



## THIRD ITEM ON THE AGENDA

**Possible improvements in ILO standards-related activities – The supervisory system of the ILO****Contents**

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## Introduction

1. At its 279th Session (November 2000), the Governing Body decided upon an integrated approach to standards-related activities.<sup>1</sup> This constituted a “first chapter” of a review for possible improvements in these activities. It was based on a vision that the standards-related activities should be examined in a holistic perspective by subject or “families” in order to increase their coherence and impact. At its present session, the Governing Body is invited to decide on a proposal to apply this approach to occupational safety and health through a new type of general discussion at the International Labour Conference in 2003.<sup>2</sup> The present document introduces the “second chapter” of the review of the standards-related activities, on possible improvements in the standards supervisory mechanism. Using the approach which has previously produced good results, broad consultations, preceded by a detailed presentation of the supervisory machinery in its current form, has made it possible to identify issues which would merit attention.
2. This examination is focused on the supervisory mechanisms, i.e. essentially the mechanisms concerning supervision of the application of Conventions. It does not include an examination of the Declaration on Fundamental Principles and Rights at Work and its Follow-up; nor does it include questions related to the interpretation of the Conventions.<sup>3</sup>
3. With regard to the spirit and method with which this examination is undertaken, it should be stated at the outset that there is a fundamental and generally shared view that the ILO supervisory system is one of the most developed systems of standards supervision in the multilateral system. It rests on the Constitution of the ILO and agreed developments in practice. These developments have been based on the recognition that from time to time, adjustments are needed to ensure that the system continues to provide for an effective tool to identify and address problems in the application of standards. In this perspective, the current examination must not lead to a reform of the supervisory machinery which might risk weakening it, but to the reinforcement of its effectiveness. What is meant by this? The issue is to strengthen, or at the very least to maintain the capacity of the supervisory machinery to ensure that the obligations driving from the ratification of Conventions are fulfilled in law and in practice. Greater effectiveness requires an appropriate balance between the various available means of action (regular reporting, tripartite dialogue, technical cooperation and special procedures).
4. Each aspect of the supervisory machinery must be examined in depth, taking into account the interdependence between the various components of the system. In this context, the experience of the past is indispensable, but it is also necessary to adopt a resolutely forward-looking viewpoint to anticipate the consequences which may arise, in particular from the new integrated approach.
5. At the same time, it is evident that there has to be a starting point and that this examination has to begin with one of the aspects of the supervisory machinery. In this connection, the question of the regular reporting system appeared from the consultations to be of general

<sup>1</sup> GB.279/4.

<sup>2</sup> GB.280/2.

<sup>3</sup> The issue of interpretation, which is very closely related to application in many cases, however, raises specific and complex questions which are left aside for the time being, but which could be addressed separately if the need arises.

interest. In addition, when the current cycle was introduced on a trial basis, there was tripartite agreement that it should be reviewed after a five-year period. Specific emphasis will therefore be placed on this issue below, even though solutions are not yet being proposed; subsequently, a preliminary inventory of related issues will be drawn up together with a possible schedule for addressing them.

## **The regular reporting mechanism**

### **The constitutional framework and its implications for reporting schedules**

6. The regular reporting system has been the subject of several productive and in-depth examinations, the latest of which was carried out in 1993.<sup>4</sup> This new examination takes into account institutional, historical and practical parameters, which must be recalled briefly.
7. Examining the implementation of the obligations deriving from the adoption of instruments, and of their ratification in the case of Conventions, is central to the ILO's constitutional mandate. It is therefore one of the activities that the Governing Body and the Conference cannot sacrifice for lack of resources, and for which they are under the obligation to provide adequate financing for this essential part of its mandate to be correctly fulfilled. However, this does not mean that adjustments are not possible to ensure the required result within the limits of available resources. This consideration applies particularly to the examination of the reports due under the Constitution.
8. Article 22 of the ILO Constitution provides that: "Each of the Members agrees to make an annual report to the International Labour Office on the measures which it has taken to give effect to the provisions of Conventions to which it is a party". Since 1958 it has been agreed that this provision does not create an obligation to submit annual reports, but an obligation for Members to respond to the requests made by the Office, which it may make each year if it appears necessary to do so.
9. Furthermore, to be fully understood, the obligation to submit reports must not be seen in isolation, but as one of the essential elements of a coherent supervisory system. Article 22 reports are intended to make it possible for the Organization, and its Members as a whole, through the International Labour Conference, to ascertain whether a Member has correctly translated into "law and practice" the obligations which it has undertaken, and when appropriate to have recourse to the special procedures. The sequence of constitutional provisions clearly confirms that such reports are intended to constitute the basis upon which the representative organizations to which copies of the reports must be communicated in accordance with article 23, paragraph 2, or a delegate to the Conference, as well as other Members (through the report provided to the Conference by the Director-General under article 23, paragraph 1) may not only submit comments, but also a representation or a complaint regarding shortcomings revealed through these reports.
10. In the ILO's constitutional practice, this system is enriched by an essential element: the objective analysis of reports by an independent body; the need for this practice soon became evident: in view of the rapid increase in the number of Conventions and

