

# ILO STANDARDS

Position Paper  
of the  
International Organisation of Employers



*Adopted by the  
IOE General Council  
Geneva, 9<sup>th</sup> June 2000*

# FOREWORD

*“If the ILO is to ensure its continued relevance in this field and reassert the usefulness of international standards, it will need to reinvigorate its efforts and experiment with new approaches”.*<sup>1</sup>

*The above statement, made by the ILO Director-General in his report to the 1999 International Labour Conference, recognises the need for the ILO to extend and deepen the debate on standards. In this respect, the IOE looks forward to the production of a broad framework document for the November 2000 Governing Body session. The IOE believes that the debate needs to go much wider than a mere discussion on the frequency of adoption of ILO Conventions and Recommendations: the changed economic, social, technological and political environment needs a more flexible approach to Standard setting with more efficient promotion and application methods. The forthcoming discussion should therefore be a comprehensive one as the credibility and relevance of the ILO in the modern world of work is at stake.*

*In preparation for this debate, the IOE has produced a position paper on ILO Standards-related activities, the main points of which are reproduced in the Executive Summary.*

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<sup>1</sup> Decent Work, Report of the Director-General, International Labour Conference 1999

# EXECUTIVE SUMMARY

*International labour standards remain one, but not the only, means of action for the ILO to achieve its objectives.*

*At the moment, obstacles to the widespread ratification of many Conventions include:*

- *The adoption of instruments by narrow majorities at the Conference – wide ratification cannot result from a weakly supported instrument;*
- *A “one-size-fits-all” approach.*

*International labour standards, and in particular Conventions, should therefore be high-impact standards that seek to address fundamental workplace issues.*

*The legal form of Conventions should be reserved for unchanging principles and address issues on which there exists a broad tripartite consensus that regulation at international level is necessary.*

*Consideration should be given to adoption of autonomous Recommendations that give guidance on specific workplace issues. The observance of such Recommendations could be strengthened by follow-up action of a promotional nature.*

*Standard-setting is not the answer to every workplace issue. Therefore, a catalogue of selection criteria which should be simultaneously fulfilled should be established to assess whether standard setting would be the most appropriate response to a given problem. Possible criteria could include:*

- *Suitability of a given topic for legal requirements*
- *Prospects of ratification*
- *Utility as a benchmark*
- *Extent of coverage*

*In order to give the Office and constituents the fullest possible information about a given subject, a Conference pre-discussion should be held before formal moves towards assessing suitability for standard setting are made. The Office should also review the use of questionnaires; at the moment these are too detailed and often add little to a real understanding of the particular subject under discussion. Thought should also be given to the negotiating process itself: too often the tendency is to resolve differences of opinion by means of voting. A more consensus-based approach needs to be developed. Ways to promote a*

*more responsible attitude of governments in the procedures/votes preceding the adoption of Conventions should be explored. Greater realism might be introduced if each government that voted in favour of the adoption of a given Convention were obliged to explain (in addition to existing Constitutional obligations), say within the two years of its adoption, why it has not ratified.*

*The review should also address issues relating to:*

- *The procedures for entry into force of Conventions;*
- *Denunciation procedures and periods.*
- *The role of all elements of the supervisory machinery to improve efficiency, effectiveness, coherence and transparency.*

*The “new” ILO has to spread to the area of standards. Its future legitimacy hinges on its ability to deliver improvements that make a difference to the world of work.*

*The IOE is ready to play an active role in exploring innovative and effective ways ahead.*

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# ILO STANDARDS-RELATED ACTIVITIES

## IOE POSITION PAPER

*(As adopted by the IOE General Council on 9 June 2000)*

### **OBJECTIVES OF STANDARD SETTING**

1. Today, the increasing complexity of labour and social issues demands a diverse and flexible approach. It is clear that, unless the ILO can place itself in the eyes of the world as the organisation which addresses the social and labour dimension of globalisation, its ability to remain relevant and credible will be lost. International labour standards remain one, but not the only, means of action at the ILO's disposal.
2. International labour standards, and in particular Conventions, should be high-impact Standards that seek to address fundamental workplace issues on which there can be a broad consensus on applicable policies or principles. An example is the Convention on the Elimination of the Worst Forms of Child Labour (No. 182). Experience has proven that over-detailed Conventions do not enjoy high levels of ratification, impact or credibility.
3. Therefore, the legal form of Conventions should be reserved for issues on which there exists a broad consensus that regulation at international level is necessary. The contents of Conventions should be confined particularly to regulating essential and unchanging principles and minimum standards. Although the aim of the IOE is not to reduce the number of Conventions produced by the ILO, it goes without saying that, if they concentrate on unchanging principles, they will be used in a more restricted way in the future.
4. The present practice of adopting both a Convention and an accompanying Recommendation on a given subject has contributed to the proliferation of Conventions which remain increasingly unratified and at the same time it has weakened the status of Recommendations which often have become "dustbins" for all of the difficult issues raised in Convention debates.

