



Governing Body

323rd Session, Geneva, 12–27 March 2015

GB.323/INS/5

Institutional Section

INS

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FIFTH ITEM ON THE AGENDA

The Standards Initiative

Introduction

1. This document and its three appendices provide information on the follow up to and progress made on the implementation of the decision of the Governing Body at its 322nd Session (November 2014) in relation to the Standards Initiative (GB.322/INS/5):

The Governing Body decided to:

- (1) convene a three-day tripartite meeting in February 2015, open to observers with speaking rights through their group, to be chaired by the Chairperson of the Governing Body and composed of 32 Governments, 16 Employers and 16 Workers with a view to reporting to the 323rd Session (March 2015) of the Governing Body on:
 - the question of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) in relation to the right to strike; and
 - the modalities and practices of strike action at national level;
- (2) place on the agenda of its 323rd Session, the outcome and report from this meeting on the basis of which the Governing Body will take a decision on the necessity or not for a request to the International Court of Justice to render an urgent advisory opinion concerning the interpretation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike;
- (3) take the necessary steps to ensure the effective functioning of the Committee on the Application of Standards at the 104th Session of the International Labour Conference, and to this end reconvene the Working Group on the Working Methods of the Conference Committee on the Application of Standards to prepare recommendations to the 323rd Session of the Governing Body in March 2015, in particular with regard to the establishment of the list of cases and the adoption of conclusions;
- (4) defer at this stage further consideration of the possible establishment of a tribunal in accordance with article 37(2) of the Constitution;
- (5) as part of this package, refer to the 323rd Session of the Governing Body the following:
 - (a) the launch of the Standards Review Mechanism (SRM), and to this effect establish a tripartite working party composed of 16 Governments, eight Employers and eight Workers to make proposals to the 323rd Session of the Governing Body in March 2015 on the modalities, scope and timetable of the implementation of the SRM;

- (b) a request to the Chairperson of the Committee of Experts on the Application of Conventions and Recommendations (CEACR), Judge Abdul Koroma (Sierra Leone), and the Chairperson of the Committee on Freedom of Association (CFA), Professor Paul van der Heijden (Netherlands), to jointly prepare a report on the interrelationship, functioning and possible improvement of the various supervisory procedures related to articles 22, 23, 24 and 26 of the ILO Constitution and the complaints mechanism on freedom of association.

A. The outcome and report of the tripartite meeting concerning the question of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike and the modalities and practices of strike action at national level

2. The Tripartite Meeting took place from 23 to 25 February 2015. A background document was prepared by the Office for the Meeting. Part I of the document provided a factual background on the adoption and supervision of the application of Convention No. 87 in relation to the right to strike and the relevant rules of international law on treaty interpretation. Part II provided a broad overview of modalities concerning strike action at the national level in both law and practice.
3. The Meeting was conducted in a constructive atmosphere. The Workers' and Employers' groups presented a joint statement concerning a package of measures to find a possible way out of the existing deadlock in the supervisory system. The Government group expressed its common position on the right to strike in relation to freedom of association and also delivered a second statement in response to the social partners' joint statement. The outcome and report of the Tripartite Meeting, together with the Office background document are appended (Appendices I, II and III).
4. It is on the basis of the outcome and report of the Tripartite Meeting that the Governing Body is called to decide on the need to request the International Court of Justice, in accordance with article 37 of the Constitution, for an advisory opinion on the question of the interpretation of Convention No. 87 in relation to the right to strike.

B. The effective functioning of the Committee on the Application of Standards (CAS)

5. After consultations with the three groups, arrangements have been made for the Working Group on the Working Methods of the Conference Committee on the Application of Standards (CAS Working Group)¹ to meet during the 323rd Session of the Governing Body.

¹ The composition of the CAS Working Group at its last meeting in November 2011 was based on the following arrangements: nine Employer representatives; nine Worker representatives; and nine Government representatives, including two from Africa, two from the Americas, two from the Asia-Pacific region, two from Europe and one from the Arab States.

