

INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY  
&  
INTERNATIONAL COMMISSION OF JURISTS

**Workshop**

Standard-setting: Lessons Learned for the Future

Geneva, 13-14 February 2005

**ADOPTION OF STANDARDS BY THE INTERNATIONAL LABOUR ORGANIZATION:  
LESSONS AND LIMITATIONS**

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1. The ILO's process of adopting standards is different from that of other international organizations. While some of it is unique to the ILO's structure, and thus difficult to reproduce elsewhere, there are also elements that carry lessons beyond the ILO.

**A BRIEF APERCU**

2. The ILO is the most prolific standard-setting organisation at the international level.<sup>2</sup> It was established for the purpose of setting standards in 1919<sup>3</sup>, when it was founded together with the League of Nations, and from that time has steadily adopted Conventions and Recommendations on a regular basis. Over the 85 years of its existence, the ILO has adopted 185 Conventions and 195 Recommendations, as of early 2005. It has also taken measures to consolidate these standards, and to keep the corpus up to date.
3. Because of the volume of standard setting carried out by the ILO, elaborate rules and procedures are in place, and there are numerous decisions of ILO bodies about how to proceed. At the time this paper is being written (January 2005) work is under way to compile a handbook of best practice for ILO standard setting. A schematic of the procedure is attached.

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<sup>2</sup> An exception to this statement, so different as to be entirely distinguishable, is the European Union procedures. The standards set internationally by the EU are, however, more in the form of legislation to be adopted at the member State level in this growing "pre-state".

<sup>3</sup> The preamble to the ILO Constitution makes it clear that it was necessary to regulate conditions of work to prevent injustice, and the adoption and supervision of Conventions and Recommendations are referred to extensively throughout the text.

4. The ILO's tripartite structure is determinant for the way it sets standards. Members of the Organization are States, as for other IGOs; but unlike in other organisations the delegations to the annual Conference and to other ILO bodies consist of mixed governmental and NGO delegations.
5. Another characteristic is that the adoption of standards by the ILO is fast, and takes place according to a schedule. From the time a decision is taken in the Governing Body to put a subject on the Conference agenda, a new instrument is adopted in 43 months; indeed, it is possible to know from the beginning the date – and practically the hour – at which a new instrument will be adopted.
6. One of the most important features of the ILO standard-setting system is that a large degree of consensus is reached before a new instrument is put on the agenda. Where this does not happen – for instance, when the Governing Body thinks it has more of a consensus than it in fact has, or when a decision is reached over the objections of one of the parties – then the process is much more difficult and has been known to fail.
7. Though a degree of consensus is necessary at all stages, there may also be strongly-held divergent views among the different forces among ILO constituents. The ILO Conference is prepared to vote to take decisions, and on occasion a two-week discussion may involve dozens of votes on hundreds of proposed amendments. The ILO does not have to wait for consensus to emerge before a provision can be adopted.
8. ILO Conventions may not be ratified with reservations – a fundamental difference from other international standards. Consequently, the Conference carefully considers whether flexibility clauses should be included, allowing choices to be made within carefully defined limits.
9. The ILO has evolved different kinds of standards for different purposes, some of which are binding once ratified, and some with more promotional aspects.
10. Finally, the role of the ILO staff is very important. The International Labour Office (the permanent secretariat) in most cases makes the proposals from among which the political bodies choose standard-setting subjects. This is based on technical analysis of gaps in the body of standards, on needs to address issues in a changing legal context, and often on years of work before proposals are made. During the process, the staff sets out the questions that are to be examined, analyses the position of the constituents, prepares drafts, and proposes and negotiates solutions. Decisions, of course, remain firmly in the hands of the constituents.

## DETAILED DESCRIPTION

11. ILO standards are adopted by the International Labour Conference, which meets annually (in June), and from time to time in special session for maritime affairs.<sup>4</sup> There is almost always at least one standard-setting item on the agenda, though the pace has been somewhat slower in recent years.
12. *Inclusion of a subject on the agenda of the Conference.* It is usually the Governing Body<sup>5</sup> that sets the Conference agenda (ILO Constitution, art. 14(1)). The Conference itself can also decide to include a question on the agenda of its next session (art. 16(3)). Subjects are normally chosen

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<sup>4</sup> A special maritime session of the ILC is to meet in 2005.