<sup>4</sup> See Appendix.

ratifications thereof, it was impossible for the Conference to deal with the information provided, and thereby to properly discharge its functions.<sup>5</sup>

11. These considerations give rise to a number of consequences with regard to the reporting cycle. In the first place, they show the importance of detailed first reports, which must make it possible to ascertain, at the very least, the conformity of national legislation with the provisions of the Conventions. They also show the importance of maintaining a certain flexibility to request additional reports for as long as doubts may persist with regard to this initial conformity. But it is not subsequently necessary to pursue this process of dialogue with the same regularity; in particular it should not duplicate the responsibilities which is incumbent under the Constitution on the parties concerned – representative organizations of employers and workers, Members that have ratified the Convention, delegates to the Conference – to avail themselves of the special procedures, particularly in cases of allegations that the situation in practice is not in conformity with legislation which may appear to respect the obligations.<sup>6</sup>

### **Material constraints and developments in practice**

12. The reform agreed to in 1993, and in application since 1996 for a trial period of five years, was intended to lighten the workload due to reporting requirements, without impairing the effectiveness of the system. The reporting cycle was changed because the reporting burden had risen steadily and resulted in an overload of the system. Such adjustments had been made earlier for the same reason. Until 1958, reports were due on all ratified Conventions each year, and after that a two-year rotating cycle was established. In 1958, the number of reports requested was 1,558 and it fell to 995 in 1959. By 1976, the number had grown to 2,200. A new revision provided for two-year intervals between reports on 17 priority Conventions and four-year intervals on all others. This resulted in 1,526 reports being requested in 1977.
13. In the last full year of that reporting cycle, 1994, the number had risen to 2,290. In 1996, this figure fell to 1,806. In 1999, the amount had gone up again to the 1994 level. For the most recent session of the Committee of Experts in November-December 2000, the number of reports requested was 2,550. The number of reports received was 1,808. The burden on countries was far from being equal, ranging from one sole report to over 200 reports per country. However, the nature of the reports requested (and thus the workload involved) were very different. Still, it is a fact that countries with high rates of ratification may be requested to furnish dozens of reports – and more in the case of countries with non-metropolitan territories – while some 17 countries have for all practical purposes ceased to participate in the reporting system for the past two or more years. Without assistance by standards specialists in the multidisciplinary teams, this figure might well be much higher.
14. It is obvious that in terms of workload, both the constituents and the Office are now facing the same problem as nearly ten years ago. The number of ratifications has risen from 1,856 in 1958 to 6,880 at the end of 2000. The number of “active” ratifications, i.e. situations

<sup>5</sup> See para. 28 below.

<sup>6</sup> In particular, insofar as the development of real autonomy by representative organizations at the national level makes them able to take direct responsibility for defending their interests, either by means of making observations to be examined by the Committee of Experts, or representations under article 24 of the Constitution.

where a detailed or simplified report is periodically required, is 5,814. Furthermore, two fundamental Conventions on child labour (the Minimum Age Convention, 1973 (No. 138) and the Worst Forms of Child Labour Convention, 1999 (No. 182)) have been added to the priority list since its adoption. Over the time of the campaign, started in 1995, for ratification of the fundamental Conventions there has been a 25 per cent increase in the level ratifications of these Conventions on which detailed reports are due every two years.

15. The following table illustrates the effect of these different components on the reporting workload:

Year	Total without additional requests <sup>1</sup>	Additional reports requested <sup>2</sup>	Reports not received in previous year <sup>3</sup>	1st and 2nd reports <sup>4</sup>	Total reports requested <sup>5</sup>
1996	1 328	108	376	142	1 812
1997	1 305	86	541	183	1 932
1998	1 379	56	602	162	2 037
1999	1 461	82	746	194	2 289
2000	1 600	92	858	139	2 550

<sup>1</sup> *Total without additional requests* is the figure that would have been due if all governments had reported and if the supervisory bodies had not asked for additional reports. <sup>2</sup> *Additional reports requested* refers to the reports requested in "footnotes" by the Committee of Experts and by the Conference Committee. <sup>3</sup> *Reports not received in previous year* indicates the number of additional reports requested because a government failed to send the previous report, or because the previous report contained no or insufficient information (replies to comments of the supervisory bodies, etc.). <sup>4</sup> *1st and 2nd reports* means the detailed reports due following ratification and reflects the continuing increases in ratifications received (no breakdown between the 1st and 2nd reports is yet available). <sup>5</sup> *Total reports requested* is the total of all the reports due that year.

