dialogue and discussion, not only written communication. The section should further recommend that such consultations be pursued by all member States, regardless of ratification of Convention No. 144, and that governments communicate the

<sup>1</sup> GB.291/LILS/1.

opinions of the social partners to the competent authority as a type of good practice; the penultimate sentence of section VII(d) should be redrafted accordingly. They also preferred to replace the term “industrial associations” in section VIII with “representative workers’ and employers’ organizations”. In any event, in communicating information to the ILO, governments should add any views of the social partners on the matter submitted. They noted the disparity in treatment at national level between ratification and denunciation: while the former required submission to parliament, the latter could often be done by a simple decision of the executive. They wanted parliamentary submission to be required before denunciation and observed that, in any event, it would be helpful to receive information on whether denunciation was done with or without tripartite consensus. As for the Questionnaire, they suggested that it be provided to employers’ and workers’ organizations, and that references to good practice in tripartite consultation be added to section III along the lines of their suggestions for the Memorandum. They suggested wording for sections IV and V to reflect a presumption that submission, including a proposal for action, had been made and to request an explanation in cases where no action on the proposal had been taken. They further considered that the sections on federal States should be streamlined.

5. The Employer members considered that the obligation of submission was crucial, since it was the logical extension of the ILO’s activity at the level of member States. The Employers had been in agreement with the principal developments that had been reflected in the revision of the Memorandum. With regard to the question of Protocols, they suggested adding a footnote to the title of the Memorandum explaining that any reference to the term “Convention” in the document also covered the relevant Protocols, without any further mention of the latter in the rest of the text. With regard to section I of the Memorandum concerning the aims and objectives of submission, the speaker noted the use of different terms in the French text such as “*but essentiel*” (“main aim”) and “*visé principalement*”, which needed to be harmonized. The aim of submission should be to facilitate rapid examination by the competent authority of the measures needed with regard to instruments adopted by the Conference, not to promote ratification of Conventions, in view in particular of the significant number of Conventions with few ratifications. The Employers therefore had reservations on this as regards paragraphs (a) and (d). With regard to paragraph (c), they considered that the sentence “compliance with this obligation should not create problems in a democracy” implied an inappropriate value judgement, and the term “democracy” should be replaced by “member State”. In the view of the Employer members, given that under the terms of section II(c) the national parliament was not always the competent authority, sections II(b) and VII(a) should refer to “competent authority”, not to “parliament”. With regard to section III of the Memorandum, the phrase “*en fait*” in the French text of paragraph (b) was considered inappropriate. In paragraph (c), the Employer members, unlike the Worker members, wished to retain the final sentence unchanged. In section VII(d), the Employers wanted to delete the sentence according to which the government is not bound to communicate to the competent authority the opinions which have been expressed to it by representative organizations. Lastly, in section VIII(b), the term “industrial associations” should be changed to “representative organizations” used in the preceding paragraph. With regard to the Questionnaire, in particular point III, the Employers wished to see governments encouraged to undertake tripartite consultations even if they have not ratified Convention No. 144.
6. The representative of the Government of the United States, speaking on behalf of the industrialized market economy countries (IMEC), noted that the issue of submission had only recently been raised and did not merit significant adjustment. Nonetheless, she supported the updated Memorandum prepared by the Office, while noting that it was important to ensure that no new obligations for member States were created in the process of revision. She recalled that, under article 19 of the Constitution, a wide range of action

taken upon submission was deemed acceptable, and proposed that a clarification drawn from the 1999 Committee of Experts report be added to section I of the Memorandum to that effect in order to prevent the misconception that submission had the sole function of initiating the ratification process. She further suggested that the first part of the Memorandum refer to the availability of ILO technical assistance where needed.

7. The representative of the Government of the Russian Federation supported the revised Memorandum with the exception of the new section III(b), which his Government could not accept. In his view, the obligation placed on the competent authority to take a decision with respect to the submitted instruments was not supported by article 19 of the Constitution. Given the number of amendments requested by the previous speakers, he suggested that the Office revisit its proposals and return to the Committee with a new proposal, prepared after necessary informal consultations.
8. The representative of the Government of El Salvador, speaking on behalf of the Group of Latin American and Caribbean States (GRULAC), appreciated the proposals of the Office which reflected the evaluation supported by his group on how to improve compliance with the obligation of submission provided for in article 19 of the Constitution. He highlighted the value of pursuing greater objectivity, transparency, balance, effectiveness and coherence in the application of standards-related procedures in member States, which presented opportunities to help understand and solve problems through ILO Recommendations and technical cooperation and assistance. While the revised Memorandum demonstrated progress made through tripartite dialogue in elaborating those provisions, he stressed that governments retained full authority to decide whether or not to ratify the Conventions or accept the Recommendations, which was confirmed by paragraph 9 of the Office paper. In relation to section III(b) of the Memorandum, he considered that the obligation of submission was fulfilled at the time of submission of the instruments to the parliament, and its scope should not be broadened to include the taking of a decision by the competent authorities, given the principle of separation of powers within a State that required the executive to respect the independence of the legislative branch on such matters. In that context, he also affirmed the approach of section III(b) that the obligation to submit the instruments did not imply any obligation to propose their ratification or acceptance. He further supported the suggestion of the Worker representative relating to use of the term “representative workers’ and employers’ organizations” in section VIII.
9. The representative of the Government of Nigeria, speaking on behalf of the Africa group, noted that the obligation of submission was regarded as an area that needed improvement. She supported the inclusion of a new section I in the Memorandum, especially paragraphs (c) and (d). However, she found the new provisions in section III confusing; this could be addressed by inverting paragraphs (b) and (c).
10. The representative of the Government of South Africa, supporting the statement of the representative of the Government of Nigeria on behalf of the Africa group, suggested several points for clarification. He noted the need for consistency in the language used, and supported in particular an alignment between paragraphs (a) and (d) of section I which would reflect the idea of promotion of ratification, and a clarification of the term “consultative body” in section II(d). As for section III, he noted with concern that paragraph (b) increased the obligation of submission without increasing the prescribed time frame within which to fulfil it, but supported section III(c) which entrenched the sovereignty of member States in making decisions whether or not to ratify or accept the instrument submitted. He endorsed the revised provisions in section VII as expressions of the principles of tripartism and social dialogue at the core of the ILO, and endorsed the suggestions already made to use the term “representative workers’ and employers’

organizations” in section VIII. As for the Questionnaire, his comments regarding alignment of language and other specific concerns applied to it as well.

- 11.** The representative of the Government of India advocated a more meaningful application of the present arrangements concerning the submission to competent authorities. As regards the proposed amendments to the Memorandum, he favoured those changes relating to increased importance attached to parliamentary bodies in section II, paragraphs (c) and (d), and the specific mention of Protocols. He did not agree, however, with the proposed amendments in sections III(b), and VII(b) and (c).
- 12.** The representative of the Government of Lithuania shared the concerns expressed by others concerning section III(b) of the proposed revised Memorandum, and supported the proposal to reword the paragraph. She had some doubts as to whether it was in line with article 19 of the Constitution of the ILO, and believed it might not be compatible with some national legal systems.
- 13.** The representative of the Government of Italy, supporting the statement of the representative of the Government of the United States speaking on behalf of IMEC, emphasized the importance of the constitutional obligation of submission and its role in securing the visibility of instruments adopted by the Conference. He particularly approved of the new section on aims and objectives, and believed that the proposed revisions would lend precision to certain aspects of the obligation of submission.
- 14.** The Legal Adviser explained that the Memorandum did not impose any new obligations, and recalled that it would be difficult to change the verbatim extracts beyond harmonizing the style and terminology, which had changed over the years. On the other hand, changes could be made to the Introductory Part of the Memorandum. It was clear that there was no obligation on governments to propose ratification of Conventions that had been submitted; that could possibly be stated in the section concerning the aims and objectives of the obligation of submission. With regard to section III(b) of the Memorandum, it was important to distinguish between the extent of the obligation of submission and the time limit for submission. Under the terms of paragraph 5(d) and (e) of article 19 of the Constitution, a decision had to be taken by the competent authority on each Convention submitted, either to ratify or not to ratify, to incorporate all or some of its provisions into national law, or not to take any action. The obligation of submission of an instrument was fulfilled only when such a decision was taken. However, the competent authority was not obliged to take its decision within the time limit of 12 (or 18) months stipulated by article 19, paragraph 5(b); that time limit applied only to the government’s obligation to communicate the texts concerned to the competent authority together with its proposals regarding follow-up action. In view of the large number of proposed amendments presented by members of the Committee, he proposed that a revised version of the Memorandum be prepared to reflect, as far as possible, the proposed amendments. Replying to the comments of the Worker members regarding the disparate treatment of ratification and denunciation of Conventions, he said that it was not possible, without amending the Constitution, to introduce a new obligation of submission when the government intended to denounce a Convention. Any proposals to denounce a ratified Convention were generally discussed in tripartite consultations, in accordance with Convention No. 144. Lastly, it was important to bear in mind that, under article 23 of the Constitution, information communicated to the Director-General on submission to the competent authorities had to be communicated to the representative organizations of employers and workers.
- 15.** The representative of the Government of Germany agreed that section III(b) of the Memorandum lacked clarity. The last part of the sentence, “and a decision has been taken by the competent authorities with respect to them”, should be deleted. Alternatively, it

would be useful to modify section III(c) to state that the obligation to submit the instruments does not imply any obligation to propose or not to propose ratification.