6. The proposed agenda for the CAS Working Group will include the two questions referred to it by the Governing Body, namely: the establishment of the list of cases and the adoption of conclusions. It is also proposed that the CAS Working Group consider the possible implications of the two-week session of the Conference at its 104th Session (2015) on the work of the Committee, while retaining the current number of sittings of the Committee. Background documents have been prepared by the Office to facilitate the discussions of the CAS Working Group, taking into account the statements from the Government group² and the Joint Statement from the Workers' and the Employers' Groups³ to the Tripartite Meeting.
7. The recommendations arising from the CAS Working Group will be referred to this session of the Governing Body and submitted to the CAS at the beginning of its work during the 104th Session (June 2015) of the Conference.⁴ At the 325th Session (November 2015) of the Governing Body, the Working Party on the Functioning of the Governing Body and the International Labour Conference (WP/GBC) will review the experience of the two-week session of the Conference.⁵

C. Launching the Standards Review Mechanism (SRM)

8. It is recalled that at its 312th Session (November 2011), the Governing Body had before it a document,⁶ which set out nine elements related to “modalities” of the SRM that would need tripartite consultation and consideration:
 - Element 1: Objectives and proposed outcomes.
 - Element 2: Guiding principles.
 - Element 3: Framework.
 - Element 4: Role of the Legal Issues and International Labour Standards (LILS) Section of the Governing Body.
 - Element 5: Establishment of the tripartite working group.
 - Element 6: Composition of the tripartite working group.
 - Element 7: Working methods and terms of reference of the tripartite working group.
 - Element 8: The selection of standards to be reviewed.

² TMFAPROC/2015/2, Appendices II and III.

³ TMFAPROC/2015/2, Appendix I.

⁴ The outcome of the discussion of the CAS Working Group will be reflected in document D.1, “Work of the Committee”, which is to be adopted by the CAS at the beginning of its work. Document D.1 will be attached to the letter communicating the preliminary list of individual cases, together with a draft provisional work schedule for the CAS.

⁵ GB.322/INS/PV/Draft, para. 287(b)(i).

⁶ GB.312/LILS/5, paras 4–34.

- Element 9: Time frames accompanying the reviews.

Element 1: Objectives and proposed outcomes

9. At the 312th (November 2011) Session of the Governing Body it was proposed that the objectives of the SRM would be to determine the status of the standards concerned, identify those that are up to date and should be promoted, the best means of keeping them up to date, those in need of revision, consolidation or other action, identify new subjects and approaches for standard-setting; identify the best methods of preparation and adoption of standards and the means for their effective implementation.
10. With respect to outcomes, the SRM would: ensure that ILO standards provide effective protection for all workers, take into account the needs of sustainable enterprises, are responsive to modern-day needs and future challenges, strengthen support for up-to-date standards, increase the number of ratifications, improve effective implementation of ratified Conventions and ensure that the body of international labour standards in place supported the achievement of the ILO's strategic objectives.

Element 2: Guiding principles

11. At its 310th (March 2011) and 312th (November 2011) Sessions, the Governing Body discussed a set of general principles to guide the discussions on standards policy and which should, ultimately, provide the basis for recommendations under the SRM. Following further discussions between the Employers' and Workers' groups, at the 313th Session of the Governing Body (March 2012), the two groups jointly put forward to governments a set of common principles that emphasized the need for:
 - policy coherence in the context of the ILO Declaration on Social Justice for a Fair Globalization;
 - a clear, robust and up-to-date body of standards for the purpose of protecting workers, taking into account the needs of sustainable enterprises;
 - the adoption of decisions by consensus and, in the absence of consensus, existing decisions should remain in place;
 - negotiations in good faith leading to a clear, robust and up-to-date body of standards; and
 - agreement among the social partners to implement those commitments.⁷
12. The Joint Statement of Workers' and Employers' Groups to the Tripartite Meeting reflected similar principles:
 - Create a coherent policy framework within ILO standards machinery;
 - A clear, robust and up-to-date body of standards;
 - For the purpose of the protection of workers and taking into account the needs of sustainable enterprises;
 - Adopt decisions by consensus;

⁷ GB.313/PV, para. 485.