<sup>5</sup> The Governing Body of the International Labour Office is composed of 56 members, half of which are governments, with 14 worker and 14 employer members, elected for three-year terms by the International Labour Conference.

from proposals by the Office, but may also come from proposals by member States and employers' and workers' organisations, regional conferences, technical meetings, or by any public international organisation. Following a review of standards completed in 2003, a series of subjects has resulted from analysis of needs to consolidate or modernise standards, and the resulting list of proposed standard-setting subjects is the first point of reference.

13. Another way ideas can arise for standard-setting is from the work of the ILO supervisory bodies. Each year the Committee of Experts on the Application of Conventions and Recommendations – the ILO's principal supervisory body – carries out a General Survey on one or several instruments. Though much longer (book length) these surveys have some of the attributes of the “General comments” adopted by UN treaty bodies, in consolidating and restating the Committee's understanding of the meaning of Conventions and Recommendations. They also examine obstacles to ratification and the situation generally in non-ratifying States. In addition to all this, General Surveys in recent years have examined whether the instruments they cover are fully up to date, and on occasion have recommended changes. For instance, a General Survey on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111) recommended that a protocol should be added to expand the prohibited grounds of discrimination in the light of developments (a proposal not yet taken up by the Governing Body, but it has been discussed there).
14. The Governing Body discusses the proposed Conference agenda at two sessions, in November each year and in March of the following year, the definitive decision being taken at the March session. The Office submits to the Governing Body a preliminary *law and practice report* on each of the subjects being submitted at the first discussion, and then a shorter list based on discussions for the March session, so that it may select one or more of them for the Conference agenda.<sup>6</sup> The agenda adopted is for the Conference session two years later, in order to be able to comply with the delays laid down in the Standing Orders of the Conference for the preparatory work for standards.
15. From time to time the ILO carries out an over-all examination of its standards, both as to their content and as to method, which influences how standards are selected for adoption as well as what they cover. When an in-depth survey on standards was carried out by the Governing Body from 1974 to 1979, the Governing Body established a list of possible subjects for future instruments, which was to be used as a basis for fixing the Conference agenda. This list was revised by the Working Party on Standards established by the Governing Body in November 1984, which also developed the criteria for standard setting adopted in 1979: (a) the number of workers affected; (b) the importance of the subject in all parts of the world; (c) the importance of the subject for workers in the most disadvantaged economic categories, and for unorganised and non-protected workers; (d) the age of existing instruments relating to the problem; (e) the gravity of the problem; and (f) the degree to which the subject would contribute to the fundamental rights of workers. Any new standards should cover the largest possible number of economic sectors, and standards on one sector or occupational group should only be considered in special cases.
16. When the process was repeated from 1995 – 2003, there were three major results. The first was to identify which instruments are *fully up to date and should be promoted*, resulting in a list of 71<sup>7</sup> Conventions. It adopted proposals, later endorsed by the Conference, to allow the *abrogation of out-of-date instruments*, resulting in a Constitutional amendment now awaiting sufficient ratifications to come into force. Finally, it repeated the earlier exercise of identifying *subjects for future standard setting*, including revision of older and out-of-date standards.

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<sup>6</sup> If a government objects to the decision, the Conference itself decides on its agenda by a two-thirds majority vote (art. 16(1) and (2), Constitution). This is more a theoretical possibility than an actual practice.

<sup>7</sup> Revised after further deliberation to 73 Conventions.