16. As can be seen from this table, the additional reports requested by the supervisory bodies add little to the overall reporting burden. The percentage of additional reports due on these grounds is between 2.75 per cent (1998) and 3.8 per cent (2001), after initially higher figures of 6 per cent in 1996 and 4.5 per cent in 1997. For some countries, of course, the workload is greater, if the supervisory bodies note problems on a wide range of Conventions.
17. The largest number of out-of-cycle reports requested is caused by governments' failure to report when reports are due. This number represents between 20 per cent (1996) and 33 per cent (2000) of the number of reports due each year. In addition, according to the 1993 agreement, when a country fails to provide a simplified report, the obligation is then to produce a detailed report the following year.
18. Another question which requires further examination concerns the timing of the receipt of the reports requested. One of the issues addressed in the context of the 1993 agreement was complaints that the report of the Committee of Experts was not received by them in time to prepare themselves adequately for the discussion in the Conference Committee. The solution agreed upon was to change the date of the annual sessions of the Committee of Experts from the two first weeks of March to November/early December each year. Previously the report of the Committee of Experts was published in the first week of May. Under the present system, delegations have two additional months to prepare themselves for the discussions at the Conference as the Office transmits the report to governments by the first week of March. The change of the date for the annual sessions of the Committee of Experts resulted in other consequential modifications in terms of timing. Requests for reports under articles 22 and 35 would be sent to governments in February each year and, as was pointed out at the time, the reports requested would "have to be sent to the Office

by 1 June or, at the latest, 1 September".<sup>7</sup> The processing of these reports – the analysis thereof and the drafting of any relevant comments – would take place between July and November, and the Committee of Experts could thus meet as agreed in November/December. The report of the Committee of Experts of this year, which is under distribution, contains detailed statistical information on the number of reports received under the new system.<sup>8</sup> On 1 September of last year, the date on which reports were due, the Office had received only 29 per cent of the reports requested. This question will be examined in further detail for the next discussion in November 2001.

19. The number of reports due varies slightly between years. When the cycle was drawn up, the ambition was to distribute evenly, to the extent possible, reports requested each year, taking into account the number of ratifications and the complexity of the Conventions concerned. Overall, the number of reports due in the five years since the system came into operation in 1996, was 738 more for all States combined in 2000 than it was in 1996, or an average of a little more than 4 more per State – though of course the effect is unevenly distributed among countries. In 2001, it will be 501 more than in 1996. As concerns first and second reports after ratification, the numbers have risen by a much higher proportion with a continuing rise in ratifications.

### Options to be explored

20. Key issues to be defined when determining the efficiency of the system, and the ways in which this efficiency can be increased, are: Does the reports system yield the required information? Can the Office process this information sufficiently well for the supervisory bodies? Does the reporting system allow for the identification not only of problems in the correct implementation of standards but also of the assistance to be extended to member States in view of resolving these problems? Are there situations where the reports are generated mainly for the sake of meeting a formal requirement, without bringing forth anything substantively new? In addition to possible reports solely for the sake of reporting, does the system require, and deliver, information which is of a secondary order and in some cases superfluous?
21. The objectives of a detailed review in November 2001 should be to assess the effect of the changes agreed upon in 1993 on the efficiency of the supervisory system; to examine further modifications which would allow the workload involved in reporting to be lightened without impairing the efficiency of supervision; to identify possible bottlenecks at each level involved; and to identify the extent to which some procedures could be simplified without loss of efficiency.
22. One conclusion seems to be that the workload is heavy on all governments, in developing and developed countries and countries in transition, on the social partners, and on the Office. Solutions can be sought in a number of ways. None of these alone would solve the problem; as is often the case, a suitable combination of measures would have to be found. The system needs its own balancing elements, just as in the decisions made in 1993 the *quid pro quo* for longer reporting cycles was to make it easier to break into the cycle in case problems arose.

<sup>7</sup> GB.258/LILS/6/1, paras. 22-29.

<sup>8</sup> Report of the Committee of Experts, p. 628.