- Negotiate in good faith to have a clear, robust and up-to-date body of standards;
- The social partners agree to implement these commitments.

Element 3: Framework

13. Discussions at the 312th Session of the Governing Body (November 2011) indicated that there is consensus among constituents that the Social Justice Declaration provides a well-defined framework for the SRM. The Joint Statement of Workers' and Employers' Groups also indicates that: "The framework for the SRM would be the principles contained in the ILO Declaration on Social Justice for a Fair Globalization".

Element 4: Role of the legal issues and International Labour Standards (LILS) Section of the Governing Body

14. Based on the discussions in March 2011, a consensus emerged among constituents for the LILS Section of the Governing Body to establish and oversee the SRM process and act as the responsible forum to follow-up on the recommendations of the tripartite working group. The Joint Statement of Workers' and Employers' Groups indicates that: "Overview and follow up to SRM decisions: By the Governing Body in its LILS Section".

Elements 5, 6 and 7: Establishment, composition, working methods and terms of reference of the tripartite working group

15. The Governing Body decision of November 2014 calls for a tripartite working party composed of 16 Governments, eight Employers and eight Workers. The Joint Statement of Workers' and Employers' Groups refers to a tripartite working group composed of 24 members (eight Governments, eight Employers and eight Workers) and that the tripartite working group should meet for three days in March and November every year.

Element 8: The selection of standards to be reviewed

16. At the 312th Session (November 2011) the Office proposed two options to the Governing Body:
- (1) all standards with the exception of: the fundamental and governance Conventions and their accompanying Recommendations, as well as the withdrawn, replaced and recently consolidated instruments;⁸ or
 - (2) standards not reviewed by the Cartier Working Party and adopted between 1985 and 2000 – with the exception of the Worst Forms of Child Labour Convention, 1999 (No. 182), and its accompanying Recommendation (No. 190), and the recently consolidated standards – standards that have been classified by the Cartier Working

⁸ This relates to 130 Conventions, three Protocols and 105 Recommendations.

Party as having an interim status, those in need of revision and those for which further information was to be requested.⁹

17. The Joint Statement of Workers' and Employers' Groups to the Tripartite Meeting proposed the scope of the work of a tripartite SRM working group as: "All ILS, except outdated, withdrawn, replaced or recently consolidated ILS, should be subject to discussion and if agreed, review. In a first instance, Standards not reviewed by the Cartier Working Party and adopted between 1985 and 2000, the instruments for which the Cartier Working Party had requested further information, those classified by the Cartier Working Party as having interim status, and those that remained to be revised could be the subject of review."¹⁰

Element 9: Time frames accompanying the reviews

18. Based on the proposal in the Joint Statement from the Workers' and Employers' Groups as referred to above, the first meeting of the tripartite SRM working group would be for three days before the 325th Session of the Governing Body (November 2015). It could discuss the modalities referred to above and the identification and selection of the standards to be considered for review.

19. Taking into account the elements above, the following time frame is proposed:

- April–July 2015: The Office would prepare a working document for consultation with tripartite constituents.
- September 2015: Consultations with the three groups, after which the Office would prepare a revised document taking into account the outcome of consultations.
- November 2015: SRM Working Group would hold its first meeting prior to the Governing Body to consider the modalities for the SRM and the identification of the first group of Standards to be reviewed. A progress report would be submitted to the Governing Body (LILS Section) for discussion and decision.
- January–February 2016: A further working document prepared by the Office as a follow-up to the November 2015 Governing Body discussions, guidance and decisions.
- March 2016: SRM Working Group would hold its second meeting on the basis of the working document prepared by the Office and propose the group of standards that should be the subject of the review by the SRM and the consultation process for the review.
- November 2016: Examination of the first set of ILS reviewed under the SRM is submitted to the Governing Body for its consideration and decision.

⁹ This relates to 49 Conventions and 52 Recommendations. The Protocol of 1996 to the Merchant Shipping (Minimum Standards) Convention, 1976, which was earlier included in this group of instruments has been revised and replaced by the MLC, 2006.