17. *The integrated approach.* One of the major results from the latest review of standards was the adoption of what is known as the “integrated approach”, meaning that a discussion at the Conference should consider all elements of the ILO’s means of action together. This may have different manifestations. One result may be the kind of discussion now being prepared for the 2005 Conference agenda on youth employment, in which both standards and technical assistance, as well as research, will be considered as a tool box for future ILO action. Another manifestation of the integrated approach may be to consider the consolidation of a large group of standards into a single, broader instrument – this is the approach taken for adopting a new consolidated instrument on safety and health at work, which should update and replace a number of older Conventions and Recommendations, also scheduled for the 2005 Conference session. Such discussions may result in a decision to revise Conventions and Recommendations. Integrated approach discussions may also validate the existing standards as a basis for action, allying them much more closely with the technical work of the Office, as happened with a discussion on migrant labour during the 2004 Session of the Conference.
18. The Governing Body may submit a subject for discussion by a preparatory technical conference before taking a decision on its inclusion on the agenda of the Conference (article 14(2), Constitution). When maritime Conventions are being considered, the maritime sessions of the Conference are preceded by the Joint Maritime Commission, and by a tripartite meeting on the proposed standards.
19. *Implications of tripartism.* The ILO is the only international organisation in which governments do not have all the votes. Its particular (and uniquely privileged<sup>8</sup>) NGOs are national and international workers’ and employers’ organisations. Each government is obliged to send to the Conference 4 delegates - 2 governmental and one each to represent employers’ and workers’ organisations.<sup>9</sup> The voting structure provides that the non-governmental delegations have 50% of the voting capacity in the Conference – and at the committee level where the detailed negotiations go on, workers, employers and governments each have one-third of the voting rights.
20. *Kinds of instruments adopted.* The Constitution provides for the adoption of Conventions and Recommendations, which are what is usually meant when referring to international labour standards. *Conventions* are drafted as treaties, and may be ratified, creating binding obligations. *Recommendations* are what the name suggests, and are drafted as guidance. They may be adopted independently of each other, but often are adopted together, in which case the Recommendation supplements the Convention and adds additional provisions to help understand or add to the ideas in the Conventions.
21. Other standard-setting options include *Declarations*, which have been adopted on several occasions. The Declaration of Philadelphia was adopted in 1944 to update the objectives of the Constitution as World War II drew to a close, and was incorporated into the Constitution in 1946. The Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy was adopted in 1976 and updated in 2000; and in 1998 the Conference adopted the very important Declaration of Fundamental Principles and Rights at Work. Both the latter

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<sup>8</sup> Workers’ and employers’ organisations are empowered under the ILO Constitution to file complaints, to submit reports on the application of ratified and unratified Conventions, and to be consulted in various ways, beyond the rights accorded to NGOs in other intergovernmental organisations; but other NGOs have fewer rights than in the UN.

<sup>9</sup> Delegations are often much larger, with all three parts of the delegation bringing “advisers”, but only 4 delegates have voting rights in the ILC plenary. The annual Conference assembling the 177 ILO member States often counts more than 4,000 participants.

instruments launched promotional follow-up procedures, compared with the more binding supervisory procedures that apply to Conventions and Recommendations.

22. Finally, the ILO adopts codes of practice, which are usually drafted by technical meetings and endorsed by the Governing Body. A recent example is the ILO code of practice on HIV/AIDS and the world of work, later endorsed by the UN General Assembly.
23. *Double discussion procedure.* The Conference usually adopts Conventions and Recommendations after discussing the subject at two successive sessions of the Conference. This procedure, which is laid down in the Standing Orders of the Conference, follows a very precise schedule, under which the Conference has before it four preparatory reports.
24. The first report is prepared by the Office immediately after the March session of the Governing Body at which the Conference agenda is fixed. It consists of a comparative study of the existing law and practice on the subject at the national and international levels, and concludes with a questionnaire on the points that might be included in the text(s) to be adopted. This report must be communicated to governments so as to reach them not less than 12 months before the opening of the session at which the question is to be discussed. Governments then have 4 months to send their replies, after consultation with the representative organisations of employers and workers in their countries. A specific question in the questionnaire always refers to difficulties that might be encountered in each country in applying the proposed standards, so that flexibility clauses may be included (this technique is examined below).
25. On the basis of the replies received, the Office prepares a second report containing an analysis of replies and proposed conclusions. This report is sent to governments so as to arrive at least four months before the Conference.
26. During the first discussion, the subject is discussed in a tripartite committee of the Conference with the objective of adopting conclusions (not exactly a draft instrument). Government, employer and worker delegations normally send to such discussions representatives who know the specific subject, and are able to negotiate among themselves without referring back to national capitals. As noted above, in the committee sessions, governments, and the employers' and workers' groups, each have one-third of the voting power. Where employers and workers do not agree on a particular provision, this leaves decisions in the hands of governments; but where workers and employers agree, or are able to negotiate an agreed approach, governments are at a real disadvantage because they can never achieve either the degree of unanimity or the number of votes the non-governmental delegates can.
27. The discussion takes place on the basis of the proposals the Office puts before the committee after the first two rounds of written consultations. Delegates support these proposals or offer amendments to them, and very often there are several hundred amendments before a committee. It votes on any that cannot be resolved by discussion and consensus, and at the end of the first discussion (which in practical terms is about 9 working days), the committee presents its conclusions to the plenary of the Conference for adoption. The Conference decides at the same time to include the question for a second discussion on the agenda of its next session. The Conference may also request the Governing Body to include the question on the agenda of the next Conference.
28. Within two months of the end of the Conference session, the Office is required to send to governments a third report, which contains a draft Convention and/or Recommendation prepared by the Office on the basis of the first discussion. These drafts include proposals by the Office to resolve drafting difficulties or inconsistencies arising from Conference discussions, and may even include reversion to earlier suggestions or a proposal to adopt a different approach.