- 23.** With a view to facilitating the identification of solutions of the issue of the workload arising out of the regular system, different kinds of elements have to be addressed. They concern the frequency of reports, their substance, and different kinds of safeguards. The following approaches could be further explored:
- (a) A further spreading out of the reporting cycle to six to ten years might appear to be an evident solution, but it must be expected, in the light of previous experience, that this would entail certain consequences: on the one hand there might be further disruptions of the regular reporting cycle through requests for ad hoc reports, and, on the other hand the number of representations might possibly increase.
  - (b) Some form of lighter reporting or even no periodical reporting might be conceivable for Conventions which do not belong to those 58 non-priority Conventions which the Working Party on Policy regarding Revision of Standards of the LILS Committee has identified as being up to date. If any constituent considers that there is something to report, it is entitled to initiate an examination similar to that which applies to the 22 Conventions upon which no periodical reports are required.<sup>9</sup>
  - (c) One measure could be to forego the practice of requesting the second detailed report due after the first report on a ratified Convention. Such a report might also be restricted to responses which the Committee of Experts might request.
  - (d) Greater reliance on the tripartite consultation mechanism and social dialogue at the national level could be explored, without prejudice to the continued availability of special procedures. The question has been raised whether it is necessary to produce a report in situations where the government and the employers' and workers' organizations agree that over the reporting period, nothing warranting such a report has taken place. This approach would assume that there are properly functioning national tripartite consultations, in the spirit of Convention No. 144, and it would have to be subject to appropriate safeguards.
  - (e) Another variation of the approach outlined above would be that if problems are identified, the tripartite constituents could report on efforts they aim to make. To the extent that such a process would take place in good faith and without prejudice to later involvement by the supervisory bodies or to the application of special procedures, it would save on intermediate reporting.
  - (f) Instruments could be examined in groups, or "families", which will have to be identified for the purposes of the integrated approach. This would mean that reports on all instruments which belong to a group would be requested in the same year, and each Member would file a report concerning all the Conventions it has ratified which belong to the family under review.
- 24.** No change would seem to be necessary in the basic two-year reporting cycles for the priority Conventions. The ratification rate of these Conventions has grown, to a great extent as a response to the ratification campaign begun in 1995 and the Declaration on Fundamental Principles and Rights at Work and its Follow-up, 1998. With increased ratifications, more attention has to be paid to the implementation of these Conventions. This would be impaired by moving away from the two-year cycle.

<sup>9</sup> It should be noted that at the 88th Session (2000) of the International Labour Conference a decision was taken to withdraw five Conventions.

## Workload relating to various requests for reports

25. The extent of the reporting workload should also be examined in the light of the number of reports requested by the Office on other subjects including those which are not directly standards-related. Statistics on this will be provided for the November session of the Governing Body. Among those concerning standards, the LILS Working Party on Policy regarding the Revision of Standards has called for a certain number of reports. Reports are also requested for the standard-setting process, for General Surveys under article 19 of the Constitution, on submission of newly adopted instruments to the competent authorities, and for the follow-up of the Declaration on Fundamental Principles and Rights at Work when one or more of the fundamental Conventions have not been ratified.
26. Additional reports are required if a representation or complaint is filed under articles 24 or 26 of the Constitution, or if a complaint is made to the Governing Body Committee on Freedom of Association. Further information is frequently requested, particularly in the conclusions and recommendations of the Committee on Freedom of Association.

## Transparency of, and access to, the supervisory system

### Improving information on the system

27. Efficient use of the supervisory system is made more difficult by inadequate knowledge about it, including the distinction between its different parts: the regular reporting system and the special procedures. Likewise, the possibilities it offers for dialogue in order to solve identified problems should be better appreciated. The Office and the Turin Centre have prepared a large number of training materials but they are not always available for general distribution or constituents are not aware of them. The most detailed explanation is in the *Handbook on procedures relating to international labour Conventions and Recommendations*. It is available also through the ILOLEX database, both on its on-line and CD-ROM versions. However, the Handbook is a highly technical one, and the Office could in due course prepare a more user-friendly version of it.

## Composition, mandate and functioning of the supervisory bodies

### 1. *The regular system*

#### (a) CEACR

28. The Committee of Experts on the Application of Conventions and Recommendations (CEACR or Committee of Experts) was created in 1926 by the Governing Body following a resolution of the International Labour Conference to examine the reports submitted by governments under articles 19, 22 and 35 of the Constitution. It is a body of 20 independent experts, appointed by the Governing Body on the proposal of the Director-



General, and it meets once a year. The current members<sup>10</sup> include 5 women and 14 men, originating from all geographical regions of the world.<sup>11</sup> As legal experts, the Committee members comprise professors of law, lawyers, and judges (including three former presidents of the Supreme Courts of their country); in addition, they hold several other professional and honorary functions. The Committee of Experts transmits a yearly report to the Conference Committee on the Application of Conventions and Recommendations. This consists of a General Report in which the Committee of Experts reviews general questions concerning international labour standards and related instruments and their implementation. It also includes observations concerning the fulfilment by particular countries of standards-related obligations under the ILO Constitution and, published in a separate volume, a General Survey on instruments on which governments have been requested to submit reports under article 19 of the Constitution. The Committee of Experts also adopts direct requests, which are sent directly to governments but are not put before the Conference.

