First Meeting of the ILO Standards Review Mechanism (SRM)
Tripartite Working Group

Employers’ Proposal

Possible Scope, Methodology and Classification of ILS

General

According to paragraph 8 of the SRM Tripartite Working Group (SRM TWG) Terms of References (TORs) the “SRM Tripartite Working Group shall contribute to the overall objective of the Standards Review Mechanism to ensure that the ILO has a clear, robust and up-to-date body of international labour standards that respond to the changing patterns of the world of work, for the purpose of the protection of workers and taking into account the needs of sustainable enterprises.” (emphasis added)

The first meeting of the SRM TWG will be held the week of 22 – 26 February 2016. The draft agenda for this meeting currently includes:

- Introduction
- Programme of work
- Classification of ILS
- Preparation of next meeting (procedure)

Given that the first actual review of standards will take place prior to the November 2016 ILO Governing Body (GB) (most probably in September/October 2016) and that any necessary preparations by the Office will have to be made by that time, the SRM TWG will at its first meeting in February have to take decisions on its approach to the review. In particular, it will have to form an opinion on possible scope, methodology and classification of ILS.

Possible scope of the review

The Cartier Working Party (CWP), when it started its work in 1995, defined the scope according to which all ILO standards require a review, except:

- recent standards, that is standards that had been adopted in the past ten years (1985-1995), and
- the fundamental ILO Conventions (C. 29, 105, 87, 98, 100, 111, 138 and 182) and the priority/governance Conventions (C. 122, 81, 129 and 144)
Standards in these two categories, but only these standards, were considered automatically (without a review) up-to-date.

The above scope for the review seems, in principle, still valid. The Employers want to put forward the following suggestions:

- That the period of “automatic recognition of up-to-dateness” could also be extended, for example, to 15 years. Moreover, this 15-year interval could be applied in a flexible manner, i.e. if need be for particular reasons, the SRM TWG could bring reviews forward, in other cases the interval for reviews may be extended.

- That standards that have already been classified by the CWP as outdated should be exempted from the review. There is no point in reviewing these standards again.

- That maritime labour standards would be reviewed by the SRM TWG after having received the expertise and advice of the constituents in the maritime sector (in this regard, the CWP solicited the views of the Joint Maritime Commission (JMC) and an informal Joint Working Group of shipowners' and seafarers’ representative organisations).

- That the Fundamental and Priority/Governance Conventions should not per se be excluded from the review – the adoption of the Protocol to C. 29 shows that a need for strengthening/adaptation/updating may also arise for these instruments.

If these suggestions are retained, all existing ILO Conventions and Recommendations, except those standards that are “younger” than 15 years, or standards that have already been classified as outdated, would be eligible for review by the SRM TWG.

In addition, it is proposed that the SRM TWG starts the review with those standards that were not reviewed by the CWP (1985-2001).

The SRM TWG will consider ILO standards, as far as possible, not one-by-one, but by categories of standards in accordance with the ILO four strategic objectives (TORs para 11).

Methodology: Possible objective parameters for reviewing standards

As the objective of the SRM is to make sure that “the ILO has a clear, robust and up-to-date body of international labour standards that respond to the changing patterns of the world of work …”, parameters for measuring the up-to-dateness and relevance of standards need to be determined in advance.

These parameters should be objective and meaningful so as to limit differences of views based on subjective perceptions as much as possible. The approaches used by the past three tripartite Working Parties to review ILO standards (Ventejol Working Parties in the 1970s and 1980s; the CWP from 1995 until 2002) may provide a starting point. The present SRM should tie in with these approaches but, if possible, further refine them.

It seems that it is probably easier and more efficient to measure outdatedness and loss of relevance than up-to-dateness and on-going relevance. So, the absence of indicators for outdatedness and loss of relevance would mean that an ILO standard is up-to-date. Indicators
for potential outdatedness or loss of relevance of ILO standards, wholly or partly, could be the following:

- **Low or declining acceptance of Conventions by member States:**
  - low level of ratification (below average)
  - no or hardly any ratification(s) in recent years
  - minimal ratification prospects
  - recent denunciations

- **Low or declining application of Conventions:**
  - Existence/increase of major and frequent difficulties in application, both as regards a standard as such or particular provisions of it, as reflected in comments by ILO supervisory bodies
  - increasing number of governments providing information regarding major trends or obstacles that hinder application
  - increasing number of submissions by social partners providing evidence for serious difficulties in implementation, for instance, employers reporting non-compatibility of a standard with the needs of sustainable enterprise, or workers reporting non-effectiveness of a standard to protect workers.