16. The Worker members said that the timeline for compliance under article 19(5)(b) applied to submission of newly adopted instruments to the parliamentary authority, not to decision taken upon submission. They interpreted the statement of the representative of the Government of Germany as supporting their proposal for more neutral wording of section III(c). They approved of the emphasis on promotion of ratification in section I(d) proposed by the Government of South Africa. They observed that, in this regard, the Conference worked to develop Conventions for the purpose of their ratification upon submission to member States and, in their view, this was reflected in article 19(5)(a) which provided that newly adopted Conventions would be communicated to all Members “for ratification”.
17. The Employer members endorsed the proposal to defer a decision on the revised Memorandum to a later session of the Governing Body, after consultations with the group secretariats on a new draft text. In their view, the fact that the Memorandum was based on extracts of observations of the Committee of Experts should not prevent the Governing Body from producing its own text. The document was addressed to the Members by the Director-General, and its adoption by the Governing Body was a policy decision. He noted that the members of the Committee appeared to be in agreement that section III(b) should be deleted. If it were not deleted, the order of paragraphs (b) and (c) would have to be inverted, and the words “On the other hand” deleted from paragraph (c), so as to ensure that a means of applying a principle did not come before the statement of the principle itself.
18. *The Committee recommends that the Governing Body request the Office to prepare for its 292nd Session (March 2005) a revised draft of the Memorandum concerning the obligation to submit Conventions and Recommendations to the competent authorities, taking into account the views expressed and the amendments proposed during the debate.*

**(b) The representation procedure**

19. The Legal Adviser recalled that the Committee was being required for the third time in six years to examine questions relating to the representation procedure under article 24 of the Constitution. The document considered the three points on which consensus had emerged during the previous discussion, namely, the notion of “industrial association”, the possible prescription of certain matters forming the basis of a representation, and problems concerning the repetitive nature of certain representations. With regard to the first two points, for constitutional reasons no amendment was proposed to the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the ILO Constitution. With regard to the third point, it was proposed to add a new paragraph 3 to the relevant article of these Standing Orders. It was difficult to avoid using the term “industrial association” in this context, as it was used in the Constitution.
20. The Employer members endorsed the new paragraph 3 in article 3. However, they did not agree with paragraphs 20 and 25 of the Office paper, according to which it was not possible to introduce *locus standi* as a condition of receivability of representations and a compulsory period for prescription of certain matters forming the basis of a representation. In the Employers’ view, nothing in the Constitution precluded specification of the means of exercising the right of representation. In the draft Introductory Note to the Standing Orders, the two questions were dealt with in the context of the examination of the substance of a representation, when in fact they concerned receivability. Since conditions

for prescription and *locus standi* existed in any legal system, the Employers would have liked such conditions to be introduced for representations.

- 21.** The Worker members supported the proposals of the Office in relation to Annexes II and III of the Office paper. Nevertheless, they suggested that, if the terms “association” in Annex II and “industrial association” in Annex III could not be changed, they wished to see a footnote or other explanation to indicate that those terms actually meant “representative workers’ and employers’ organizations”. They noted the desirability of using in addition the full reference “industrial association of employers or workers”, as found in article 2(2) of the Standing Orders and paragraph 9 of Annex III. In the latter paragraph, a reference to employers’ industrial associations needed to be added to the third part. In relation to potentially repetitive representations, the Workers suggested that the language of Annexes II and III be modified to ensure a more definite time of postponement of appointment of a tripartite committee to examine the representation, notably by suggesting postponement pending an examination by the Committee of Experts “at its following session” or “next session”.
- 22.** The representative of the Government of the United States, speaking on behalf of IMEC, generally supported the Office proposals, which incorporated well-established principles and common-sense approaches without compromising the wide discretion given to the Governing Body under article 24 of the Constitution. She believed the proposals contributed to greater transparency and coherence of the procedure, and complemented other supervisory procedures. The draft Introductory Note was a step towards a user-friendly publication describing the article 24 process, which IMEC had earlier proposed. On specific points, she agreed with the proposed clarification of the term “industrial association” and the possibility of applying the principle of prescription in line with the practice of the Committee on Freedom of Association, and with their inclusion in the Introductory Note to the Standing Orders. She also supported the proposed amendment to article 3 of the Standing Orders on repetitive representations, and expressed the support of the French-speaking IMEC members for the proposed correction to the French version of the Standing Orders. Finally, she renewed IMEC’s request of November 2003, which had been endorsed by the Worker and Employer members, for a catalogue of issues addressed and decisions made by the Governing Body to date with a view to improving standards-related activities of the ILO.
- 23.** The representative of the Government of India said that, when deciding on the receivability of a representation, the Governing Body should satisfy itself that there was at least one Employer or Worker representative from the country concerned who supported the representation. This would help to prevent frivolous representations submitted by organizations not related to or affected by a matter on which the social partners in the country concerned agreed. Concerning the question of prescription, he was of the opinion that a fixed time limit should be set for the receivability of representations and the Standing Orders amended if necessary. As regards the repetitive nature of representations, the Committee of Experts should take a final decision on the subject within a certain period, and no new representation on the same issue should be receivable thereafter. India therefore did not agree with the proposed amendment to article 3 of the Standing Orders as drafted.
- 24.** The representative of the Government of El Salvador, speaking on behalf of the Group of Latin American and Caribbean States (GRULAC), generally supported the recommendations proposed by the Office and considered them relevant and feasible. In particular, he supported the amendment proposed to article 3(3) of the Standing Orders to deal with repetitive representations, and the approach in the Introductory Note summarizing the different stages of the procedure and the various options available to the Governing Body in analysing issues of receivability, procedure, merits and follow-up.

Nevertheless, the group had several concerns. While he fully supported the principles recognized in paragraph 9 of the Introductory Note, which he considered would strengthen the credibility of the procedure, the option proposed in paragraph 10 to apply *mutatis mutandis* the principles of receivability established by the Committee on Freedom of Association (CFA) was inadequate, given the very nature of the receivability of the representations to be analysed, which were based on Conventions governing matters other than freedom of association. Finally, as to prescription, he considered that the Governing Body could adopt a solution similar to that of the CFA, but recalled that prescription was to be handled as a preliminary matter before examination on the merits, a point clearly made in paragraph 16(a) of the Introductory Note.