(b) Conference Committee

**29.** One of the standing committees of the International Labour Conference is the tripartite Committee on the Application of Conventions and Recommendations (Conference Committee).<sup>12</sup> Its mandate is to discuss the reports of the Committee of Experts. Firstly, the Conference Committee normally holds an opening general discussion on matters covered by the General Part of the report of the Committee of Experts; this is followed by a discussion of the General Survey. Subsequently, the Committee examines the individual cases that it has selected. Governments addressed by the observations in the selected cases have a further opportunity to submit written replies, the substance of which will appear in a document for the information of the Committee. Whenever the Committee decides that it wishes to receive supplementary information, it invites representatives of the governments concerned to attend one of its sittings to discuss the observations in question.<sup>13</sup> Following statements of Government representatives, members of the Committee may put questions or make comments, and the Committee reaches conclusions on the case. A summary of Governments' statements and the ensuing discussion and the conclusions are reproduced in Part Two of the Committee's report to the Conference.<sup>14</sup> The Committee's report is

<sup>10</sup> One post is vacant. Details of the CEACR members, including a brief curriculum vitae, are published each year in the report. See paras. 3-7 in the report to the 89th Session (2001) of the ILC, Report III (Part IA).

<sup>11</sup> The present members are nationals of the following countries: *Australia, Barbados, Brazil, Croatia, France, Germany, India, Japan, Kuwait, Madagascar, Mexico, Nigeria, Poland, Russian Federation, Senegal, Singapore, Spain, United Kingdom, United States.*

<sup>12</sup> As provided for in article 7 of the Standing Orders of the Conference.

<sup>13</sup> Through the Conference *Daily Bulletin*, governments which are not members of the Committee are kept informed of its agenda and the date on which it wishes to hear statements from their representatives.

<sup>14</sup> In addition, the Committee includes in the body of its report information on its discussions as to various States' compliance with specific obligations: submission to the competent authorities; failure to comply with reporting obligations; mention of cases of progress, in which the Committee notes changes in law and practice which overcome difficulties previously discussed by it; paragraphs drawing the Conference's attention to discussions of certain special cases; other paragraphs drawing attention to cases discussed previously by the Committee where there has been continued failure over several years to eliminate serious deficiencies in the application of ratified

presented to the Conference and discussed in plenary, which gives delegates a further opportunity to draw attention to particular aspects of the Committee's work. The report is published in the *Record of Proceedings* of the Conference and separately for circulation to governments. Furthermore, governments' attention is drawn to any particular points raised by the Committee for their consideration, as well as to the discussions of individual cases, so that due account may be taken in the preparation of subsequent reports.

## 2. *Special procedures*

### (a) Representations

**30.** The Constitution (article 24) provides for a "representation" to be made "by an industrial association of employers or of workers that any of the Members has failed to secure in any respect the effective observance within its jurisdiction of any Convention to which it is a party". Pursuant to the special Standing Orders<sup>15</sup> for representations, the Office acknowledges receipt and informs the government concerned, brings the matter before the Governing Body and reports on the receivability of the representation. Receivable representations must: (i) be communicated to the ILO in writing; (ii) come from an industrial association of employers or workers; (iii) make specific reference to article 24 of the Constitution; (iv) concern a Member of the ILO; (v) refer to a Convention to which the Member in question is a party; (vi) indicate in what respect it is alleged that that Member has failed to secure the effective observance within its jurisdiction of that Convention.

**31.** The Governing Body decides on the receivability without discussing the substance of the matter. If the representation is receivable, the Governing Body may set up a tripartite committee to examine the matter according to rules laid down in the Standing Orders. If the matter relates to a Convention dealing with trade union rights, it may refer it to the Committee on Freedom of Association. Whenever a tripartite committee is set up to examine a representation, it reports to the Governing Body, describing the steps taken to examine the representation and giving its conclusions and recommendations for decisions to be taken by the Governing Body. The government concerned is invited to be represented in the Governing Body when the case is brought before it for examination. Pursuant to article 25 of the Constitution,<sup>16</sup> the Governing Body may decide whether to publish the representation and any government statement in reply. It notifies the association and government concerned. The conclusions are followed up by the Committee of Experts.

### (b) Complaints

**32.** The Constitution provides in article 26 that "[a]ny of the Members shall have the right to file a complaint with the International Labour Office if it is not satisfied that any other Member is securing the effective observance of any Convention which both have ratified".<sup>17</sup> Article 26, subparagraph 4, states: "[t]he Governing Body may adopt the same

Conventions; communication of copies of reports to employers' and workers' organizations; and participation in the work of the Committee.

<sup>15</sup> Adopted by the Governing Body – see *Official Bulletin*, Vol. LXIV, 1981, Series A, No. 1, pp. 93-95; an offprint is available.

<sup>16</sup> "If no statement is received within a reasonable time from the government in question, or if the statement when received is not deemed to be satisfactory by the Governing Body, the latter shall have the right to publish the representation and the statement, if any, made in reply to it."