Governments have three months to propose amendments or make observations, after consulting the employers' and workers' organisations in their countries. On the basis of the replies received, the Office prepares the fourth report, containing the amended text of the draft Convention and/or Recommendation, and sends it to governments at least three months before the session of the Conference at which the second discussion will take place. Discussions again take place on the same basis in a technical committee of the Conference, and the text it adopts is then examined by the Conference in plenary session.

29. In plenary the voting power reverts to 50% for governments, and 25% each for workers and employers. Once the text has been approved in plenary, it is referred to the Drafting Committee of the Conference for a final check (including ensuring that the English and French versions are identical as they are the official languages, and also checking the Spanish). The text is then resubmitted to the Conference for final approval, for which it is necessary to obtain two-thirds of the votes cast by the members present (art. 19(2), Constitution). If this majority cannot be obtained, the Conference may decide to send a draft Convention back to the Drafting Committee to transform it into a Recommendation (though this has never in fact occurred).
30. *Single discussion procedure.* The Standing Orders of the Governing Body stipulate that in cases of special urgency or where other special circumstances exist, it may be decided by a majority of three-fifths of the votes cast that a question should be submitted to the Conference for a single discussion.<sup>10</sup> In this case the Office prepares a "brief" law and practice report, together with a questionnaire. The procedure then follows the course already described until the first discussion is reached, which will in this case be the only discussion for the adoption of the instrument(s). A variant before this discussion takes place is when the subject has already been discussed previously by a preparatory technical conference, in which case the Office may (if the Governing Body has so decided) simplify the procedure and submit only one report to the Conference - sent to governments four months earlier - prepared on the basis of the preparatory technical conference.
31. *Revision of Conventions and Recommendations, and Protocols.* The ILO is the only international organisation that revises the instruments it adopts. It has done so regularly since the earliest days of the Organization, when it began in the mid-1930s to revise earlier minimum age Conventions to increase the age at which young people could enter the workforce. This has become increasingly more necessary as the body of standards continues to grow. Some instruments also need to be changed to reflect more modern conceptions of, for instance, the role of women in society (a prohibition on night work for women is no longer considered a protective measure, but is now seen as discrimination), or to reflect technological advances in work processes.
32. Revision may take place either under the special procedure provided for this purpose, or by using the normal double discussion procedure.
33. *Effect of revision.* It was decided already in 1928 that the adoption of a Convention that revises an earlier one would not result in the derogation of the older instrument.<sup>11</sup> A Convention might involve reciprocal obligations between States, and it is not possible to replace these automatically when the new Convention came into force. Instead, when a revised Convention is adopted, it closes the earlier instrument to further ratifications as soon as the revised Convention enters into force. Ratification of the revised Convention entails an automatic denunciation of the earlier ratification – i.e., a replacement ratification.