25. The representative of the Government of Italy, supporting the statement made by the representative of the Government of the United States speaking on behalf of IMEC, agreed in particular with the analysis on receivability in the Office paper, especially the emphasis in paragraphs 20 and 21 on the “direct interest” of the complainant. He supported the decisions not to propose an amendment to the Standing Orders on receivability, to rely on the Governing Body to decide on prescription as a preliminary matter, and to propose an amendment to article 3 of the Standing Orders deferring a decision in representations of a repetitive nature until review by the Committee of Experts.
26. The representative of the Government of Mexico, supporting fully the statement of the representative of the Government of El Salvador speaking on behalf of GRULAC, wished to make several proposals and seek clarifications. With respect to the proposed new paragraph 3 of article 3 of the Standing Orders, she suggested adding the words “on which a tripartite committee has already issued a report” after the words “earlier representation” in order to provide more certainty regarding the decision to postpone the appointment of a Committee to examine the new representation. While she agreed that the Introductory Note in Annex III helped to clarify the process relating to receivability and review of a representation, she found that the scope and role for interpretation based on the criteria and practice of the Committee on Freedom of Association, which was introduced in the proposed paragraph 16(b), was not clear. She requested a detailed explanation by the Office of the intended aims of adopting such criteria, especially in light of the Employer members’ observations. Finally, she emphasized the importance of continuing to seek improvements in the article 24 procedure. In particular, she noted that it was important to focus on the analysis conducted by the Governing Body Officers at the time of deciding on the receivability of a representation. As paragraph 11 of the Introductory Note acknowledged, that analysis should clearly and appropriately set forth the facts upon which the representation was based and, above all, the aspects that should be referred to the tripartite committee for review.
27. The Legal Adviser, replying to comments by the representative of the Government of El Salvador concerning paragraph 10 of the draft Introductory Note, noted that the text referred to application of the principles developed by the Committee on Freedom of Association *mutatis mutandis*. There was no question of adopting identical procedures, but simply of suggesting to the Governing Body that it draw on the extensive experience of the CFA in order to improve the focus on the notion of industrial association as clearly as possible. He took note of the amendment proposed by the Worker members to the new paragraph 3 of article 3 of the Standing Orders. With regard to the amendment proposed by the representative of the Government of Mexico, which did not appear to be supported, the condition that a tripartite committee should already have submitted a report on the previous representation was implied by the text proposed by the Office, which referred to “recommendations previously adopted by the Governing Body”.
28. The Worker members believed that there was now consensus on their proposal to add the words “at its following session” with respect to the timing for postponement of

appointment of a tripartite committee. As to the proposal of the representative of the Government of Mexico, they believed the draft text of article 3(3) of the Standing Orders already covered the matter. They supported the IMEC proposal requesting a full update of the issues and decisions relating to the Governing Body's review with a view to improvement of standards-related procedures.

29. The point for decision was adopted subject to the amendment to article 3(3) of the Standing Orders presented by the Worker members, and the replacement in the Introductory Note of the term "industrial association" with "industrial association of employers and workers".

30. *The Committee recommends to the Governing Body that it:*

(a) *adopt the proposed amendments to the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the ILO Constitution contained in Appendix I;*

(b) *approve the introductory note to the aforementioned Standing Orders contained in Appendix II.*

## II. Practices for the preparation of international labour Conventions: Progress regarding the handbook on good drafting practices

(Second item on the agenda)

31. The Committee had before it a document<sup>2</sup> submitted for information on progress achieved on the proposed handbook on good drafting practices.

32. The Employer members requested that the Office conduct urgent consultations with the group secretariats on this subject. They also recalled that the French title of the document should be "*manuel*" (handbook), not "*code*".

## III. Consolidation of rules applicable to the Governing Body

(Third item on the agenda)

33. The Committee had before it a paper<sup>3</sup> prepared by the Office with a number of proposals relating to the content and form of a possible consolidation of the rules, practices and arrangements governing the functioning of the Governing Body.

34. The Employer members noted that it was necessary to gather together all the various complex rules on the functioning of the Governing Body in the interests of transparency and to enhance its governance capacity and effectiveness. The means of doing so favoured by the Employer members was a compendium, as a compilation would not meet the objective of clarity required, and a comprehensive legal text might lead to excessively rigid rules.

<sup>2</sup> GB.291/LILS/2.

<sup>3</sup> GB.291/LILS/3.

35. The Worker members supported the intermediate solution of a compendium proposed in paragraph 18 of the paper. They looked forward to a substantive discussion at the Governing Body's next session of the initial draft prepared by the Office and, in particular, to reviewing the issue of the relationship with international non-governmental organizations referred to in paragraph 13. As to the further reference in that paragraph to member States' failure to send a delegation or a complete tripartite delegation to the Conference and other meetings, they recalled earlier discussions of the Governing Body in November 1998 and March 2001, and noted the need to continue such reporting, given the widespread persistence of the practice, as recently demonstrated by attendance at the Preparatory Technical Maritime Conference.
36. The representative of the Government of the United States, speaking on behalf of IMEC, supported the intermediate solution of a compendium, prefaced with an explanatory note. She considered that the purpose of such a consolidation would be to contribute to the efficient functioning of the Governing Body by ensuring that its rules, decisions and practices were transparent and fully accessible to all members of the Governing Body and to all ILO constituents. As to content, the new compendium should incorporate all the relevant subjects, themes and sets of rules. As to form, a mere compilation as proposed in paragraph 16 would leave unreported some aspects governed by practice, and the negotiation of a single comprehensive text proposed in paragraph 17 did not appear to be either necessary or a wise use of scarce resources. The preferred option, a compendium, should note where the full text of each rule or decision could be found, and she encouraged the Office to make those texts available online.
37. The representative of the Government of Nigeria, speaking on behalf of the Africa group, agreed that the consolidation of the different rules and practices that regulate the composition, structure and procedures of the Governing Body in a single document would enhance its efficiency. She believed that, except for those referred to in I(a) of the Office paper, the different rules could be assembled in the form of a compendium and should be subject to review in 2008 following the Governing Body elections.
38. The representative of the Government of India welcomed the proposal to consolidate the rules applicable to the Governing Body and noted that a number of important questions were governed by decisions and practices that were not readily accessible. As a first step towards consolidation of the rules, he preferred a compendium of existing rules, prefaced with an explanatory note in which certain practices could be reflected without being fixed as legal rules.
39. The representative of the Government of South Africa supported the proposal for a compendium with regular updating, perhaps every three years. He observed that, since it took years for most members of the developing world to become members of the Governing Body, there was a need to ensure that the rules were consolidated. He believed the rules were still relevant and did not warrant serious review, although there was also a need to guard against the risk that a review would introduce excessive rigidity into already established, flexible arrangements. He suggested that, to assist member States that had been out of the Governing Body for a long time, the compendium should clearly reference the Financial Regulations, rules on Governing Body membership, Standing Orders and decisions taken by the Governing Body on improving its own functioning. He urged the Office to consult widely in the process leading to the compendium.
40. The representative of the Government of the Russian Federation noted that a comprehensive review of the applicable rules was a complex task that would require some time. He supported the intermediate solution of a compendium, which should also include non-codified practice.

41. The representative of the Government of Italy supported the statement of the representative of the Government of the United States speaking on behalf of IMEC. He stressed the importance of the consolidation initiative, which he believed would provide greater transparency to the rules and practices on the composition, structure and procedures of the Governing Body that were currently dispersed in different texts and publications.
42. *The Committee recommends to the Governing Body that it request the Office to prepare an initial draft compendium consolidating the rules, practices, and arrangements applicable to the Governing Body, for examination by the Committee on Legal Issues and International Labour Standards at its March 2005 session, taking into account the views expressed during the debate.*

## **Second part: International labour standards and human rights**

### **IV. Ratification and promotion of fundamental ILO Conventions** (Fourth item on the agenda)

43. The Committee had before it a document<sup>4</sup> on the ratification of ILO fundamental Conventions under the campaign launched by the Director-General in May 1995.
44. The representative of the Director-General provided an oral update on new information on the subject received since the report had been issued. The Office had received 14 further replies to the Director-General's 2004 campaign letter. This brought the number of replies received up to 33. In addition, a number of countries had provided relevant information in their 2004 reports under the Declaration.
45. In the light of this new information, the following paragraphs of the Office paper should be modified: *paragraph 11* – Myanmar indicated in September 2004 that priority was given to the drafting of a new Constitution under which the laws necessary for further ratifications should be adopted; *paragraph 13* – the United States repeated previous information; *paragraph 16* – Qatar renewed its commitment to applying the principles contained in the fundamental Conventions, while measures taken in regard to ratification of the Conventions in question would be notified in due course; *paragraph 21* – Kiribati stated in its 2004 annual report under the Declaration that ratification of Conventions Nos. 182 and 138 should not be a problem, while the country was also committed to ratifying Conventions Nos. 100 and 111; *paragraph 24* – Singapore reiterated in October 2004 information provided previously; *paragraph 31* – the Islamic Republic of Iran indicated in September 2004 that the Government continued its endeavours to remove obstacles to ratification of Conventions Nos. 87 and 98; *paragraph 32* – Latvia stated in September 2004 that the translation of Conventions Nos. 29 and 138 into Latvian which was required for ratification continued; *paragraph 35* – Uganda stated in its 2004 report under the Declaration that ratification of Conventions Nos. 87, 100 and 111 was now under way; *paragraph 39* – Estonia announced in September 2004 that amendments to the Employment Contracts Act and the adoption of the Gender Equality Act in 2003 made the ratification of Conventions Nos. 111 and 138 possible; *paragraph 40* – Haiti reiterated in its 2004 annual report under the Declaration that it remained committed to ratifying Conventions Nos. 138 and 182; *paragraph 43* – Liberia stated in its 2004 annual report

