International Labour Standards – A glossary

A

ABROGATION

The Conference decision by which a Convention in force is found to be obsolete and is removed from the body of standards. As a result, all legal effects arising out of the Convention in question between the Organization and its Members are definitively eliminated, namely States having ratified that Convention are no longer required to submit reports under article 22 of the Constitution, and may no longer be subject to representations (article 24) or complaints (article 26) for non-observance; ILO supervisory bodies are not required to examine its implementation; and the Office ceases all relevant activities, including the publication of the text of the Convention and the official information regarding its ratification status. However, the abrogation of a Convention does not affect any national legislation that has been adopted with a view to giving it effect, nor does it prevent a State from continuing to apply a Convention if it so wishes.

Following the entry into force in October 2015 of the 1997 constitutional amendment, the Conference is empowered, by two-thirds majority and upon recommendation by the Governing Body, to abrogate a Convention in force if it appears that it has lost its purpose or that it no longer makes a useful contribution to attaining the objectives of the Organization (article 19(9) of the Constitution). The term 'abrogation' refers to Conventions which are in force whereas the term 'withdrawal' is used for Conventions which have never entered into force or are no longer in force due to denunciations, and to Recommendations. Abrogation and withdrawal follow the same procedure set out in article 45bis of the Conference Standing Orders. The only difference is that the Conference was empowered, on the basis of its Standing Orders, to withdraw an instrument even before the entry into force of the 1997 constitutional amendment.

In accordance with article 45bis of the Conference Standing Orders, when an item on abrogation or withdrawal is placed on the agenda of the Conference the Office must communicate to the governments of all member States not later than 18 months before the opening of the session of the Conference at which the item is to be discussed, a short report and questionnaire requesting them to indicate within a period of 12 months their position on the subject of the said abrogation or withdrawal. On the basis of the replies received, the Office draws up a report containing a final proposal which is distributed to governments four months before the opening of the Conference.

As at September 2019, the Conference had abrogated ten Conventions, including Conventions Nos 4 and 41 prohibiting the nigh work of women in industry, Convention No 15 setting a minimum age for trimmers and stockers and Conventions Nos 50, 64, 65, 86 and 104 concerning the recruitment of indigenous workers in dependent territories. All these Conventions were found to have had lost their purpose with regard to the Organization, either because they have been replaced by more modern instruments or because they no longer reflect current practices and conceptions.

See also WITHDRAWAL

ADOPTION

According to article 40 of the Standing Orders of the Conference, once the final text of a Convention or Recommendation has been prepared by the Conference Drafting Committee and has been circulated to the delegates, the Conference proceeds to take a final vote on the adoption of the instrument concerned. As prescribed by article 19(2) of the Constitution, a two-thirds majority of the votes cast by the delegates present and entitled to vote is necessary on the final vote for the adoption of a Convention or Recommendation. Articles 19(5) and 20(3) of the Standing Orders of the Conference further specify that a record vote must be taken for the adoption of a Convention or Recommendation and that where a quorum is not obtained in the final vote for the adoption of a Convention or Recommendation, no new vote may be taken.

AGENDA

The list of items to be discussed at a given session of the Conference. These include standing items which are automatically included on the agenda of each session and 'technical' items which are placed on the agenda by the Governing Body generally with a view to standard-setting, a general or a recurrent discussion. Under article 14(1) of the Constitution, the Governing Body is responsible for setting the agenda of all Conference sessions while under article 16(3) of the Constitution the Conference itself may also decide to include a subject in the agenda of its next session.

ANNEX

Annexes are normally used to provide technical or other information which it would be difficult to include in the main body of an instrument. Ten Conventions, one Protocol and 15 Recommendations contain annexes. These are placed at the end of the instruments, they are an integral part of those instruments and vary in form and content depending on the subject matter.