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<sup>10</sup> Standing Orders of the International Labour Conference, art. 34(7).

<sup>11</sup> As indicated above, a Constitutional amendment that would allow derogation of out-of-date instruments is awaiting a sufficient number of ratifications to enter into force.

34. *Protocols*. During the in-depth review of standards carried out from 1974 to 1979, the idea of a simplified form of revision was raised: protocols. This device - used for the first time in 1982 for the Plantations Convention, 1958 (No. 110), and later for the Night Work (Women) Convention (Revised), 1949 (No. 89)<sup>12</sup> –is itself considered to be a kind of Convention, and therefore to be covered by the relevant provisions of the Constitution. It must be adopted by the Conference and approved by a two-thirds majority, and it is subject to the obligation of submission to the competent authorities (see below). This device was introduced for purely practical reasons, as it avoids having two different Conventions on the same subject and offers options to States with immediately visible results. In such cases both the Convention alone, and the Convention plus its protocol, normally remain open to ratification. The ratification of the protocol modifies the obligation undertaken when ratifying the original Convention.
35. *Flexibility of standards*. Because ILO Conventions cannot be ratified with reservations<sup>13</sup>, they are often adopted with flexibility clauses that allow ratifying States to make choices within specified limits. Flexibility is important if international standards are to be incorporated into national law. The ILO Constitution provides in art. 19(3) that in drawing up instruments the Conference "shall have due regard to those countries in which climatic conditions, the imperfect development of industrial organization or other special circumstances make the industrial conditions substantially different and shall suggest the modifications, if any, which it considers may be required to meet the case of such countries." It is therefore important for governments and employers' and workers' organisations to point out, both in commenting on the preparatory reports and in the discussions in the Conference, any special situations that should be taken into account through flexibility clauses.
36. Various flexibility devices are used. Some of the earliest Conventions included special clauses for specific countries, but this is no longer used. The most widely used devices are the following.
- (a) **Conventions laying down basic principles**, with a complementary Recommendation dealing with technical and other details of implementation; for example, the Human Resources Development Convention, 1975 (No. 142) and its supplementary Recommendation No. 195.<sup>14</sup>
  - (b) **The definition of standards in broad, flexible language** (frequently, to fix objectives of social policy) leaving flexibility in methods of application to take account of national conditions and practice; for example, the Discrimination (Employment and Occupation) Convention (No. 111) and Recommendation (No. 111), 1958. Conventions usually are flexible as to their methods of application, in that many of them refer to implementation by legislation, collective agreements, arbitration awards or judicial decisions, and to "methods appropriate to national conditions and practice", as is provided in Article 2 of Convention No. 111.
  - (c) **Conventions consisting of a number of parts**, only a minimum number of which need be accepted at the time of ratification, thus permitting the gradual extension of obligations as social legislation and institutions develop; for example the Social Security (Minimum Standards) Convention, 1952 (No. 102).
  - (d) **Conventions permitting acceptance of alternative parts**, with varying levels of obligations; for example, the Fee-Charging Employment Agencies Convention, 1949 (No. 96), which allows a choice between abolishing fee-charging employment agencies, and retaining them but regulating them in specified ways.

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<sup>12</sup> In all the device has been used 5 times.

<sup>13</sup> It has been ILO practice since the beginning that ILO Conventions are not subject to ratification with reservations because they are negotiated in a tripartite setting and not simply by inter-State processes.

<sup>14</sup> In another instance of the ILO's ability to update standards, Recommendation No. 195 was adopted in 2004, to replace Recommendation No. 150 adopted in 1975 at the same time as Convention No. 142.

