
Appendix II

Consideration of the deferral of the 109th Session of the International Labour Conference

I. Introduction

1. The rapid spread of the COVID-19 pandemic is having an extraordinary impact around the globe. Many governments have imposed severe restrictions on the movement and gathering of people and on commercial activity. Many countries have closed borders and airlines have ceased flying. The ILO host State, Switzerland, has current restrictions on entry into the country, commercial activities and meetings or gatherings of people. Restrictions in some countries have been imposed for defined periods subject to review, other restrictions have been imposed indefinitely. While there is no clear determination of how long the impact of COVID-19 will be felt, many health authorities suggest it could be for several months.
2. The 109th Session of the International Labour Conference (ILC) and its associated sessions of the Governing Body are scheduled to be held in Geneva, Switzerland, during the period 25 May to 6 June 2020. The ILC typically brings together around 6,000 participants, travelling from most of the 187 ILO member States. As global restrictions currently stand, very few, if any, of those participants would be able to travel to or gain entry into Switzerland, and in view of its size and nature, the ILC would not be permitted to take place under current Swiss restrictions.
3. The Office has undertaken an assessment of the costs of the ILC and the time at which they are accrued. As of now, the costs incurred or committed and non-refundable are in the order of US\$0.5 million. They will remain at this level until mid-April 2020 when they will rise to the order of US\$4 million. While compelling financial reasons suggest that a decision on deferral of the Conference should be taken by mid-April, many member States are already calling for a decision to be taken as a matter of urgency, in light of delegation costs they incur and for practical planning reasons. Several have already indicated that due to their existing national restrictions extending beyond May, they would not be able to attend in any event.
4. Therefore, in view of these extraordinary circumstances and after consultation with, and endorsement from the Officers of the Governing Body and the tripartite Screening Group (which includes the Officers and the Government group Chairperson and regional coordinators), the Director-General is recommending to the Governing Body to defer the 109th Session of the ILC (25 May to 5 June 2020) until June 2021 and, as a consequence, to cancel the associated 338bis and 339th Sessions of the Governing Body, scheduled for 25 May and 6 June 2020 respectively.
5. To facilitate Governing Body consideration of this matter, this paper offers an overview of the legal, financial and practical implications of a deferral of the 109th Session of the ILC, and consideration of alternative arrangements.

II. The legal authority of the Governing Body to defer a session of the International Labour Conference

6. Any decision to defer the annual session of the ILC raises, first, the question of the organ of the Organization which would have the constitutional power to take such a decision. In this respect, it is recalled that neither the Constitution nor the Standing Orders of the Conference contain any provision on this matter. In practice, however, the Governing Body has been recognized as having the authority in very exceptional circumstances to decide to postpone the annual session of the Conference. This was part of the Organization's emergency planning prior to the outbreak of the Second World War which led to the postponement of the 26th Session (June 1940) until 1944. At the same time, provision was made for the consultation of Governing Body members by correspondence (letter or telegram), for instance for the approval of the 1941 budget.
7. The underlying rationale is that, as the executive organ of the Organization, the Governing Body, with its tripartite legitimacy, may assume such exceptional powers. Not only is the Governing Body the organ that has the constitutional authority to establish the agenda of the Conference under article 14(1) of the Constitution but it has also assumed responsibility since its first session to determine the date of sessions of the Conference.
8. It should be specified, in this regard, that should the Governing Body decide not to hold the 109th Session of the ILC from 25 May to 5 June 2020, as currently scheduled, it would not be cancelling that session but simply rescheduling it to June 2021. In other words, the 109th Session will still take place but at a later date.
9. Based on the foregoing, the Governing Body can be considered to have the implied power to postpone the annual session of the ILC.¹ Further, in the event the Governing Body is not in session or cannot meet at the time the postponement of the ILC needs to be considered, it may be safely assumed that the authority to decide the postponement of the ILC could be exercised by means of an alternative approach, namely through a written request to all members of the Governing Body to indicate their support for, or otherwise, the recommendation.