¹⁰ See GB.312/LILS/5, Appendix II, for a list of the instruments covered. This proposal would result in a total of 139 Conventions, four Protocols and 113 Recommendations under review and, for those instruments adopted between 1985 and 2000, this would result in a total of 49 Conventions and 52 Recommendations that would be considered by the tripartite working group.

- March 2017: SRM Working Group reports on progress.
- November 2017: SRM Working Group continues its work and the Governing Body adopts relevant decisions.
- March 2018: Governing Body follow-up to November 2017 decisions of the Governing Body.

D. Preparation of a report on the interrelationship, functioning and possible improvement of the various supervisory procedures related to articles 22, 23, 24 and 26 of the ILO Constitution (decision point 5(b))

20. At its 322nd Session (November 2014) the Governing Body deferred to this session consideration of a request to the Chairpersons of the CEACR and the CFA to jointly prepare a report on the interrelationship, functioning and possible improvement of the various supervisory procedures related to articles 22, 23, 24 and 26 of the ILO Constitution and the complaints mechanism on freedom of association. The Joint Statement of the Workers' and Employers' Groups refer to the "clarification of the roles and mandates of the CFA and the art. 24/26 procedures vis-à-vis regular standards supervision".

Financial implications

21. As there is no provision in the Programme and Budget for 2014–15 nor in the Director-General's Programme and Budget proposals for 2016–17 to cover the costs of the outcomes of the Tripartite Meeting, should the Governing Body decide to adopt any of the measures proposed, financial arrangements would have to be made.
22. The estimated cost of Tripartite Working Group on the Standards Review Mechanism described in paragraphs 15 and 19 would be US\$176,800 per meeting, comprising:

	US\$
Travel costs	105 300
Interpretation	70 000
Documentation	1 500
	176 800

23. The estimated costs in 2015 would be \$176,800 and in 2016–17 would be \$707,200.
24. The estimated cost to prepare and publish the report referred to in paragraph 20 during the current biennium is \$50,000.

Draft decision

25. The Governing Body:

- (a) *takes note of the outcome and report of the Tripartite Meeting on the Freedom of Association and Protection of the Right to Organise Convention,*

1948 (No. 87), in relation to the right to strike and the modalities and practices of strike action at national level;

- (b) decides, in light of the outcome and report of the Tripartite Meeting, not to pursue for the time being any action in accordance with article 37 of the Constitution to address the interpretation question concerning Convention No. 87 in relation to the right to strike;*
- (c) decides to take the necessary steps to ensure the effective functioning of the Committee on the Application of Standards at the 104th Session of the International Labour Conference, taking into account any recommendations made by the Working Group on the Working Methods of the Conference Committee on the Application of Standards, in particular with regard to the establishment of the list of cases and the adoption of conclusions;*
- (d) decides to establish under the SRM a tripartite working group composed of 32 members: 16 representing Governments, eight representing Employers and eight representing Workers to meet for three days prior to the March and November sessions of the Governing Body every year;*
- (e) decides that this tripartite SRM working group will report to the Governing Body at its 325th Session in November 2015 on progress made in the implementation of the SRM;*
- (f) requests the Chairperson of the Committee of Experts on the Application of Conventions and Recommendations (CEACR), Judge Abdul Koroma (Sierra Leone), and the Chairperson of the Committee on Freedom of Association (CFA), Professor Paul van der Heijden (Netherlands), to jointly prepare a report on the interrelationship, functioning and possible improvement of the various supervisory procedures related to articles 22, 23, 24 and 26 of the ILO Constitution and the complaints mechanism on freedom of association;*
- (g) decides that the cost of the measures proposed in this paper estimated to cost up to \$226,800 in 2015 and up to \$707,200 in 2016–17 be financed in the first instance from savings in Part I of the budget for the respective bienniums or, failing that, through Part II, on the understanding that should this subsequently prove impossible, the Director-General would propose alternative methods of financing.*