- (e) **Conventions permitting - sometimes on a temporary basis - the acceptance of specified lower standards by some countries**, for example where the economy and facilities are insufficiently developed. This is the case of the Minimum Age Convention, 1973 (No. 138) which offers developing countries the possibility of accepting a minimum age for employment of 14 years instead of 15, as is the general rule under the Convention.
  - (f) **Permissive exclusions**, for example of specified categories of occupations or undertakings or of insufficiently populated or developed areas. This possibility is also found in Convention No. 138.
  - (g) **Acceptance of obligations separately for persons employed in specified economic sectors**. This is the case under the Labour Inspection Convention, 1947 (No. 81), which refers separately to labour inspection in industry and in commerce, and which allows the acceptance of the part on industry by itself.
37. It is important to mention that when lower standards are accepted or when categories, sectors, etc. are excluded from ratification, countries are obligated to indicate in their reports on the application of the Convention the reasons for which they maintain these lower standards, or to indicate the law and practice on the categories, etc., that have been excluded, and the degree to which the Convention is applied or to which it is proposed to apply to such categories.
  38. In spite of the considerable attention given at the adoption stage to including flexibility clauses, most countries make very limited use of the flexibility devices that are already included in Conventions.
  39. *Conventions and Recommendations as minimum standards*. One of the major influences on the way they are drafted is that ILO standards are minimum standards, intended to establish a platform from which national law may evolve, and to promote the improvement of law and practice at the national level. They are based both on national law and practice, and on a need to improve that law and practice. They should be attainable by most nations, even when the standards they set are below the level of the most advanced nations.
  40. However, they may never be used as a pretext for reducing protections already guaranteed for workers. This is stated clearly in the ILO Constitution, in art. 19(8): “In no case shall the adoption of any Convention or Recommendation by the Conference, or the ratification of any Convention by any Member, be deemed to affect any law, award, custom or agreement which ensures more favourable conditions to the workers concerned than those provided for in the Convention or Recommendation.”
  41. This provision entails three implicit consequences. First, while the working conditions established by law may be reduced to the level of a ratified Convention by a unilateral decision of the government, such a reduction is not an automatic consequence of ratification. In other words, the Constitution does not oblige governments to maintain working conditions higher than those explicitly provided for in a Convention.<sup>15</sup>
  42. Second, the constitutional provision is applicable to national standards which exceed the requirements of a Convention but which are not inconsistent with it. Therefore, the more favourable nature of a national provision or practice cannot be invoked if this infringes a ratified Convention.<sup>16</sup>

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<sup>15</sup> OB, Vol. XVII, 1932, No. 1; and OB, Vol. XXIII, 1938, No. 1.

<sup>16</sup> OB, Vol. LV, 1972, Nos. 2, 3 and 4, paras. 82 and 83.

43. Third, a ratified Convention puts a lower limit on the degree to which working conditions may be reduced, if a government should decide to lower them.
44. *Consultation of the most representative organisations.* It has been noted above that under the procedure established for the preparation of a Convention or a Recommendation, governments are asked to consult the most representative organisations of employers and workers when they reply to the questionnaire in the first report, and when they send their observations on the third report containing the draft text of the Convention or Recommendation. This procedure, incorporated by the Conference into its Standing Orders in 1987, follows the line already established since 1971 on the basis of the resolution adopted in that year on the strengthening of tripartism in all the ILO's activities.
45. The consultation procedure is based on an invitation made to governments and is not obligatory. The situation is different, however, if a country has ratified the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), which provides that the most representative organisations of employers and workers must be consulted on governments' replies to questionnaires on items on the agenda of the Conference and on governments' comments on proposed texts to be discussed by the Conference (Art. 5(a)). This Convention has now received 1xx ratifications, and is thus binding on the majority of member States.
46. One problem that has arisen in this connection is that European States, working in concert, have tended to push the Conference to adopt European levels of protection, thus raising the minimum standards out of reach of many developing countries. The workers' group normally goes along with the highest attainable standards, and some recent Conventions thus have been lightly ratified by countries which do not have developed infrastructures.