<sup>17</sup> The following articles of the Constitution deal with other aspects of the complaints procedure: *article 27* (Members' cooperation with a commission of inquiry); *article 28* (report of the

procedure either of its own motion or on receipt of a complaint from a delegate to the Conference". This also provides delegates of the Conference with the possibility to submit a complaint. The Governing Body is also entitled, upon its own initiative, to open the complaints procedure. The Governing Body may, if it thinks fit, refer complaints to a commission of inquiry, usually composed of three independent persons. There are no standing orders governing the procedures of commissions of inquiry. The Governing Body has, in each case, left the matter to the Commission of Inquiry itself, subject only to the Constitution's and its own general guidance. The reports of the respective Commissions of Inquiry describe the procedure followed for the examination of complaints, including the procedure for receiving communications from the parties and other interested persons or organizations and the conduct of hearings. Commissions of Inquiry usually conduct such hearings and make on-the-spot investigations before adopting their conclusions and recommendations. The conclusions are followed up by the Committee of Experts.

(c) The Committee on Freedom of Association

33. Pursuant to the agreement between the ILO and the Economic and Social Council of the United Nations to set up a special procedure for the protection of trade union rights, the Governing Body, in 1951, decided to set up a tripartite committee composed of nine regular members drawn in equal numbers from the Government, Employers' and Workers' groups for the purpose of examining complaints regarding violations of trade union rights. These complaints may be presented against member States of the ILO, irrespective of whether or not they have ratified the Conventions on freedom of association.
34. On several occasions, the Committee has been called upon to clarify the exact nature of its mandate. Its function is to guarantee and promote the freedom of association of employers and workers. It is not to bring accusations against governments or to condemn them. The Committee has always taken the greatest care to avoid dealing with matters which do not fall within its specific sphere of competence. Given these particular functions, the Committee has based all its decisions on unanimity.
35. Since its inception, the Committee has established certain rules of procedure. It has frequently adjusted these procedures in order to improve them, to increase the speed with which cases are examined and to ensure that the appropriate follow-up is given to the recommendations. For this purpose, the Committee has, over the years, adopted a number of measures endorsed by the Governing Body. At present it is embarking upon a new discussion regarding these rules of procedure.

### 3. **Issues raised**

36. While the mandate of the supervisory bodies depends on the Governing Body and the International Labour Conference,<sup>18</sup> they have, within that framework, themselves decided on the most suitable working methods. In 1999 the Committee of Experts set up an internal

Commission of Inquiry); *article 29* (communication and publication of the report, indication by governments concerned as to whether they accept its recommendations, and possible referral to the International Court of Justice (ICJ)); *article 31* (decision of the ICJ being final); *article 32* (power of the ICJ over the findings or recommendations of a commission of inquiry); *article 33* (Governing Body recommendation as to action by the Conference in the event of failure to carry out recommendations of the Commission of Inquiry or the ICJ); *article 34* (verification of compliance with recommendations of the Commission of Inquiry or the ICJ and subsequent Governing Body recommendation as to discontinuance of action by the Conference).

<sup>18</sup> See, for instance, article 7 of the Standing Orders of the International Labour Conference.

working group to review its working methods. There has been discussion on the working methods of the Conference Committee, including the issue of selection of cases to be considered. The Governing Body can provide ideas to the bodies concerned to facilitate such discussions.

37. The Conference Committee has on different occasions discussed the criteria for the selection of individual cases to be discussed by it. The Workers' group has indicated its criteria for this selection.<sup>19</sup> There have also been suggestions that the decision on this list would be made by the Governing Body in March of each year, although this might raise legal questions and prove difficult in practice as the report of the Committee of Experts is currently available only shortly before the March session. The Conference Committee might usefully continue to discuss the selection process, in order to arrive at a set of criteria which would correspond to the aims of increased efficiency in solving issues as well as a comprehensive overview of the development of international labour law.
38. The Conference Committee could also discuss, and decide upon, the optimal distribution of the time available to it so that it would be able appropriately to address issues arising out of the supervision of non-priority Conventions. The idea has been suggested for instance that a certain percentage of cases could be devoted each year to a specific "family" of Conventions.
39. The method of formulating conclusions following the discussion on individual cases has also been raised. At the conclusion of each case, the Chairperson proposes conclusions to the Committee on the basis of the discussion which has taken place. These conclusions take into account the general orientation of the discussion as well as specific proposals made in the course thereof. They are proposed to the Committee for adoption, and are often amended on the basis of the views put forward in the discussion.
40. The increase in numbers of article 24 representations in the 1990s raised the question of the criteria for receivability of such representations. It is true that the criteria established by the Constitution are very broad, and in certain respects they are purely formal in contrast to those for other supervisory bodies such as the CFA. This would indicate that, in the first instance, the methods for determining receivability (by the Governing Body and its Officers) might be examined. At present, there is no indication that the number of representations under article 24 will continue to grow. In comparison with the latter part of the 1990s, recourse to this procedure has diminished somewhat. The issue may, nevertheless, merit further consideration as part of a review on the mandates of, and relations between, the general and the special procedures. Further consultations could help in defining the issues to be addressed.<sup>20</sup>

## Other questions with implications for application

41. One question mentioned by both Government and Employer representatives has been the number of ratifications needed for the entry into force of a Convention. It has been felt that

<sup>19</sup> 88th Session (2000) of the International Labour Conference, *Provisional Record* No. 23, Part I, para. 7.