- **Low or declining government cooperation in ILO standards supervision:**
  - low or declining government response rate regarding ratified Conventions (Art 22)
  - increasing number of government reports that do not contain meaningful information
  - increasing number of governments that do not consider comments/requests for better compliance made by ILO supervisory bodies

- Emerging new technologies, labour practices, and trends in the world of work that are not compatible with existing ILO standards or particular provisions contained in them

- Increased heterogeneity in ILO constituency and respective shifts in labour protection/regulation needs

- Evolution of societal perceptions and priorities amongst ILO constituents regarding labour protection needs and protection/regulation approaches to ensure for instance the sustainability of enterprises

It would be helpful if the Office provided information related to possible objective parameters in a fact sheet in addition to the background documents for the February meeting to have a basis for the discussion.
Possible sources for information on the above could be:

- ILO standards supervision (Report of the CEACR; CEACR General Surveys; CAS conclusions; CAS General Survey discussions, Reports of committees set up under Art. 24)
- Findings from ILO meetings (expert meetings, sectoral meetings, etc.)
- Findings from ILO technical co-operation (on standards)
- Existing research, national case studies, etc. both from inside and outside ILO
- In special cases where information from the existing above sources does not seem conclusive, the Office may undertake (short) surveys of ILO constituents or studies on specific issues regarding particular standards or their provisions.

**Possible classification of ILO standards**

The CWP defined a number of statuses of ILO standards which were not all very clear:

- up-to-date
- to be revised
- outdated
- request for additional information
- status quo
- interim status

It seems desirable for the SRM TWG to establish a simple, comprehensible and functional classification. Along with the classification, it should be defined what the individual classification statuses imply and what action should or may be taken by the ILO or ILO constituents. It would also seem appropriate to have a monitoring mechanism that makes sure that the action related to a particular classification is taken within a reasonable time and does not get lost or unduly delayed.

The following classification statuses are proposed:

a) **Up-to-date**

b) **Not fully up-to-date (or partly up-to-date)**

c) **Outdated**

d) **Pending a decision or under review**

a) **Up-to-date**

Standards that by and large continue to be accepted by ILO constituents as meaningful should be classified in this category.

Up-to-date standards should appear in the table of up-to-date standards, along with the year when the classification was made.
The ILO should promote up-to-date standards. For each standard classified as up-to-date by the SRM TWG, a tailored catalogue of appropriate promotional measures could be determined. This could involve the following action:

- ILO policy bodies make regular recommendations to ratify or implement up-to-date instruments
- Office prepares promotional materials that can facilitate understanding and implementation, e.g. commentaries on the meaning of the provisions of an up-to-date instrument, reflecting the views of ILO supervisory bodies, as well as the perspective of employers and workers, or case studies on good application practices
- Office steps up technical assistance and capacity building for better implementation

ILO constituents may systematically examine the possible implementation/ratification of up-to-date standards, where not yet implemented or ratified.

b) Not fully up-to-date (or partly up-to-date)

In this category, standards that require full or partial revision should be placed.

In this regard, the SRM TWG should specify in its assessment:

- the provisions concerned
- the particular needs and reasons for revision
- the possible options for revision (partial revision, adoption of a new revised standard, adoption of a new standard that merges/consolidates a number of standards in a particular field, including the standard in question)

It should be understood that standards should not remain for a longer period in this category. Either they are revised and then classified as up-to-date or they are classified as outdated.

At some point in time, the SRM TWG should also review the existing procedures for revision in order to identify possible improvements that allow swifter revision and updating of ILO standards.

c) Outdated

Standards that no longer respond to current needs and for which revision does not appear to be meaningful would be classified as outdated.

While standards classified as outdated would remain legally valid, they should be put by the GB on the agenda of a subsequent ILC for

- withdrawal (for Conventions that have not entered into force, and for Recommendations) or
- abrogation (abrogation procedure now in force).
Pending abrogation and withdrawal, Conventions should be shelved (they would no longer be supervised in regular ILO supervision).

Outdated standards should no longer be listed in official ILO publications and there should be no promotional measures.

d) Pending a decision (or under review)

Where – exceptionally - no agreement can be found on the up-to-dateness and on-going relevance of a reviewed standard, research could be commissioned on critical questions or a meeting of experts held in order to facilitate agreement. Guidance could also be sought from members of the GB. In any case, the review process should continue until a status can be agreed. These standards could be classified as “pending a decision” or “under review”.

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