As regards amendments to annexes, three different procedures are provided for in the relevant instruments. Some provide that the amendment can be made by future adoption or revision of any Convention or Recommendation through a two-thirds majority decision of the Conference. The MLC, 2006 and Conventions Nos 185 and 188 provide for a simplified or tacit amendment process, whereby the acceptance of entry into force of duly adopted amendments to annexes is implicit in the absence of a written notice to the contrary. Finally, Recommendation No. 194 provides for the amendment of the list of occupational diseases contained in its annex through a tripartite meeting of experts convened by the Governing Body which should approve the amended list before it is communicated to Members.

Annexes have a certain interpretative value for determining the meaning of a particular provision in its context and in the light of its object and purpose

AUTHENTHIC TEXT

The final and definitive text of a Convention or Recommendation as voted upon and adopted by the Conference. According to article 42 of the Standing Orders of the Conference, the English and French texts are the 'authentic texts' of Conventions and Recommendations. This is also reflected in a final provision which has remained practically unchanged since its

inclusion in the first Convention in 1919, and which provides that the English and French language versions are both 'equally authoritative'. Pursuant to article 19(4) of the Constitution, two copies of the authentic texts of a new Convention or Recommendation must be authenticated by the signatures of the President of the Conference and of the Director-General, one copy to be deposited in the archives of the Office and the other with the Secretary-General of the United Nations.

In case of errors (typing, spelling, punctuation, numbering), a lack of conformity of the original of the instrument with the official records of the Conference which adopted the instrument, or a lack of concordance between the two authentic texts, the Office, in its depositary capacity, may initiate a correction procedure, proprio motu or at the request of a member State. Following UN practice, the Office has established a formal correction procedure where a procès-verbal of rectification is circulated to all member States which may raise objections to the correction proposed. This procedure was last followed in 2007 to correct two printing errors in the MLC, 2006.

C

CLASSIFICATION OF STANDARDS

Arrangement of standards in specific categories according to their relevance, obsolescence or need for revision. The classification of standards aims at informing ILO constituents and guiding the Office action and normative policy. The determination is made under the authority of the Governing Body upon the recommendation of the Standards Review Mechanism (SRM) tripartite working group that was established in 2015 for the purpose of reviewing standards and advising on their status. The SRM tripartite working group has adopted a three-tier classification system that distinguishes 'up-to-date' instruments from those 'requiring further action to ensure continued and future relevance' and 'outdated' instruments.

Up-to-date standards are those which are found to be fit for purpose and may therefore continue to be promoted by the Office. Standards requiring further action to ensure continued and future relevance are those that may not be fully up-to-date in some respects but that remain relevant in other respects and therefore cannot be classified as outdated. These may include instruments that are in the process of being fully or partially revised, as well as instruments pertaining to areas of social and labour policy where new standards need to be developed. Outdated or obsolete standards are those which appear to have lost their purpose or to no longer make a useful contribution to attaining the objectives of the Organization.

See also STANDARDS REVIEW MECHANISM; UP-TO-DATE STANDARDS

COMPETENT AUTHORITY

Term employed in international labour instruments to denote the minister(s), government department(s) or other authority having power to issue and enforce regulations, orders or other instructions having force of law in respect of the subject matter dealt with in those instruments (see, for instance, article II(1)(a) of the MLC, 2006 and article 1(1)(b) of Convention No. 188).

Competent authority within the meaning of article 19 of the Constitution is the authority of each member State – normally be the legislature – which has power to legislate or to take action

in order to implement Conventions and Recommendations and which should receive copy of any new Convention or Recommendation within one year from adoption for consideration.

See also SUBMISSION

CONSOLIDATED/ FRAMEWORK CONVENTION

Convention that revises and updates a number of existing standards into a single new instrument. The best example of a comprehensive consolidation exercise is the Maritime Labour Convention, 2006 (MLC, 2006), which revises and replaces 37 international maritime labour Conventions. Other well known cases of consolidation are the Minimum Age Convention, 1973 (No. 138) which revises ten Conventions and the Invalidity, Old-Age and Survivors' Benefits Convention, 1967 (No. 128) which revises six Conventions.