<sup>20</sup> During consultations, one regional group has expressed the view that the CFA should be restricted to cases involving countries that have not ratified the relevant Conventions, as allegations of violations of ratified Convention can be taken up under articles 24 and 26 of the Constitution.

the threshold number of two ratifications for entry into force is too low. At various stages, proposals have ranged from five to ten or more countries, or a certain minimum percentage of the membership of the Organization. Whereas this discussion will no doubt continue, it might be useful to note that if there is broad consensus on a Convention, and if it is effectively promoted, its ratification rate would tend to increase (which, at the same time, would render such a minimum requirement less relevant). The threshold number could also be adapted to the topic of Conventions, particularly if they cover specific sectors or situations which may not apply in all countries.

## Promotional activities

42. The key to increasing the effectiveness of supervision, and responding to the constituents' wish to improve the application of Conventions, is to improve the assistance given to them to overcome problems. As indicated above, this in itself would make a major contribution to reducing the reporting workload. Efforts have been made for many years to put mechanisms for this in place. A number of comments by the Committee of Experts regularly encourage governments to have recourse to the Office's assistance to resolve problems, and many of them do so, in a formal or informal way. In principle, the Office responds to all such requests for assistance, and this close link between supervision and assistance is one thing that distinguishes the ILO from other international supervisory systems.
43. Under the direct contacts procedure established in 1964, the Director-General appoints a representative – an official of the Office or, in appropriate cases, an outside personality – to discuss intractable problems with the government concerned and to attempt to find a solution. Supervision can then be suspended for a year to allow problems to be worked out. Contrary to certain perceptions, this is not a measure for the purposes of supervision. It has always been intended to be a means to allow for the resolution of problems when the supervisory bodies or the government concerned note that specific ILO assistance would be needed or where formal dialogue has not led to satisfactory results.
44. In 1980, the system of regional advisers on international labour standards was established in the developing regions; and in time, this was replaced by the multidisciplinary teams covering most developing countries and countries in transition. The standards specialists on these teams have significantly increased the volume of assistance provided to States on a day-to-day basis, both in terms of reporting, and in relation to the substantive problems raised under the supervisory mechanisms.
45. While the belief that the Organization's standards and principles should guide its technical cooperation activities is not new, much remains to be done for better integration of these modes of action. The need for a proactive move in this direction was confirmed by the resolution and conclusions concerning the role of the ILO in technical cooperation, adopted by the International Labour Conference in 1999. That resolution stated that the four strategic objectives all embrace respect for international labour standards and contain the implicit goal of promoting them. Furthermore, an enabling environment for the promotion, realization and implementation of international labour standards should be created with a view to ensuring that technical cooperation can assist in the ratification of Conventions and help member States to implement them effectively.

## Conclusions

46. In the light of the above and of the consultations, the discussion will have to proceed in stages, with detailed attention to be given to specific questions all while keeping the larger

framework in mind. On the basis of the indications provided in the present paper, it is intended to submit proposals concerning the reporting system for the November 2001 session, following a detailed analysis by the Office and taking into account the discussions at the present session of the Governing Body and further consultations, as appropriate. It will then be necessary to establish a timetable for the other questions that need to be discussed in more detail.

**47. *The Committee may wish to recommend that the Governing Body invite the Director-General to:***

- (a) prepare, in the light of the views expressed during the discussion and in consultation with the constituents, proposals for the 282nd Session (November 2001) of the Governing Body on possible modifications in the reporting cycle;***
- (b) inform the supervisory bodies of any relevant comments that may facilitate the review of their working methods and any proposals they themselves might wish to make;***
- (c) undertake consultations for the preparation of an overview of the special procedures for an initial discussion at the 283rd Session (March 2002) of the Governing Body;***
- (d) specify other questions, such as promotional activities, which should be the object of an in-depth review at the subsequent stage;***
- (e) take the necessary measures for increasing knowledge of the system, training for those directly involved in its functioning, including, at the appropriate time, the revision of the Handbook of procedures relating to international labour Conventions and Recommendations with the aim of making it more user-friendly.***

Geneva, 8 March 2001.

*Point for decision:* Paragraph 47.