<sup>4</sup> GB.291/LILS/4.

under the Declaration that the new administration intends to ratify Convention No. 138 before the end of the year, and Convention No. 100 would soon be ratified as well; *paragraph 46* – Nepal replied in September 2004 that after tripartite consultation held in 2004 it was decided that further deliberations would help to forge a broad consensus among social partners regarding the ratification of Conventions Nos. 87 and 105; *paragraph 47* – New Zealand stated in September 2004 that no further decisions had been made regarding Convention No. 87, while in relation to Convention No. 138 a compatibility assessment was under way; *paragraph 52* – Bolivia indicated in September 2004 that it was in the process of ratifying Convention No. 29; *paragraph 53* – Brazil indicated in October 2004 that the results of the National Employment Forum (2003-04) would be included in a legislative initiative to make the necessary changes that would allow ratification of Convention No. 87; *paragraph 56* – Chad has sent a copy of the outstanding declaration under Article 2(1) of Convention No. 138 and the original is awaited; *paragraph 59* – the Czech Republic stated in September 2004 that after the adoption of two laws relating to child labour, the proposal for ratification of Convention No. 138 was being prepared; *paragraph 62* – Ghana stated in its 2004 annual report under the Declaration that it is planning to ratify Convention No. 138 soon; *paragraph 68* – Madagascar indicated in its 2004 annual report under the Declaration that the efforts towards ratification of Convention No. 105 continued; *paragraph 70* – Morocco informed the Office in September 2004 that certain aspects of legislation on the public sector remained obstacles to ratification of Convention No. 87, but the Government would continue its efforts; *paragraph 72* – Pakistan stated in its 2004 annual report under the Declaration that further steps were being taken for ratification of Convention No. 138; *paragraph 73* – the Philippines stated in October 2004 that for procedural reasons Convention No. 29 needs to be resubmitted to Congress. The updated table of ratifications and information regarding outstanding ratifications is annexed to the Committee's report (see Appendix III).

- 46.** The Worker members welcomed the paper and expressed their satisfaction with the increasing number of ratifications of fundamental Conventions. They urged that the efforts to attain universal ratification should continue. Concern was expressed that Convention No. 87, with 142 ratifications, was the second least ratified fundamental Convention, with only two new ratifications in the last two-and-a-half years. As this instrument was the backbone of tripartism, special efforts were required to obtain further ratifications. They recalled the Director-General's statement to the International Labour Conference in the context of the discussion of the second Global Report on freedom of association, that universal ratification of Conventions Nos. 87 and 98 should be achieved by 2015 at the latest. As these instruments contained "enabling rights", it was particularly important that the remaining countries, which accounted for a high proportion of the world's workers, ratified them. Further technical assistance by the Office was needed, and more donor support should be given.
- 47.** With regard to section II of the paper, the Worker members suggested that, where a government had failed to provide relevant information, workers' and employers' organizations should be invited to do so. They also stated that the document should provide more details on remaining obstacles for ratification. They regretted that some countries, including Governing Body members, had failed to make any efforts towards further ratifications. They stressed that accurate information was needed to formulate action plans. The Worker members further noted that there were still a number of countries that had not yet sent the required declaration under Article 2(1) of Convention No. 138, and wondered what the Office had done to remedy that situation.
- 48.** The Employer members said that the report was interesting, as it allowed any progress made with the ratification campaign initiated in 1995 to be traced. While the campaign had led to impressive results, it was nevertheless apparent that difficulties with regard to

outstanding ratifications continued to exist, and therefore the pace of new ratifications had slowed down. They suggested that the list of countries having ratified one or more Conventions since the beginning of the campaign contained in the appendix could be omitted in future reports.

49. The representative of the Government of Nigeria, speaking on behalf of the Africa group, commended the Office for the paper. The update given on ratifications of fundamental Conventions was an indication of the good cooperation between the Office and member States. She stressed that ratification was meaningful only if followed by application. She regretted that some African countries had been mistakenly omitted from the appendix.
50. The representative of the Government of South Africa also commended the Office for the report. He proposed that the efforts to promote ratifications should be extended to other important Conventions, such as those protecting workers in agriculture and the informal sector, as well as domestic workers. The speaker regretted that his country had again been omitted from the list of those having ratified Convention No. 111 in the appendix.
51. The representative of the Government of Norway noted that, while some progress had been made, not all workers were yet covered by the fundamental Conventions. The campaign should therefore continue.
52. The representative of the Director-General said that two cases of outstanding declarations under Article 2(1) of Convention in No. 138 had been resolved since last year, and work with regard to the cases continued. The Office had offered technical assistance to all countries concerned.
53. The Worker members said that a similar report should be provided next year, and supported the proposal by the representative of the Government of South Africa to step up the promotion of other important Conventions.
54. The Committee took note of the document and the information provided orally.

**V. Choice of instruments on which reports should be requested in 2006 and 2007 under article 19 of the Constitution**  
(Fifth item on the agenda)

55. The Committee had before it a paper<sup>5</sup> concerning the choice of Conventions and Recommendations on which governments should be invited in 2006 and 2007 to present reports under paragraphs 5(e), 6(d) and 7(b) of article 19 of the Constitution.
56. The Employer members said they were in favour of examining instruments concerning forced labour for reports due in 2006. They supported the idea that a survey on this subject would be a useful supplement to the more general approach adopted in the Global Reports under the Declaration on Fundamental Principles and Rights at Work. As for the reports that should be requested in 2007, discussion might centre on the list of instruments to promote, but the Employers were open to other suggestions.
57. The Worker members said that, in their view, the periodicity of the General Survey should not change as these studies were important in identifying obstacles in the application of standards. More should be done to provide assistance to countries experiencing difficulties

<sup>5</sup> GB.291/LILS/5.

applying relevant Conventions. With regard to the selection of topics for future General Surveys, they were of the view that all three proposed topics were important. They noted with concern that Convention No. 94 and Recommendation No. 84 on labour clauses in public contracts had not been the subject of a General Survey for 50 years. That was one of the longest periods for which a group of instruments had not been examined under article 19. It was the ILO's duty to rectify that situation. Furthermore, there were numerous good reasons to examine these instruments, and they were set out in paragraph 8 of the document before them. In addition, they had an important role to play in the context of the social dimension of globalization. Convention No. 94 had not received a great number of ratifications, which was all the more reason to examine why there were obstacles to ratifying this important instrument. Therefore, for 2006 the Worker members supported a General Survey on Convention No. 94 and Recommendation No. 84. For 2007, they supported a General Survey on forced labour.