See also REVISION

CONVENTION

Instrument which upon ratification creates legally binding obligations for States parties. To be adopted by the Conference, international labour conventions require a majority of two-thirds of the votes cast by the delegates present. Under articles 19(5)(e) and 22 of the Constitution, States parties to a convention have an obligation to report regularly on the measures taken to give effect to its provisions whereas non-States parties are required to report to the Director-General, at appropriate intervals as requested by the Governing Body, the position of the law and practice in their country in regard to the matters dealt with in the convention and the difficulties which prevent or delay ratification.

D

DECLARATION

Several Conventions require declarations to be made (compulsory declarations) either in the instrument of ratification itself or in an accompanying document. For instance, under article 2 of the Minimum Age Convention, 1973 (No. 138), a ratifying State must specify in a declaration appended to its ratification, a minimum age for admission to employment or work within its territory. Similarly, under Standard A4.5 (10) of the MLC, 2006, a ratifying State must at the time of ratification specify the branches of social security for which protection is provided to seafarers. If no such declaration is received by the Office, the ratification cannot be registered.

In the case of some Conventions a declaration is needed only where the ratifying State wishes to make use of permitted exclusions, exceptions or modifications (optional declarations). For instance, under article 16 of the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), a ratifying State may by a declaration append to its ratification, exclude either Part I or part II from its acceptance of the Convention. Similarly, under article 3 of the Plantations Convention, 1958 (No. 110), a ratifying State which has excluded one or more Parts from its acceptance of the obligations of the Convention, shall specify in a declaration

appended to its ratification the Part or Parts so excluded. A Member which has made use of the option to limit the scope of the Convention's application to it may subsequently modify, cancel or withdraw such limitation by a further declaration according to the terms of each Convention.

The term 'declaration' is also used for the communication made under article 35 of the Constitution by a member State responsible for the international relations of a non-metropolitan territory with a view to notifying the extent to which it undertakes to apply the provisions of a ratified Convention to that territory. The member State concerned may subsequently communicate a further declaration modifying the terms of any former declaration.

Declaration is also the term to designate a special type of Conference resolution where principles of lasting importance are enunciated at the highest level. A declaration is a solemn instrument containing symbolic and political undertakings by the member States. It commits the Organization as a whole and produces legal effects vis-à-vis all its bodies, namely the Governing Body and the Office. To date, the ILO has adopted seven declarations: the Declaration of Philadelphia in 1944, which has since formed an integral part of the Constitution; the Declaration concerning the policy of apartheid of the Republic of South Africa in 1964; the Declaration on equality of opportunity and treatment for women workers in 1975; theDeclaration concerning multinational enterprises in 1977; the Declaration on fundamental principles and rights at work in 1998; the Declaration on social justice for a fair globalization in 2008; and theCentenary Declaration in 2019. With the exception of the Declaration concerning multinational enterprises that has been adopted by the Governing Body, all declarations have been adopted by the Conference.

DENUNCIATION

The act by which a State having previously ratified a Convention announces its intention to terminate its obligations arising from that ratification. Denunciation requires a formal instrument communicated to the ILO Director-General for registration. The conditions concerning the form and content of such an instrument are the same as those governing ratification. Accordingly, an instrument of denunciation must be signed by a person having the power to bind the State in external relations, such as the Head of State, the Prime Minister, the Minister of Foreign Affairs or the Minister of Labour.

Conventions usually provide that denunciation is permitted within a one-year interval – known as the 'denunciation window' – from the expiration of successive periods of ten (or, less frequently, five) years from the date on which these Conventions first came into force. A distinction is often made between 'genuine' or 'pure' denunciations, which involve the unilateral termination of the acceptance of the obligations of a Convention without the simultaneous acceptance of any related obligations, and 'automatic' denunciations, which are the direct consequence of the ratification of more up-to-date Conventions on the same subject and in accordance with the explicit provisions to that effect of the revised Conventions. Pure denunciations are far less common than automatic ones. In the last ten years, for instance, there have been 698 ipso jure denunciations due to ratification of more up-to-date Conventions and only 40 pure denunciations for reasons unrelated to the ratification of more up-to-date Conventions.