## Appendix

### Description of the current reporting system <sup>1</sup>

#### I. Reporting system

The following system of reporting was approved by the Governing Body in November 1993, so as to come into force in 1996 for a trial period of five years:

- (a) *First and second reports.* A first detailed report is requested the year following that in which a Convention comes into force in a given country. A second detailed report is requested two years after the first (or one year after, if that is the year when a periodic report is in any event due from all countries bound by that Convention).
- (b) *Periodic reports.* Subsequent reports are requested periodically on one of the following bases, on the understanding that the Committee of Experts on the Application of Conventions and Recommendations may request detailed reports outside the normal periodicity.
  - (i) *Two-yearly reports.* Detailed reports are automatically requested every two years on the following ten Conventions, regarded as priority Conventions:
    - freedom of association: Nos. 87 and 98;
    - abolition of forced labour: Nos. 29 and 105;
    - equal treatment and opportunities: Nos. 100 and 111;
    - employment policy: No. 122;
    - labour inspection: Nos. 81 and 129;
    - tripartite consultation: No. 144.
    - child labour: Nos. 138 and 182
  - (ii) *Five-yearly reports.* Simplified reports are requested every five years on other Conventions according to the table below. A detailed report is nevertheless required:
    1. where the Committee of Experts has made an observation or direct request calling for a reply; or
    2. where the Committee of Experts considers that a detailed report should be communicated on account of possible changes in legislation or practice in a member State which might affect its application of the Convention.
- (c) *Non-periodic reports.* Non-periodic detailed reports on the application of a ratified Convention are required:
  - (i) when the Committee of Experts, of its own initiative or that of the Conference Committee on the Application of Standards, so requests;

<sup>1</sup> Excerpt from the *Handbook of procedures relating to international labour Conventions and Recommendations*, paras. 34-36. For full text, including references, see said *Handbook of procedures*.

- (ii) when the Committee of Experts is called on to consider the follow-up to proceedings instituted under articles 24 or 26 of the Constitution or before the Committee on Freedom of Association;
  - (iii) when comments have been received from national or international employers' or workers' organizations and the Committee of Experts considers that a detailed report is warranted in the light of the government's comments in reply or the fact that the government has not replied;
  - (iv) when no report is supplied or no reply is given to comments made by the supervisory bodies (given that, where there is repeated failure to reply or the reply is manifestly inadequate, the Committee of Experts may examine the matter on the basis of available information).
- (d) *Exemption from reporting.* Subject to the conditions and safeguards laid down by the Governing Body, no reports are requested on Conventions which do not correspond to present-day needs.

## **II. Detailed reports**

A detailed report should be in the form approved by the Governing Body for each Convention. The form sets out the substantive provisions of the Convention, information on which has to be supplied. It includes specific questions as to some of the substantive provisions, designed to aid in the preparation of information which will enable the supervisory bodies to appreciate the manner in which the Convention is applied. A typical report form also contains questions on the following matters:

- (a) *Laws, regulations, etc.* All relevant legislation or similar provisions should be listed and – unless this has already been done – copies supplied.
- (b) *Permitted exclusions, exceptions or other limitations.* Several Conventions allow given categories of people, economic activities or geographical areas to be exempted from application, but require a ratifying State which intends to make use of such limitations to indicate in its first article 22 report the extent to which it has recourse to them. It is therefore essential for the first report to include indications in this respect, since, if it does not, the limitations will no longer be possible. The same Conventions may call for information to be included in subsequent article 22 reports indicating the extent to which effect is nevertheless given to the Convention in respect of the excluded persons, activities or areas.
- (c) *Implementation of the Convention.* Detailed information should be given for each Article on the provisions of legislation or other measures applying it. Some Conventions ask for particular information to be included in reports (as to the practical application of the Convention or certain Articles or as to application in cases of exclusion).
- (d) *Effect of ratification.* Information is asked for as to any constitutional provisions giving the ratified Convention the force of national law and any additional measures taken to make the Convention effective.
- (e) *Comments by the supervisory bodies.* Where the Committee of Experts or the Conference Committee on the Application of Standards have made comments or asked for information, the report should indicate the action taken and supply the information wanted.
- (f) *Enforcement.* Governments are asked to indicate the authorities responsible for administration and enforcement of the relevant laws, regulations, etc., and to supply information on their activities. Copies of the authorities' own reports may be appended or – if they have already been supplied – referred to.
- (g) *Judicial or administrative decisions.* Governments are asked to supply either a copy or a summary of relevant decisions.



- (h) *General appreciation.* Governments are asked to give a general assessment of how the Convention is applied, with extracts from any official reports, statistics of workers covered by the legislation or collective agreements, details of contraventions of the legislation, prosecutions, etc.
- (i) *Observations of employers' and workers' organizations.* Full information together with any government response should be given.
- (j) *Communication of copies of reports to employers' and workers' organizations.* The names of the organizations to which copies are sent should be given.

### **III. Simplified reports**

These will contain only:

- (a) *Laws, regulations, etc.* Information on whether any changes have occurred in legislation and practice affecting the application of the Convention and on the nature and effect of such changes.
- (b) *Implementation of the Convention.* Statistical information or other information and communications prescribed by the Convention in question (including required information on any permitted exclusions).
- (c) *Communication of copies of reports to employers' and workers' organizations.* An indication of the employers' and workers' organizations to which copies of the simplified report have been addressed.
- (d) *Observations of employers' and workers' organizations.* Comments received from employers' and workers' organizations to which a copy of the simplified report has been addressed.