5. As a consequence, the adoption of guidance in the form of autonomous Recommendations may be a way forward for the ILO. However, Recommendations should be namely that, and not merely aspirational "good practice statements". Recommendations, which are more easily revised, updated, or replaced, could be more suited to an international social environment increasingly characterised by rapid change and the consequent need for flexibility together with the demand to provide "decent work". Furthermore, in order to strengthen the status of autonomous Recommendations, a reporting mechanism of a promotional nature based on Article 19 of the Constitution could be devised along the lines of the follow-up procedures of the Declaration on Fundamental Principles and Rights at Work.
6. The ILO should consider the important complementary role of non-binding instruments such as Declarations, Guidelines and Codes of Practice. Declarations should be reserved for exceptional occasions to highlight important principles or policies covered by international labour standards (such as the Declaration on Fundamental Principles and Rights at Work of 1998). Guidelines and Codes of Practice could complement international labour standards by offering concrete guidance on technical and/or sectoral issues.

### **IDENTIFICATION OF POSSIBLE STANDARD-SETTING ITEMS**

7. A catalogue of selection criteria, which should be simultaneously fulfilled, should be established to assess whether standard setting would be the most appropriate answer to a given problem. Possible criteria could include:
  - (a) Suitability of the topic for legal requirements;
  - (b) Prospects of ratification;
  - (c) Utility as a benchmark;
  - (d) Extent of coverage;
  - (e) Is the issue of a nature that addresses a significant workplace problem?
  - (f) Factual understanding concerning the proposed Standard;
8. To achieve the balance between business realities and providing worker protection, indicators should be established to measure whether the above mentioned criteria are met, e.g. as regards "utility", expectation of positive effects for the protection of workers to be achieved, absence of negative effects on the competitiveness of enterprises (in particular their ability to sustain and create employment), etc. In sending out ILO questionnaires, respondents should be asked specifically to address these issues and how they can be balanced against the perceived need for a new standard. Agreement of the broad majority of ILO constituents, including representatives from both developed and developing countries, should be required regarding the fulfilment of the criteria indicated above.

### **PREPARATION OF STANDARDS**

9. The "Portfolio" approach has been a step in the right direction in that it has broadened the selection basis and has begun to help in eliminating unsuitable subjects. However, what is missing is a mechanism to help identify selection criteria which would give ILO constituents a general overview of subjects and enable them to identify or reject more systematically items for standard setting and also to identify existing standards needing abrogation, withdrawal or revision.

10. If there is no particular topic that requires urgent and appropriate attention, no hasty selection should be made. There is a concern that the selection of topics might in some instances be undertaken solely for the purpose of compiling the Conference agenda. The mere existence of structures for the development of standards is an insufficient reason to justify the selection of new standards.
11. In order to give the Office and constituents the fullest possible information about a subject, a Conference pre-discussion should be held before formal moves towards assessing suitability for standard setting are made. Such pre-discussions could create a better understanding of the differences and practical problems in various countries and regions and, on a topic by topic basis, consideration may have to be given as to whether the pre-discussions should be on a global or regional basis. Pre-discussions could also crystallise agreement on core fundamentals that would be essential for an intended standard; and they could pave the way for a better understanding during the tripartite debate on a given standard-setting issue at the annual Conference.
12. If, following a pre-discussion, the Conference believes that an item is of interest, it should adopt a Resolution recommending the item to the Governing Body for possible inclusion in a future Conference agenda. By starting with a pre-discussion, items that are not ripe for standard setting will not advance in the process. If the issue of contract labour had been addressed in a Conference pre-discussion (much wider than the meeting of experts which was held) the loss of more than two years of Office and Conference time and credibility would have been avoided. The forthcoming General Discussion in 2001 on the difficult issue on social protection will provide, we hope, a good example of the usefulness of pre-discussions.
13. Shortlisting of items in the Portfolio should reflect better the wishes of the Governing Body rather than the state of preparation of a particular issue within the Office. Before any pre-discussions take place, the existing Governing Body committees could also provide an advisory role to the Office and Governing Body in discussing issues for standard setting as standard setting should not take place in a policy vacuum. The Governing Body discussion on a potential standard should be near the end, not the beginning, of the process.
14. ILO questionnaires need to be more than a collection of affirmative and negative responses to the questions posed. The Office needs to take into account the detailed responses to the questions and tailor the draft proposal for a standard to fit responses received. The questionnaires should deal with broad policies and principles and avoid micromanaging the issue in the national context. The Office could use two types of questionnaires: a general, broad questionnaire to be used before the pre-discussion and a questionnaire tailored to the conclusions of the Conference pre-discussion. A number of the ILO's constituents go to considerable trouble to respond to questionnaires, but by no means enough. This sometimes leads to an imbalance in the interpretations of the responses received. Ways should be explored to balance the need for better-quality representative information from constituents to be at the disposal of the Office, with the reality that for many organisations, responding to ILO questionnaires represents a real administrative and technical burden. Questionnaires should be cleared through the Governing Body.