The Governing Body has advised that, as a general principle, when a denunciation of a ratified Convention is contemplated, it is desirable for the government to fully consult the representative organizations of employers and workers. Denunciations take effect in accordance with the final provisions of each Convention, usually one year after they are registered by the Director-General. Every denunciation registered by the Director-General is notified to the UN Secretary-General.

See also ENTRY INTO FORCE ; FINAL PROVISIONS ; RATIFICATION

DEPOSITARY FUNCTIONS

According to the standard final provisions of all Conventions but also articles 19(4) and 20 of the Constitution, the Director-General as depositary registers ratifications and denunciations; notifies all Members of any registrations and denunciations; communicates any ratified Convention to the UN Secretary-General for registration in accordance with article 102 of the Charter; communicates a certified copy of any newly adopted Convention to each Member; and draws Members' attention to the date of entry into force of a Convention once the required number of ratifications have been registered.

DOUBLE / SINGLE DISCUSSION

The examination of a standard-setting item by the Conference proceeds at two successive annual sessions, hence the procedure is known as the 'double discussion' procedure. The process is initiated with the preparation by the Office of a law and practice report which offers an overview of the state of affairs globally and includes a questionnaire seeking the views of the tripartite constituents on the scope and content of desirable standards on the question under examination. On the basis of the replies, a report is drafted to serve as the basis of the first Conference discussion. This discussion proceeds within an ad hoc tripartite technical committee with the three groups having equal voting power and results in the adoption of proposed conclusions. Based on the outcome of the first discussion, the Office prepares a draft convention or recommendation, as the case may be, and communicates it to the member States for their comments. In the light of the observations, the Office introduces any necessary amendments to the draft text which is then submitted to the Conference for the second and final discussion. This is again held within a technical committee which negotiates and finalizes the provisions of the draft instrument before it is put to a vote at the Conference plenary.

In case of special circumstances, the Governing Body may decide to refer an item to the Conference for a single discussion only. Although the procedure for preparing the draft text through tripartite consultations, preparatory reports and questionnaires is the same, the timeline for the adoption of the instrument is practically half of that of a double discussion. Single discussions were last used last for the adoption of the Seafarers' Identity Documents Convention (Revised), 2003 (No.185) and the Protocol of 2014 to the Forced Labour Convention , 1930.

DRAFTING COMMITTEE

The Committee drafting committee (article 59 of the Standing Orders of the Conference) is composed of one government, one employer and one worker delegate, meets in the presence of the Legal Adviser and the Rapporteur, and is responsible for preparing the English and French texts, both versions being equally authoritative; solving drafting problems specifically referred to it by the technical committee; and ensuring that both texts are legally and linguistically coherent. The Conference Drafting Committee (article 6 of the Standing Orders of the Conference) prepares the definitive texts to be submitted to the Conference for adoption.

Under normal circumstances, the main tasks of the Conference Drafting Committee consists in

merely double-checking the legal consistency of the texts and the concordance between the English and French versions of the proposed instruments, which have already been fully reviewed by the Committee drafting committee. In addition, in the case of a Convention, the Conference Drafting Committee inserts the standard final provisions. In view of the time constraints of the two-week format of the Conference, it has been suggested that on an experimental basis the review of the draft instruments by the Conference Drafting Committee could be omitted and that its general responsibilities could be assumed by the Committee drafting committee including as regards the standard final provisions in a case of a draft Convention. This arrangement was trialled in June 2019 during the second Conference discussion of the draft Convention and Recommendation on violence and harassment in the world of work.

E

ENTRY INTO FORCE

The date on which a Convention takes effect and its provisions become binding on ratifying States. The vast majority of Conventions provide that they take effect, initially, twelve months after the date on which the ratifications of two Members have been registered (‘objective’ entry into force), and thereafter, twelve months after the registration date of each subsequent ratification (‘subjective’ entry into force).

The objective entry into force brings into effect the rights and obligations under articles 22, 24 and 26 of the Constitution and also marks the starting point for calculating time limits for denunciation. The standard number of ratifications required for a Convention to enter into force was set by default in the final provisions at two. However, many maritime Conventions require from five to 30 ratifications, while a certain number of Conventions require not only a specified number of ratifications to be registered but also stipulate that a certain number of those ratifications be registered by specific member States, or by countries with a merchant fleet of a certain size.