58. The Employer members also emphasized the importance of General Surveys as reference documents, and did not intend to question the periodicity of these surveys. They adhered to their proposal of forced labour for 2006, but were prepared to consider the question of labour clauses in public contracts for 2007, with the proviso that in their view, the reference to "social dumping" in the Office paper was inappropriate.
59. The representative of the Government of Nigeria, speaking on behalf of the Africa group, noted that in 2007 the Global Report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work would deal with equality. Awareness of the forced labour Conventions was high in the ILO, as a result of the treatment of the subject under the Declaration on Fundamental Principles and Rights at Work and its Follow-up and the importance of these fundamental Conventions. Convention No. 94, however, was not well known and appeared to be misunderstood, despite the fact that it has been influential in the field of public procurement. The Africa group therefore supported a General Survey on labour clauses in public contracts for 2006. They agreed that the Office should hold further consultations on the subject for the 2007 General Survey and on the periodicity of these reports.
60. The representative of the Government of the United States indicated that her Government supported a General Survey on forced labour for 2006 and further tripartite consultations regarding the 2007 General Survey and the periodicity question. General Surveys were useful reference documents on ILO standards, and 25 years had elapsed since the last survey on forced labour. Developments with regard to prison labour and trafficking in persons made the subject all the more important.
61. The representative of the Government of Norway supported a General Survey on forced labour for 2006, and further consultations regarding the periodicity of General Surveys. He noted that General Surveys created a large workload for governments, the Conference Committee on the Application of Standards and the ILO's International Labour Standards Department. The latter's limited resources needed to be taken into account as well. The Office could prepare proposals in a document on this issue for the next session of the LILS Committee.
62. The representative of the Government of China supported a General Survey on forced labour for 2006. While this topic had been the subject of two reports under the follow-up to the Declaration on Fundamental Principles and Rights at Work, further explanation was needed on the application of these Conventions, especially with regard to new forms of forced labour. Further consultations should be held with regard to a topic for 2007.
63. The representative of the Government of Canada supported a General Survey on forced labour in 2006, and further consultations regarding the topic for 2007 and the periodicity of

the reports. Her Government would support a two- or three-year interval for General Surveys in order to lighten the workload for governments and the Office, so that they could remain focused on the important task of the regular supervision of ratified Conventions. She also noted that a single report on the instruments relevant to gender equality as set out in paragraph 12(b) would be overwhelming for both governments and the Office. She therefore proposed that, if this topic were to be accepted, it be divided into three separate subjects concerning equality, workers with family responsibilities and maternity protection, to be spread out over subsequent years.

- 64.** The representative of the Government of France said that, of the three proposals in the Office paper, he would prefer the forced labour instruments as the choice for 2006, and added that a new survey would take into account recent developments in this area. For 2007, the choice of the French Government was for labour clauses in public contracts. The question was of particular interest in the context of economic and trade liberalization. She stressed the increasingly international dimension of public contracts, and referred to the work of the United Nations Commission on International Trade Law. Gender equality could be chosen in 2008. She supported the proposal for a coordinated review of the different instruments dealing with this subject area, with a view to promoting a more strategic approach. This timetable showed the value placed by the French Government on having annual General Surveys, which were an exceptional tool for knowledge and used far beyond the ILO. At a time when concern was being expressed, with the integrated approach, about the impact of standards, it would not be consistent to lessen the role of a tool of this kind, other than having a different scope for the survey supplemented by a tripartite discussion.
- 65.** The representative of the Government of Mexico endorsed the choice of forced labour for the 2006 General Survey. The subject for the following year should be chosen on the basis of consultations between member States. She agreed with the representatives of the Governments of Canada and Norway with regard to the periodicity of the General Surveys.
- 66.** The representative of the Government of Spain, noting the work achieved by the ILO in the area of forced labour, said his choice for 2006 was labour clauses in public contracts. A General Survey would provide the opportunity to appeal to governments to re-examine national legislation and practice in this area. As for the choice of subject for 2007, consultations would be necessary.
- 67.** The representative of the Government of Japan indicated his Government's support for a General Survey on forced labour in 2006 and gender equality in 2007.
- 68.** The representative of the Government of the Republic of Korea supported a General Survey on forced labour for 2006 in view of the importance of the issue with regard to prison work and questions arising from alternatives to military service. With regard to the topic for 2007, further consultations should be held.
- 69.** The representative of the Government of Italy endorsed the choice of labour clauses in public contracts for the 2006 General Survey, for the reasons stated by the representative of the Government of Spain, and agreed with the proposal to carry out consultations to choose the subject for 2007.
- 70.** The Worker members noted that the active debate on the question on future General Survey topics had demonstrated the importance of the topics proposed, and they congratulated the Office for having submitted a useful paper in this regard. They noted that several governments had supported the Worker members' first choice of a topic regarding labour clauses in public contracts. They would be prepared to accept a General Survey on forced labour in 2006 and on labour clauses in public contracts in 2007.

71. This solution was supported by the Employer members.
72. There being no objections, the choices of forced labour as the subject for 2006 and labour clauses in public contracts for 2007 were adopted by the Committee.
73. *The Committee recommends that the Governing Body invite governments to submit reports under article 19 of the Constitution:*
- (a) *in 2006 on the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105);*
- (b) *in 2007 on the Labour Clauses (Public Contracts) Convention, 1949 (No. 94), and the Labour Clauses (Public Contracts) Recommendation, 1949 (No. 84).*

**VI. Establishment of arrangements and procedures under Article 5, paragraphs 6-8, of the Seafarers' Identity Documents Convention (Revised), 2003 (No. 185)**  
(Sixth item on the agenda)

74. A representative of the Director-General (Ms. Doumbia-Henry, Director of the International Labour Standards Department), introducing the Office paper<sup>6</sup> before the Committee, indicated that Convention No. 185 was the first legal instrument that comprehensively dealt with identification at the global level. Article 5, paragraphs 6-8, of the Convention gave the Governing Body a ground-breaking role, namely the responsibility for devising and implementing the arrangements described in the Office paper. The arrangements would enable the Governing Body to approve a list of countries that fully comply with the Convention requirements as regards the security of the production and issuance process and the quality control procedures. The purpose of the paper was to allow the Governing Body to comment on the proposed procedures so that a final text could be submitted to the Governing Body in March 2005. She gave an update on the progress achieved in the implementation of the Convention, such as on the testing of equipment and software for interoperability, and said that the Committee on Sectoral and Technical Meetings and Related Issues had discussed a paper on technical cooperation with regards to the Convention.
75. The Worker members stressed the importance of the Convention in securing facilitated travel and shore leave for seafarers in the exercise of their profession. It balanced requirements for security with the need to ensure the protection of seafarers' rights. The shipping industry attached much importance to seafarers being able to enjoy shore leave, as was demonstrated by the joint action of shipowners and seafarers on World Maritime Day. The Workers therefore supported the point for decision. However, in the interest of efficiency, they wanted to know if aspects of the seafarers' identity issue would be dealt with by this Committee and if any would be assigned to the Committee on Technical Cooperation or other committees.
76. The Employer members supported the work undertaken by the Office and approved the point for decision, on condition that the process identified in the report was followed.
77. The representative of the Government of Canada considered these arrangements and procedures to be essential for the global acceptance of the Convention. States must be satisfied that issuance systems for seafarers' identity documents were fully secure. She therefore raised a number of questions. How could countries be removed from the list as a result of complaints or otherwise? Pending the consideration of complaints, would the

<sup>6</sup> GB.291/LILS/6.

relevant documents be recognized? Would persons forming part of both levels of the review process possess a sufficient level of expertise? Would the system evaluators be sufficiently independent? What would be the means for Members to share information on the problems identified and the solutions applied?

78. The representative of the Government of Japan expressed his conviction that the Office paper formed a very good basis for the enforcement of Convention No. 185, and expressed the full support and endorsement of his delegation in this respect.
79. The representative of the Government of the United States endorsed the document, which contained, in her opinion, the necessary checks and balance. She emphasized that, in the opinion of her Government, the success of Convention No. 185 depended on the complete reliability of the various procedures. She hoped that countries that had systems in place that met all the requirements of the Convention would be able to be included in the list of compliant States.
80. The representative of the Government of Norway, in spite of the fact that he found the flow chart rather complicated, considered that the document formed a sound basis for the future, and supported it.
81. The representative of the Director-General, replying to the question raised by the Worker members, explained that the decision of the Governing Body involved both technical and legal aspects and would have to be taken in accordance with some fundamental legal principles relating to the rule of law, such as respect for established procedures and ensuring the right of interested governments and other constituents to be heard at various stages in the procedure. There would also be a technical cooperation aspect that was referred to in the paper. In this regard, therefore, the legal issues could be discussed in this Committee and the technical cooperation aspects could be referred to the Committee on Technical Cooperation.
82. Replying to a point raised by the representative of the Government of Canada, the representative of the Director-General observed that governments should consult relevant experts to ensure that all elements were taken into account in finalizing the arrangements. Detailed arrangements such those raised by Canada were useful. The Convention explicitly provided for all member States to be notified promptly where the non-inclusion of a member State was contested. The arrangements provided for a rapid procedure at the first level of the review mechanism. Replying to the comment of the representative of the Government of the United States, she indicated that the informal consultation would seem not to have been favourable to such a proposal, as it would create a second tier of countries, possibly at the expense of the countries that had already ratified the Convention.
83. ***The Committee recommends that the Governing Body approve the general lines of the proposals contained in document GB.291/LILS/6 with a view to their development into a set of arrangements and procedures to be submitted at the next session of the Governing Body.***