III. The legal basis for deferring the forthcoming session of the International Labour Conference

10. According to article 3 of the ILO Constitution, the meetings of the ILC shall be held "at least once in every year". However, under the general principle of law that no one is expected to perform the impossible (*ad impossibilia nemo tenetur*), non-compliance with such a constitutional obligation would be justified if it were the result of force majeure, that is to say an irresistible impediment or event, beyond the ILO's control, which makes it objectively impossible to perform the obligation concerned.
11. The list of countries imposing restrictions on travel, gatherings and movement of people, as referred to in paragraph 1, is getting longer every day, which would further mean that holding

¹ A similar practice has been developed with regard to the deferral of Regional Meetings whereby the Governing Body has been readjusting the dates of Regional Meetings or deferring such meetings from three days to an indeterminate period. Under article 2(2) of the 2018 *Rules for Regional Meetings*, it is now expressly provided that the Governing Body decides the date and the venue of a Regional Meeting.

the Conference outside Geneva, in another country, is not an option, without even considering the logistical difficulties this would present.

12. In the current context that genuinely qualifies as force majeure, any decision to defer the June Conference to a later date could not be reasonably deemed to contravene the constitutional obligation to hold an annual meeting.

IV. Possible alternatives to deferral of the 109th Session of the International Labour Conference to June 2021

13. A question directly related to the constitutional obligation to convene the Conference at least once every year is whether it would be legally and administratively feasible to organize a Conference of reduced composition, duration or agenda later in 2020 or early 2021.
14. In principle, there is no legal impediment to holding a Conference session of a reduced format in terms of duration and number of delegates or agenda items. With respect to the length, the Constitution is silent on the matter and ultimately it would be for the Governing Body to decide. For instance, the Governing Body decided at its 320th Session (March 2014) to reduce, on a trial basis, the duration of the Conference to two weeks.² It is also for the Governing Body to decide the number of agenda items under article 14(1) of the Constitution. As for the Conference composition, article 3(1) of the Constitution lays down the minimum requirement of four delegates to be accredited by each member State while article 3(2) provides that each delegate may be accompanied by no more than two advisers for each agenda item. While delegations have increased in size over the past few years, member States are constitutionally bound to send only four delegates to the Conference. Accordingly, the 109th Session of the Conference could theoretically be convened on the understanding that the composition of delegations should be limited to the minimum constitutional requirements.
15. However, even if participation in a session of the Conference was limited to national delegations reduced to basic constitutional requirements, or the Conference agenda was significantly reduced, based on recent participation data between 2,000 to 3,000 participants could be expected, with still a considerable number of large meeting rooms and related services being required.
16. A reduction in the duration of the Conference also does not seem possible, having regard to the challenges faced since the introduction of the two-week format.
17. A further consideration is that in the event of a “reduced” Conference the important “Assembly” function of the ILC may be diminished, as the attendance of Heads of State, ministers and senior representatives of social partners would be unlikely.
18. In conclusion, while it might be legally possible to hold a scaled down Conference session later this year or early next, its political legitimacy and institutional added value, as well as its feasibility from a logistical point of view, would be more than questionable in view of its reduced duration, composition and agenda.

² [GB.320/INS/13](#), para. 20. In the same vein, it is recalled that the 94th (Maritime) Session of the Conference, the last maritime session to date, was held for two weeks, when the standard duration of the Conference at the time was of three weeks.

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19. As regards timing of a deferred session of the Conference, in addition to the uncertainty of the duration and impact of the crisis, the only “low” period in Geneva for large meetings are the months of July and August. Considering that many organizations that have cancelled meetings due to COVID-19 will try to reschedule them at the end of the crisis, competition for meeting room space and related services (IT, shuttles, catering, interpretation, etc.) is likely to increase significantly, at least during the last quarter of 2020 and possibly in early 2021. Such competition will be exacerbated by the fact that part of the Conference facilities in the Palais des Nations are not available during the renovation of the UN buildings in Geneva, which is likely to face further delays in view of the current closure of all construction sites in Switzerland.
 20. Consideration should also be given to the need to avoid overlap, or proximity, of a deferred Conference session with any other ILO official meetings already scheduled during the first half of 2021. These include the Governing Body in March 2021, the fourth meeting of the Special Tripartite Committee of the Maritime Labour Convention, 2006 and the 17th Asia and the Pacific Regional Meeting in April 2021, and various technical meetings.
 21. In view of the duration and size of ILO Conferences, it is most likely, therefore, that there would be no available time slot or space in Geneva for a deferred Conference session before the next scheduled ILC session in June 2021.
 22. Consideration has also been given to the potential to hold a “reduced” Conference in an online or “virtual” format. While some other UN agencies are considering this approach, and to have governments primarily represented by their Geneva-based missions, given the tripartite structure of the ILO this is not possible, as Workers’ and Employers’ delegates do not have similar representatives based in Geneva. Furthermore, as they are in many different time zones around the world, to convene a forum of any reasonable duration in which they could all participate would not be feasible.