No time limit was specified in the first 23 Conventions which entered into force as soon as they were ratified. The Conventions adopted in 1927 provide for a period of 90 days after ratification before entry into force, while as from 1928 onwards the period for the entry into force was set at one year to allow ratifying States to bring their legislation into line with the ratified instrument. Exceptionally, a six-month period is set in many maritime Conventions, such as the Seafarers’ Identity Documents Convention (Revised), 2003 (No. 185) but also in the Plantations Convention, 1958 (No.110).

See also DENUNCIATION; RATIFICATION

F

FINAL PROVISIONS

The final provisions, or final clauses, are an integral part of the operative provisions of a Convention and have binding force. They are technical in nature and relate specifically to its entry into force, ratification formalities, denunciation and revision. In order to ensure that Conventions are subject to a system that is as uniform as possible, the ILO has generally used a set of standard provisions reproduced without any major modifications in the final articles of each new Convention.

The standard final provisions in their present form comprise normally eight articles on entry into force of the Convention, denunciation, revision, depositary functions of the Director-General and UN Secretary-General, and authoritative language versions. These standard provisions date from 1928 with further adjustments introduced in 1933 and 1946.

According to established practice, articles containing the final provisions are added by the Conference Drafting Committee to the text of the proposed Convention drawn by the technical committee before it is submitted to a final vote in the plenary session of the Conference. Once included in a Convention, the final provisions cannot be amended except by revision of that Convention.

The need to review the content of certain final provisions, especially the 'default' values regarding the number of ratifications required for the initial entry into force of a Convention or the calculation of denunciation periods of Conventions, has been discussed on a number of occasions in the Conference and in the Governing Body, last in March 2003 (GB.286/LILS/1/2) and in March 2012 (GB.313/LILS/2). There seems to be general agreement that this matter should be properly examined by the Standards Review Mechanism Tripartite Working Group set up in October 2015.

FLEXIBILITY CLAUSES

Flexibility clauses, or flexibility devices, are all the different means that have been developed to ensure that standards are easily adaptable to the divergent socio-economic conditions in member States is reflected in article 19(3) of the Constitution that requires consideration to be given to the situation of countries in which climatic conditions, the imperfect development of industrial organization, or other special circumstances call for modifications to be proposed to accommodate the needs of such countries. Although this provision was initially interpreted narrowly to mean that a convention should expressly name the countries concerned and set out differentiated standards applicable to them, it later served as the basis for developing various practical solutions to ensure widespread acceptance and effective implementation of international labour standards. Among the numerous methods ensuring flexibility, some conventions contain optional parts which ratifying States may accept at a later date; others allow for the exemption or exclusion of certain sectors or categories of workers; yet others permit the progressive implementation of standards or use flexible expressions (e.g. "as far as is reasonably practicable", "having regard to national conditions", "to the extent possible", "where appropriate") to qualify certain requirements.

INFORMAL OPINION

Governments which are in doubt as to the meaning of particular provisions of an ILO Convention may request the Office to express its opinion. Office unofficial 'interpretations' have always been considered part of administrative assistance that governments of member States could expect to receive from the ILO secretariat, subject to the understanding that the Constitution does not confer upon it any special competence to interpret international labour Conventions.

In most cases, questions are asked prior to the ratification of a Convention and concern its scope of application or the exact meaning of a particular term. Office opinions seek principally to establish the drafters' intention and the context in which a specific provision was introduced in an international labour Convention by tracing its negotiating history.

Until 2002, Office informal opinions were communicated to the Governing Body and published in the Official Bulletin – 147 in total – but this practice has since been discontinued, with the exception of selected opinions concerning the Maritime Labour Convention, 2006 (MLC, 2006) which have been compiled and published in the form of frequently asked questions. Office informal opinions have no binding legal effect, remain of a purely administrative nature and are without prejudice to the views of the ILO supervisory bodies.