**VII. Other questions**

(Seventh item on the agenda)

**(a) Flag of the International Labour Organization**

84. The Committee had before it a paper<sup>7</sup> prepared by the Office containing proposals relating to the adoption of an ILO flag, along with regulations for its use.
85. The Employer members endorsed the idea proposed in the Office paper, while also wishing for a number of examples of rules on the use of the flag.
86. The Worker members supported the adoption of an ILO flag, provided that it contained the traditional symbol of the ILO, which the Office should ensure was contained in the draft resolution to be drawn up.
87. The Legal Adviser confirmed that the emblem on any future flag would be the current one, which had been adopted by the Director-General in 1969 on the occasion of the ILO's 50th anniversary. Replying to a question from the Employer members, he said that the United Nations had very precise rules concerning the use of their flag, based on those applied by States and intended to prevent inappropriate use.
88. *The Committee recommends to the Governing Body that it authorize the Office to draw up a draft resolution for the adoption of an ILO flag, along with draft regulations for its use, to be examined by the Committee on Legal Issues and International Labour Standards at the 292nd Session of the Governing Body (March 2005), in view of its report to the International Labour Conference.*

**(b) Agenda of the next session of the Committee on Legal Issues and International Labour Standards**

89. A representative of the Director-General (Mr. Tapiola, Executive Director of the Fundamental Principles and Rights at Work Sector) summarized the questions that would be put before the Committee at its next session. They were as follows: review of questions already considered by the Committee in its examination of improvements to the standards-related activities of the ILO; submission to competent authorities in accordance with article 19 of the Constitution; the handbook of good drafting practice; the general status report on ILO action concerning discrimination in employment and occupation; practical arrangements for the discussion of the Global Report prepared under the follow-up to the ILO Declaration; consolidation of rules applicable to the Governing Body; arrangements and procedures under Article 5, paragraphs 6-8, of Convention No. 185; forms for reports on the application of unratified Conventions and Recommendations (article 19 of the Constitution); the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour Convention, 1957 (No. 105); and the flag of the ILO.

Geneva, 15 November 2004.

*Points for decision:* Paragraph 18;  
Paragraph 30;  
Paragraph 42;  
Paragraph 73;  
Paragraph 83;  
Paragraph 88.

<sup>7</sup> GB.291/LILS/7/1.

## Appendix I

[Text proposed to be added is underlined and the text proposed for deletion is ~~struck through~~.]

### **Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the International Labour Organization**

#### ***General provision***

##### Article 1

When a representation is made to the International Labour Office under article 24 of the Constitution of the Organisation, the Director-General shall acknowledge its receipt and inform the Government against which the representation is made.

#### ***Receivability of the representation***

##### Article 2

1. The Director-General shall immediately bring the representation before the Officers of the Governing Body.
2. The receivability of a representation is subject to the following conditions:
  - (a) it must be communicated to the International Labour Office in writing;
  - (b) it must emanate from an industrial association of employers or workers;
  - (c) it must make specific reference to article 24 of the Constitution of the Organisation;
  - (d) it must concern a Member of the Organisation;
  - (e) it must refer to a Convention to which the Member against which it is made is a party; and
  - (f) it must indicate in what respect it is alleged that the Member against which it is made has failed to secure the effective observance within its jurisdiction of the said Convention.
3. The Officers shall report to the Governing Body on the receivability of the representation.
4. In reaching a decision concerning receivability on the basis of the report of its Officers, the Governing Body shall not enter into a discussion of the substance of the representation.

#### ***Reference to a committee***

##### Article 3

1. If the Governing Body decides, on the basis of the report of its Officers, that a representation is receivable, it shall set up a committee for the examination thereof, composed of members of the Governing Body chosen in equal numbers from the Government, Employers' and Workers' groups. No representative or national of the State against which the representation has been made and no person occupying an official position in the association of employers or workers which has made the representation may be a member of this committee.
2. Notwithstanding the provisions of paragraph 1 of this article, if a representation which the Governing Body decides is receivable relates to a Convention dealing with trade union rights, it may be referred to the Committee on Freedom of Association for examination in accordance with articles 24 and 25 of the Constitution.

3. Notwithstanding the provisions of paragraph 1 of this article, if a representation which the Governing Body decides is receivable relates to facts and allegations similar to those which have been the subject of an earlier representation, the appointment of the committee charged with examining the new representation may be postponed pending the examination by the Committee of Experts on the Application of Conventions and Recommendations of the follow-up given to the recommendations previously adopted by the Governing Body.
- ~~3.4.~~ The meetings of the committee appointed by the Governing Body pursuant to paragraph 1 of this article shall be held in private and all the steps in the procedure before the committee shall be confidential.

### ***Examination of the representation by the committee***

#### Article 4

1. During its examination of the representation, the committee may:
  - (a) request the association which has made the representation to furnish further information within the time fixed by the committee;
  - (b) communicate the representation to the Government against which it is made without inviting that Government to make any statement in reply;
  - (c) communicate the representation (including all further information furnished by the association which has made the representation) to the Government against which it is made and invite the latter to make a statement on the subject within the time fixed by the committee;
  - (d) upon receipt of a statement from the Government concerned, request the latter to furnish further information within the time fixed by the committee;
  - (e) invite a representative of the association which has made the representation to appear before the committee to furnish further information orally.
2. The committee may prolong any time limit fixed under the provisions of paragraph 1 of the article, in particular at the request of the association or Government concerned.

#### Article 5

1. If the committee invites the Government concerned to make a statement on the subject of the representation or to furnish further information, the Government may:
  - (a) communicate such statement or information in writing;
  - (b) request the committee to hear a representative of the Government;
  - (c) request that a representative of the Director-General visit its country to obtain, through direct contacts with the competent authorities and organizations, information on the subject of the representation, for presentation to the committee.

#### Article 6

When the committee has completed its examination of the representation as regards substance, it shall present a report to the Governing Body in which it shall describe the steps taken by it to examine the representation, present its conclusions on the issues raised therein and formulate its recommendations as to the decisions to be taken by the Governing Body.

### ***Consideration of the representation by the Governing Body***

#### Article 7

1. When the Governing Body considers the reports of its Officers on the issue of receivability and of the committee on the issues of substance, the Government concerned, if not already represented on

the Governing Body, shall be invited to send a representative to take part in its proceedings while the matter is under consideration. Adequate notice of the date on which the matter will be considered shall be given to the Government.

2. Such a representative shall have the right to speak under the same conditions as a member of the Governing Body, but shall not have the right to vote.
3. The meetings of the Governing Body at which questions relating to a representation are considered shall be held in private.

#### Article 8

If the Governing Body decides to publish the representation and the statement, if any, made in reply to it, it shall decide the form and date of publication. Such publication shall close the procedure under articles 24 and 25 of the Constitution.

#### Article 9

The International Labour Office shall notify the decisions of the Governing Body to the Government concerned and to the association which made the representation.

#### Article 10

When a representation within the meaning of article 24 of the Constitution of the Organization is communicated to the Governing Body, the latter may, at any time in accordance with paragraph 4 of article 26 of the Constitution, adopt, against the Government against which the representation is made and concerning the Convention the effective observance of which is contested, the procedure of complaint provided for in article 26 and the following articles.

### ***Representations against non-members***

#### Article 11

In the case of a representation against a State which is no longer a Member of the Organisation, in respect of a Convention to which it remains party, the procedure provided for in these Standing Orders shall apply in virtue of article 1, paragraph 5, of the Constitution.