V. Implications of a deferral of the 109th Session for the Conference and Governing Body agendas

23. With a deferral of the 109th Session of the ILC to June 2021, consideration will need to be given as to how the agenda for 2020 and the currently incomplete agenda for 2021 could be most effectively dealt with. One approach would be simply to retain the 2020 agenda and conduct that business in 2021, and defer the items currently on the agenda for 2021 to 2022, and so on. An exception to this would be the item on the 2021 agenda for the 2022–23 programme and budget, which must be dealt with in 2021. These matters will require further discussion between the Officers and the Screening Group, following which proposals for dealing with the business of the Conference will be submitted to the Governing Body.
24. An important consequence of the deferral of the 109th Session of the ILC would be the incapacity to hold the Governing Body elections due for this year. Under article 7(2) and (4) of the Constitution and articles 49 and 50 of the Conference Standing Orders, the members of the Governing Body representing governments, employers and workers are elected by electoral colleges composed respectively of the Government, Employers’ and Workers’ delegates accredited to the Conference. Therefore, no elections may be held outside a duly convened session of the Conference without duly accredited delegates. However, as article 7(5) of the Constitution provides, “if for any reason the Governing Body elections do not take place on the expiry of [the three-year] period, the Governing Body shall remain in office until such elections are held.”
25. Therefore, on the basis of clear constitutional prescription, the currently serving members of the Governing Body would continue to exercise their functions until such time as the Conference is in a position to proceed with new elections.

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26. Consideration will also need to be given to how best to deal with the proposed agenda items for the Governing Body sessions scheduled to be held in association with the 109th Session of the Conference in May and June 2020, and the consequential impact on the Governing Body session scheduled for October–November 2020.
27. In view of the potential number of items on the consolidated agenda for the October–November 2020 session, the Officers of the Governing Body and the Screening Group will give consideration to the possibility of extending the October–November 2020 session by one or two days.
28. Concerning the agenda items that require a decision by the Governing Body before its October–November session, it is proposed that they be considered first by the Officers and other members of the Screening Group with a view to reaching a common position. A preliminary consideration of these items could be organized at a meeting of the Screening Group in late April or early May, leaving sufficient time for consultations within and between the groups. The proposals from the Screening Group could then be submitted to Governing Body members for consideration.
29. The calendar and sequence of meetings and consultations by correspondence with the Governing Body is as follows:
- (1) Friday 27 March: consideration and endorsement by the Officers, in consultation with the Screening Group, on the recommendation to defer the 109th Session of the Conference to June 2021.
 - (2) First week of April: ballot by correspondence of Governing Body members concerning the deferral of the 109th Session of the Conference.
 - (3) Second half of April or early May: joint meeting of the Officers of the Governing Body and the Screening Group to prepare draft decisions on the items on the agenda of the 338th Session of the Governing Body that require urgent decisions, including the item relating to the Conference agenda. The Employers' and Workers' groups, as well as regional groups, could use the second week of April to consult their members on the items to be considered by the Officers and the Screening Group.
 - (4) First half of May: ballot by correspondence of Governing Body members on the draft urgent decisions prepared by the Officers and the Screening Group.
 - (5) Second half of May or early June: meeting of the Screening Group to determine the agenda of the October–November session of the Governing Body taking into account the results of the ballot referred to in the preceding subparagraph.

Geneva, 30 March 2020