## **REVISION OF STANDARDS**

15. In terms of the revision of Standards, the ILO should make further use of the General Surveys. The use of existing simplified and more targeted revision methods as suggested in the document submitted to the Governing Body Working Party on the Policy regarding the Revision of Standards (LILS/WP/PRS2, Nov 1999) seems appropriate.
16. Revision of a standard does not necessarily mean revision upwards and it should be done with the purpose to facilitate the ratification and applicability of Conventions. As far as possible, revision should be combined with the consolidation of standards to contribute to the consistency of the ILO's standard-setting system. The 1997 Constitutional amendment has yet to enter into force. This amendment would permit the withdrawal and abrogation of instruments, subject to a two-thirds majority vote of the delegates at any given Conference. To date, ratification of the amendment has been insufficient. The Office should launch a campaign for the ratification of this amendment. Abrogation/withdrawal and revision exercises should also be guided by the principle of continued relevance of a particular standard.

## **THE NEGOTIATING PROCESS**

17. A lot of time is wasted during Conference discussions due to the late arrival of “key players” at the meetings. This is not always as a result of behind-the-scenes discussions to progress the formal debates. Chairpersons of committees need to be fully briefed prior to the first meeting, regarding ILO protocol, rules, etc. This should not be done during the course of the time allotted for the committee to meet. A further time-saving measure would be for the ILO Secretariat to make use of PCs to put the proposed wording of amendments, etc. under discussion on a screen instead of painstakingly repeating the whole text for the slowest writers to copy the words.
18. At the Conference, there is still a tendency to resolve differences of opinion by means of voting. A more consensus-based approach needs to be developed. (It goes without saying that this would be easier done if a consensus exists on the need for a particular Standard in the first place.)
19. There is also a discrepancy between the mostly positive reactions and votes of governments in the creation of new Conventions and their behaviour as regards subsequent ratification of the Instruments. Ways to promote a more coherent and responsible attitude of governments in the procedures/votes preceding the adoption of Conventions should be explored. It is odd that the system allows for a situation whereby governments that vote in favour of the adoption of a Convention (after having participated positively and actively in its formulation) sometimes state publicly that they are in no position to ratify. Greater realism might be introduced in the debates at Conference if each government that voted in favour of the adoption of a given Convention were obliged to explain, say within the two years of its adoption, why it has not ratified. This would come on top of the existing constitutional reporting requirements on non-ratified Conventions.
20. Flexibility devices are already contained in the ILO Constitution in Article 19, paragraph 3 and are being further developed by the Conference. However, there is a need to use these flexibility devices more systematically. The ILO Secretariat should provide better information on flexibility devices to the constituents and make more suggestions for their use. The relatively new experience of using time-bound commitments, as used in Convention No. 182, should also continue to be used.

## **RATIFICATION, ENTRY INTO FORCE, DENUNCIATION**

21. Obstacles to the ratification of Conventions include:
- The adoption of instruments by narrow majorities at Conference – wide ratification cannot flow from a weakly supported instrument;
  - A "one-size-fits-all" approach;
  - Lack of relevance of the standard;
  - Too much direction on what a government must do to implement and enforce the standard.
22. The required number of ratifications for entry into force of a Convention is too low. The number may have been appropriate when the ILO was established in 1919, but now the ILO has grown to 174 member countries and the required number should increase proportionately as a percentage of membership. The required number for entry into force should be no less than ten. Other international treaties provide for higher numbers of ratifications (e.g. Council of Europe).
23. The period before entry into force of a Convention should therefore be within one year of the tenth ratification.
24. A ten-year denunciation procedure is too rigid. Rigidity deters member States from ratifying. In an ideal situation, a country denouncing a Convention should be able to deposit its intention to denounce a given Convention at any time. However, it is reasonable that a country ratifying a Convention remains bound by its provisions for a minimum period of time.