## Appendix II

### **Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the Constitution of the International Labour Organization**

#### ***Introductory note***

1. The Standing Orders concerning the procedure for the examination of representations were adopted by the Governing Body at its 56th Session (January 1932) and amended on some points of form at its 212th Session (February-March 1980).
2. In adopting further amendments at its [291st Session (November 2004)], the Governing Body decided to precede the Standing Orders with this introductory note, which summarizes the various stages of the procedure while indicating the options open to the Governing Body at the various stages of the procedure in accordance with the Standing Orders and with the guidance that emerges from the preparatory work of the Standing Orders and the decisions and practice of the Governing Body.
3. The Standing Orders comprise six titles, the first five of which correspond to the main stages of the procedure, namely: (i) receipt by the Director-General; (ii) examination of receivability of the representation; (iii) decision on referral to a committee; (iv) examination of the representation by the committee; and (v) examination by the Governing Body. The sixth title of the Standing Orders concerns the application of the procedure in the specific instance of a representation against a non-member State of the Organization.

#### ***General provision***

4. Article 1 of the Standing Orders concerns the receipt of representations by the Director-General of the ILO, who informs the Government against which the representation is made.

#### ***Receivability of the representation***

5. Examining receivability means determining whether the prior conditions that have to be satisfied before the Governing Body can proceed to examine the merits of the representation and formulate recommendations have been met.
6. The examination of receivability is, in the first instance, entrusted to the Officers of the Governing Body, to whom the Director-General transmits all the representations that are received. The Officers of the Governing Body make a proposal with respect to receivability, which is communicated to the Governing Body; the Governing Body then decides whether it deems the representation receivable. Although the Standing Orders specify that the Governing Body must not, at this stage, enter into a discussion of the merits of the representation, the conclusions of its Officers regarding receivability may be the subject of discussions.
7. Pursuant to article 7, paragraph 1, of the Standing Orders, the Office invites the Government concerned to send a representative to take part in these deliberations if that Government is not a member of the Governing Body.
8. The conditions of receivability for representations are set out in article 2, paragraph 2, of the Standing Orders. Four of the conditions simply relate to the form of submission (paragraph 2(a), (c), (d) and (e)), while the remaining two conditions may require examination of the representation in greater depth: these relate to the industrial character of the association that is making the representation, on the one hand (paragraph 2(b)), and, on the other hand, the indication of in what respect the State concerned is alleged to have failed to secure the effective observance of the Convention to which the representation relates (paragraph 2(f)).

The representation must emanate from an industrial association of employers or workers (article 2, paragraph 2(b) of the Standing Orders)

9. The following principles may guide the Governing Body in its application of this provision:
- The right to make a representation to the International Labour Office is granted without restriction to any industrial association of employers or workers. No conditions are laid down in the Constitution as regards the size or nationality of that association. The representation may be made by any industrial association whatever may be the number of its members or in whatever country it may be established. The industrial association may be an entirely local organization or a national or international organization.<sup>1</sup>
  - The widest possible discretion should be left to the Governing Body in determining the actual character of the industrial association of employers or workers which makes the representation. The criteria to be applied in this connection by the Governing Body should be those which have up to the present guided the general policy of the Organization and not those laid down by the national legislation of States.<sup>2</sup>
  - The Governing Body has the duty of examining objectively whether, in fact, the association making the representation is an industrial association of employers or workers, within the meaning of the Constitution and the Standing Orders. It is the duty of the Governing Body to determine in each case, independently of the terminology employed and of the name that may have been imposed upon the association by circumstances or selected by it, whether the association from which the representation emanates is in fact an “industrial association of employers or workers” in the natural meaning of the words. In particular, when considering whether a body is an industrial association, the Governing Body cannot be bound by any national definition of the term “industrial association”.<sup>3</sup>
10. Moreover, the Governing Body might apply *mutatis mutandis* the principles developed by the Committee on Freedom of Association on receivability as regards a complainant organization that is alleging violations of freedom of association. Those principles are formulated as follows:

*At its first meeting in January 1952 (First Report, General observations, paragraph 28), the Committee adopted the principle that it has full freedom to decide whether an organization may be deemed to be an employers’ or workers’ organization within the meaning of the ILO Constitution, and it does not consider itself bound by any national definition of the term.*

*The Committee has not regarded any complaint as being irreceivable simply because the Government in question had dissolved, or proposed to dissolve the organization on behalf of which the complaint was made, or because the person or persons making the complaint had taken refuge abroad.*

*The fact that a trade union has not deposited its by-laws, as may be required by national laws, is not sufficient to make its complaint irreceivable since the principles of freedom of association provide precisely that the workers shall be able, without previous authorisation, to establish organizations of their own choosing.*

*The fact that an organization has not been officially recognized does not justify the rejection of allegations when it is clear from the complaints that this organization has at least a *de facto* existence.*

<sup>1</sup> See *Proposed Standing Orders concerning the application of articles 409, 410, 411, §§4 and 5, of the Treaty of Peace*, explanatory note of the International Labour Office submitted to the Standing Orders Committee of the Governing Body at its 56th Session (1932).

<sup>2</sup> *ibid.*

<sup>3</sup> See *representation submitted by Dr. J.M. Curé on behalf of the Labour Party of the Island of Mauritius concerning the application of certain international labour Conventions in the Island*, Report of the Committee of the Governing Body (adopted by the Governing Body at its 79th Session), ILO, *Official Bulletin*, Vol. XXII (1937), pp. 71-72, paras. 6-7.

*In cases in which the Committee is called upon to examine complaints presented by an organization concerning which no precise information is available, the Director-General is authorized to request the organization to furnish information on the size of its membership, its statutes, its national or international affiliations and, in general, any other information calculated, in any examination of the receivability of the complaint, to lead to a better appreciation of the precise nature of the complainant organization.*

*The Committee will only take cognizance of complaints presented by persons who, through fear of reprisals, request that their names or the origin of the complaints should not be disclosed, if the Director-General, after examining the complaint in question, informs the Committee that it contains allegations of some degree of gravity which have not previously been examined by the Committee. The Committee can then decide what action, if any, should be taken with regard to such complaints.<sup>4</sup>*

The representation must indicate in what respect it is alleged that the Member against which it is made has failed to secure the effective observance within its jurisdiction of the said Convention (article 2, paragraph 2(f), of the Standing Orders)

11. In examining this condition of receivability, particular importance is attached to article 2, paragraph 4, of the Standing Orders, which provides that in reaching a decision concerning receivability on the basis of the report of its Officers, the Governing Body shall not enter into a discussion of the substance of the representation. It is important however that the representation be sufficiently precise for the Officers of the Governing Body to be able to legitimately substantiate their proposal to the Governing Body.

### **Reference to a committee**

12. If the Governing Body deems, on the basis of the report of its Officers, that a representation is receivable, it shall usually set up a tripartite committee to examine the representation (article 3, paragraph 1). However, depending on the content of the representation, the Governing Body has, under certain conditions, other options:
  - (a) if the representation relates to a Convention dealing with trade union rights, the Governing Body may decide to refer it to the Committee on Freedom of Association for examination in accordance with articles 24 and 25 of the Constitution (article 3, paragraph 2);
  - (b) if the representation relates to matters and allegations similar to those which have been the subject of a previous representation, the Governing Body may decide to postpone the appointment of the committee to examine the new representation until the Committee of Experts on the Application of Conventions and Recommendations at its following session has been able to examine the follow-up to the recommendations that were adopted by the Governing Body in relation to the previous representation (article 3, paragraph 3).
13. It is the practice for the report of the Officers of the Governing Body concerning the receivability of the recommendation to also include a recommendation concerning reference to a committee. It is for the Governing Body to appoint the members who make up the tripartite committee, taking into account the conditions established in article 3, paragraph 1.

### **Examination of the representation by the committee**

14. Under article 6, the tripartite committee charged with examining a representation must present its conclusions on the issues raised in the representation and formulate its recommendations as to the decisions to be taken by the Governing Body. The committee examines the merits of the allegation made by the author of the representation, that the Member concerned has failed to secure effective

<sup>4</sup> See paras. 35-40 of the Procedures of the Fact-Finding and Conciliation Commission and the Committee on Freedom of Association for the examination of complaints alleging violations of freedom of association (*Digest of Decisions and principles of the Freedom of Association Committee*, 4th edition, 1996, Annex I).

observance of the Convention or Conventions ratified by the Member and indicated in the representation.