#### **SOME LESSONS FROM ILO STANDARD SETTING**

47. *Positive features.* The tripartite environment cannot easily be captured in other organisations, but several aspects of the ILO's standard-setting regime would be reproducible outside the ILO's particular setting.
  - *Choice of standard-setting items.* This is usually done after a technical examination by staff of existing law and practice at the national and international levels, and of the possible content of new standards, including an analysis of gaps and needs. It is done only when a wide consensus exists before a subject is included on the Conference agenda;
  - *Proper use of staff.* While the staff does not have to have such a prominent role as at ILO, the technical analysis and drafting of possible conclusions emerging from submissions and discussions could be used more frequently;
  - *Written consultations.* Formal exchanges of proposals, reservations and concepts can advance drafting;
  - *Technical meetings feeding directly into conclusions.* Without restricting the freedom of parties to negotiate, properly organised technical consultations that can make direct proposals on form and content could be helpful when the political-level discussions begin;
  - *Time limits and voting.* The requirement to take action within a specified time, reinforced by the possibility of making decisions before entire consensus is reached – whether by voting or by other means – would enhance standard-setting processes;
  - *Use of flexibility clauses rather than reservations.* Unrestricted use of reservations burden the ratification process and the supervision of obligations, but defining precisely in the instrument itself the kinds of reservations that can be expressed would result in greater uniformity of obligations among States.

- *Aspects that need improvement.* While the ILO's standards mandate is generally accepted by all its constituents, not everyone is happy with it as it stands.
48. Some countries continue to invoke the idea that ILO standards – especially the human rights standards, which were adopted for the most part before 1960 – reflect Western values and should not be considered as universal values. This argument has progressively lost its force, however, as the Cold War and its ideological confrontations have become a thing of the past, and as the wave of countries liberated after 1960 have had time to accept or reject these values. In addition, when the Declaration on Fundamental Principles and Rights at Work was adopted in 1998, the decision included a statement that certain values were binding on all States, even if they were not yet in a position to undertake the detailed obligations involved in ratification of the corresponding Conventions.
  49. The major reservations being expressed these days come from the employers' group of the ILO. This represents in large part an institutional conviction that self-regulation is better than binding rules – a view not shared by all. While they were fierce devotees of standards during the Cold War, as they did in fact represent Western values that the employers wanted to defend, they now say that the pace of standard-setting is too fast and should be slowed. They have also said repeatedly that the possibility of adopting Recommendations and guidelines rather than binding Conventions should be given more systematic consideration. They advocate the position that instead of continuing to adopt new standards, the ILO should concentrate on revising older Conventions and Recommendations to adapt them to modern conditions. Finally, they maintain that countries should not vote for the adoption of standards they do not intend to ratify, and that persistent low numbers of ratifications of some Conventions proves that there are serious problems with the content and process of adoption of ILO standards.
  50. Their position has in fact gained credibility and support over recent years, for several reasons. First, there is general acceptance that the ILO's major standard setting is broadly complete. In 1995 there was a real and active consensus for adopting what became the Worst Forms of Child Labour Convention (No. 182), which since its adoption in 1998 has gathered more than 150 ratifications, the fastest pace in ILO history. In the 1950s and 1960s there was a similar urgency about adopting the ILO's other major human rights Conventions on freedom of association and collective bargaining, forced labour and discrimination – even if the content of these standards occasioned much more debate. But there remain no “burning” subjects on the agenda at present.
  51. In recent years the menu for standard-setting has resulted from the overall review that ended in 2003, leading either to “integrated approach” discussions, or to General Surveys by the supervisory bodies evaluating whether the standards concerned are up to date. Most of the proposals made there for review, revision, or adoption of consolidated standards are already acted upon, or are before the Governing Body for inclusion on the Conference agenda.
  52. The pace of ratification has indeed slowed. It is difficult to say whether this indicates standards that are not well adapted to the needs of member States, or whether the recent ratification campaign for the fundamental Conventions<sup>17</sup> has temporarily diverted the energy of States and of other constituents to a smaller set of instruments.

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<sup>17</sup> Following the Social Summit in 1995, the ILO launched a ratification campaign for 7 – later 8, after the adoption of Convention No. 182 – Conventions representing fundamental values on freedom of association and collective bargaining, and freedom from forced labour, child labour and discrimination.

## **CONCLUDING REMARKS**

53. The ILO has the oldest and most active standard-setting system in international law. It has created a body of law that is far more influential than is generally appreciated, as many of its standards have passed into nearly universal acceptance in the internal law of most countries of the world. The lessons to be learned from it are significant.

**ADOPTION OF CONVENTIONS  
AND RECOMMENDATIONS**