## **THE SUPERVISORY SYSTEM**

25. Employers do not have strong views on either the frequency of reporting requirements or their content, but would restate support for government obligations to consult the social partners on draft reports. However, the system should at least balance what governments are capable of producing, what the Office realistically can handle and also, more importantly, what is relevant information for the Office and the constituents.

### *Application of Standards*

26. The terms of office of the members of the Committee of Experts on Application of Conventions and Recommendations should be limited to two terms of five years. There should also be transparency of selection procedures.
27. The Committee of Experts should acknowledge better that it plays a preparatory role for the Conference and that the observations contained in its report therefore are not final. In certain instances, the Committee of Experts has accorded interpretations to standards that were not contemplated at the time they were adopted. These create obligations not always directly discernible from the texts. A case in point is the over-extensive interpretations of Convention No. 87 on Freedom of Association. This is not only in contradiction with the provisions of the Vienna Convention of the Law of Treaties, but also an over-extensive interpretation of a particular Convention can almost be

considered as creating a new standard. Only the International Labour Conference, and no other body, has the power to create new standards. This uncertainty has no doubt contributed to a reluctance to ratify Conventions – the obligations imposed on member States can be open-ended in the sense that they are subject to re-definition and extension in an interpretative process that does not permit for any direct influence by the member concerned.

28. Instead of criticising minor deviations from obligations under ratified Conventions, the experts should focus on the application of essential principles and clearly defined provisions. This would involve giving less extensive explanations on the contents of provisions of ratified Conventions and accepting the fact that ILO Conventions are not "set in stone" and are not the solution to all the problems of the world of work. There should also be more emphasis on "cases of progress" in the Committee of Experts' work.
29. The general discussion at the Conference provides a useful opportunity to address general developments on standards supervision. The discussion of the General Survey is also a chance for constituents to comment on the instruments covered by the survey (e.g. as regards obstacles to ratification or the need for revision of outdated articles). However, the Committee's procedures require revision not only to ensure that the more "serious" cases are dealt with, but also that they are accorded the time necessary to do them justice. Too often, less important domestic political issues are allowed to dominate the agenda. The system of selection of individual cases for discussion should be revised to permit more discussion on matters concerning alleged breaches of fundamental rights. The time limits on speeches should be enforced more strictly. The current procedure permits endless interventions – few of which add anything to the debate.

### *Committee on Freedom of Association*

30. Complaints made to the Committee on Freedom of Association relate to governments. However, in many instances employer organisations have specific information about cases, and recommendations made by the Committee may have a direct impact on enterprises. The ILO should therefore adopt new procedures to ensure that national employers' organisations are consulted on cases concerning their country and, if they so desire, are able to present their views directly to the Committee.
31. There are differences between the freedom of association rights considered by the Committee on Freedom of Association and the obligations strictly derived from Conventions 87 and 98. The Committee should therefore focus on the enforcement of these basic principles rather than continuing to build up an extensive "jurisprudence" which has no legal basis and erodes the authority of the Committee's findings. It is true that there is a general lack of understanding of the Committee's procedures and working methods. This contributes no doubt to the repeated requests by constituents for transparency.

### *Other Procedures*

32. Articles 24 and 26 of the ILO Constitution are sometimes abused in that conflicts are brought to an international forum for publicity reasons. Means to limit this practice, perhaps by limiting the receivability criteria or introducing a filter mechanism, should be considered to prevent automatic discussion of a receivable complaint. The way in which Articles 24 and 26 procedures complement the regular supervisory machinery should also be considered in order to prevent overlapping and provide more coherence.

## **THE PROMOTION OF STANDARDS**

33. Linking the delivery of technical co-operation to the ratification of standards should not be accepted. In general, technical co-operation to promote standards should only be considered if the standard in question is realistic, practical and flexible. A better understanding of what a standard seeks to achieve together with a greater degree of consensus on the desirability of achieving the goal could lead to an approach of co-ownership. This could increase prospects for ratification and better application of the Standard. The preparation phase and pre-Conference consultations and discussions could contribute significantly to establishing a more coherent approach.
34. There should be coherence between supervisory and promotional procedures. Nevertheless the basic legal difference between the supervisory procedures and promotion of the ILO Declaration must be observed and respected.

## **EVALUATION OF STANDARDS-RELATED ACTIVITIES AGAINST THEIR OBJECTIVES**

35. A continuous overall evaluation mechanism should be devised to assess the impact of instruments in terms of their legal, economic and social effects. Such mechanism should be able to measure success achieved in fulfilling the specific objectives set forth in a Convention or Recommendation and identify any possible indirect or adverse repercussions there might be with respect to other main ILO objectives - for example that of promoting and sustaining employment.

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