15. The powers of the tripartite committee during its examination of the representation are laid down in article 4. Article 5 concerns the rights of the Government concerned if the committee invites it to make a statement on the subject of the representation.
16. Moreover, the committee may apply, *mutatis mutandis*, two principles developed by the Committee on Freedom of Association:
  - (a) In establishing the matters on which the representation is based, the committee may consider that, while no formal period of prescription has been fixed for the examination of representations, it may be very difficult – if not impossible – for a Government to reply in detail regarding matters which occurred a long time ago.<sup>5</sup>
  - (b) In formulating its recommendations as to the decision to be taken by the Governing Body, the committee may take into account the interest that the association making the representation has in taking action with regard to the situation motivating the representation. Such interest exists if the representation emanates from a national association directly interested in the matter, from international workers' or employers' associations having consultative status with the ILO, or from other international workers' or employers' associations when the representation concerns matters directly affecting their affiliated organizations.<sup>6</sup>

### ***Consideration of the representation by the Governing Body***

17. On the basis of the report of the tripartite committee, the Governing Body considers the issues of substance raised by the representation and what follow-up to undertake. Article 7 determines the modalities for the participation of the Government concerned in the deliberations.
18. The Standing Orders recall and determine two options provided for in the Constitution that are open to the Governing Body if it decides that a representation is substantiated, it being understood that the Governing Body remains free to take or not to take these measures:
  - (a) Under the conditions laid down in article 25 of the Constitution, the Governing Body may publish the representation received and, if applicable, the statement made by the Government concerned; in the event that it so decides, the Governing Body also decides the form and date of publication.
  - (b) The Governing Body may, at any time, in accordance with article 26, paragraph 4, of the Constitution, adopt, against the Government concerned and with regard to the Convention the effective observance of which is contested, the procedure of complaint provided for in article 26 and the following articles (article 10 of the Standing Orders).
19. Furthermore, the Governing Body may decide to refer issues concerning any follow-up to the recommendations adopted by the Governing Body to be undertaken by the Government concerned to the Committee of Experts on the Application of Conventions and Recommendations. That Committee shall examine the measures taken by the Government to give effect to the provisions of the Conventions to which it is a party and with respect to which recommendations had been adopted by the Governing Body.

### ***Representations against non-members***

20. Article 11 of the Standing Orders stipulates that a representation against a State which is no longer a Member of the Organization may also be examined in accordance with the Standing Orders, in virtue of article 1, paragraph 5, of the Constitution, which provides that the withdrawal of a Member of the Organization shall not affect the continued validity of obligations arising under or relating to Conventions that it had ratified.

<sup>5</sup> *ibid.*, paragraph 67.

<sup>6</sup> *ibid.*, paragraph 34.

## Appendix III

### Table of ratifications and information concerning the ILO's fundamental Conventions (as at 10 November 2004)

No. 29	–	Forced Labour Convention, 1930
No. 87	–	Freedom of Association and Protection of the Right to Organise Convention, 1948
No. 98	–	Right to Organise and Collective Bargaining Convention, 1949
No. 100	–	Equal Remuneration Convention, 1951
No. 105	–	Abolition of Forced Labour Convention, 1957
No. 111	–	Discrimination (Employment and Occupation) Convention, 1958
No. 138	–	Minimum Age Convention, 1973
No. 182	–	Worst Forms of Child Labour Convention, 1999

### Explanation of symbols in the table

- X Convention ratified.
- O Formal ratification process already initiated (with or without mention of time frame); approval of ratification by the competent body, although the Director-General has not yet received the formal instrument of ratification or it is incomplete (concerns chiefly Convention No. 138) or is a non-original copy; bill currently before the legislative body for approval.
- ▲ Ratification will be examined after amendment/adoption of a Constitution, Labour Code, legislation, etc.
- Convention currently being studied or examined; preliminary consultations with the social partners.
- Divergences between the Convention and national legislation.
- ◆ Ratification not considered/deferred.
- No reply, or a reply containing no information.

**All ILO member States not listed in this table have ratified all eight of the fundamental Conventions.**

Member State	Forced labour		Freedom of association		Equal treatment		Child labour	
	C. 29	C. 105	C. 87	C. 98	C. 100	C. 111	C. 138	C. 182
Afghanistan	–	X	–	–	X	X	–	–
Armenia	O	O	O	X	X	X	●	O
Australia	X	X	X	X	X	X	◆	●
Bahrain	X	X	●	●	●	X	●	X
Bangladesh	X	X	X	X	X	X	◆	X
Bolivia	O	X	X	X	X	X	X	X
Brazil	X	X	▲	X	X	X	X	X
Cambodia	X	X	X	X	X	X	X	–
Canada	O	X	X	■	X	X	■	X
Cape Verde	X	X	X	X	X	X	O	X
Chad	X	X	X	X	X	X	O	X
China	●	●	◆	◆	X	●	X	X
Colombia	X	X	X	X	X	X	X	O
Cuba	X	X	X	X	X	X	X	▲
Czech Republic	X	X	X	X	X	X	O	X
Democratic Republic of Timor Leste	–	–	–	–	–	–	–	–
Djibouti	X	X	X	X	X	O	▲	▲
El Salvador	X	X	■	■	X	X	X	X
Eritrea	X	X	X	X	X	X	X	O
Estonia	X	X	X	X	X	▲	▲	X
Gabon	X	X	X	X	X	X	O	X
Ghana	X	X	X	X	X	X	O	X
Guinea-Bissau	X	X	◆	X	X	X	◆	◆
Haiti	X	X	X	X	X	X	●	●
India	X	X	■	■	X	X	■	●
Iran, Islamic Republic of	X	X	▲	▲	X	X	●	X
Iraq	X	X	●	X	X	X	X	X
Israel	X	X	X	X	X	X	X	▲
Japan	X	●	X	X	X	●	X	X
Jordan	X	X	●	X	X	X	X	X
Kenya	X	X	▲	X	X	X	X	X
Kiribati	X	X	X	X	●	●	●	●
Korea, Republic of	■	■	▲	▲	X	X	X	X
Kuwait	X	X	X	O	O	X	X	X
Lao People's Democratic Republic	X	●	●	●	●	●	●	●
Latvia	O	X	X	X	X	X	O	O
Lebanon	X	X	▲	X	X	X	X	X
Liberia	X	X	X	X	O	X	O	X

Member State	Forced labour		Freedom of association		Equal treatment		Child labour	
	C. 29	C. 105	C. 87	C. 98	C. 100	C. 111	C. 138	C. 182
Madagascar	X	●	X	X	X	X	X	X
Malaysia	X	◆	◆	X	X	◆	X	X
Mauritius	X	X	▲	X	X	X	X	X
Mexico	X	X	X	◆	X	X	■	X
Mongolia	O	O	X	X	X	X	X	X
Morocco	X	X	▲	X	X	X	X	X
Myanmar	X	◆	X	●	◆	◆	◆	●
Namibia	X	X	X	X	■	X	X	X
Nepal	X	●	▲	X	X	X	X	X
New Zealand	X	X	▲	X	X	X	◆	X
Oman	X	●	●	●	●	●	●	X
Pakistan	X	X	X	X	X	X	●	X
Philippines	O	X	X	X	X	X	X	X
Qatar	X	●	●	●	●	X	●	X
Saint Kitts and Nevis	X	X	X	X	X	X	O	X
Saint Lucia	X	X	X	X	X	X	●	X
Saint Vincent and the Grenadines	X	X	X	X	X	X	O	X
Sao Tome and Principe	O	O	X	X	X	X	O	O
Saudi Arabia	X	X	●	●	X	X	●	X
Sierra Leone	X	X	X	X	X	X	O	O
Singapore	X	◆	◆	X	X	◆	◆	X
Solomon Islands	X	–	O	O	●	●	–	–
Somalia	X	X	–	–	–	X	–	–
Sudan	X	X	●	X	X	X	X	X
Suriname	X	X	X	X	▲	▲	O	O
Tajikistan	X	X	X	X	X	X	X	O
Thailand	X	X	●	●	X	●	X	X
Turkmenistan	X	X	X	X	X	X	O	–
Uganda	X	X	O	X	O	O	X	X
United Arab Emirates	X	X	◆	◆	X	X	X	X
United States	◆	X	◆	◆	◆	O	◆	X
Uzbekistan	X	X	O	X	X	X	●	●
Vanuatu	–	–	–	–	–	–	–	–
Venezuela	X	X	X	X	X	X	X	O
Viet Nam	●	●	◆	◆	X	X	X	X