See also INTERPRETATION

INTERPRETATION

The International Court of Justice (ICJ) is by virtue of Article 37(1) of the Constitution the only body competent to give authoritative interpretations of ILO Conventions. Article 37(2) provides for the establishment of an in-house tribunal for the expeditious settlement of disputes relating to the interpretation of Conventions based on the understanding that not all questions of interpretation are highly controversial or complex to merit referral to the ICJ.

In its early years, the ILO had recourse to the advisory function of the Permanent Court of International Justice (PCIJ) on six occasions between 1922 and 1932. Five of the six advisory opinions concerned the interpretation of the Constitution and only one advisory opinion referred to the interpretation of an international labour Convention, namely the Night Work (Women) Convention, 1919 (No.4). To date, no use has been made of the advisory jurisdiction of the ICJ while the idea of setting up an internal tribunal for the rapid settlement of interpretation disputes has never been followed up beyond the level of preliminary studies.

In practice, 'interpretative functions' have been exercised by the Office and the supervisory bodies of the Organization. In the case of informal opinions, the Office views are solicited by a government or an employers' or workers' organization and take the form of administrative clarifications whereas in the case of the supervisory bodies, such as the Committee of Experts, Commissions of Inquiry or the Committee on Freedom of Association, interpretation is incidental to the exercise of supervisory responsibilities. Yet, the practical explanations of the Office or the incidental views of the supervisory bodies are at best working solutions to settle day-to-day difficulties of interpretation but do not constitute authoritative responses to controversies concerning the meaning and scope of the provisions of a Convention.

N

NON-METROPOLITAN TERRITORIES

Territorial entities largely corresponding to former colonies which enjoy a degree of self-governance or autonomy but depend for their external relations on the central government of a member State. Under article 35 of the Constitution, member States administering non-metropolitan territories have an obligation to communicate to the Director-General whether or not they accept to extend the application of ratified Conventions to those territories. Until 1955, the ILO had adopted seven instruments, four Conventions and three Recommendations, specifically drawn up to address matters of labour and social policy in non-metropolitan territories. Three of these instruments have already been withdrawn or proposed for abrogation as outdated while the remaining four instruments have not yet been considered by the SRM Tripartite Working Group. At present, there are nine member States responsible for the international relations of a total of 33 non-metropolitan territories, also known as overseas or dependent territories.

O

OBSOLETE / OUTDATED CONVENTIONS

According to article 19(9) of the Constitution which was introduced following the entry into force of the 1997 constitutional amendment, obsolete Conventions are those which appear to have lost their purpose or to no longer make a useful contribution to attaining the objectives of the Organization.

See also ABROGATION

P

PREAMBLE

Conventions include a formal preamble that typically recalls the normative framework surrounding the instrument adopted, and sets out the objectives and the reasons for which it has been adopted. The preamble is non-binding in nature and its primary function is to set out the context of the instrument. The preamble has a certain interpretative value for determining the meaning of a particular provision in its context and in the light of its object and purpose.

PREPARATORY TECHNICAL CONFERENCE

Special conference convened by the Governing Body prior to or when placing a standard-setting item on the agenda of the Conference. Under article 14(2) of the Constitution, the Governing Body ma convene such preparatory conferences to ensure thorough technical preparation and adequate consultation prior to the adoption of an instrument. Under article 5.1 of its Standing Orders, the Governing Body must determine the date, composition

and terms of reference of the preparatory conference while the Office must prepare a report to facilitate the exchange of views and set out the law and practice in the different countries. To date, there have been six preparatory technical maritime conferences – last in 2004 prior to the 94th Session of the ILC that led to the adoption of the MLC, 2006 – and eight preparatory technical conferences in other matters – last in 1966 prior to the 51st Session of the ILC that led to the adoption of Convention No. 127 concerning the maximum permissible weight to be carried by one worker).

PROTOCOL

Protocols are formal instruments partially revising existing Conventions. They become effective in accordance with the conditions set out in their final provisions but they do not close to ratification the Convention to which they are linked. Protocols allow adaptation of specific provisions or parts of existing standards to evolving conditions and practices, thus helping maintain a body of Conventions that is relevant and up to date. The ILO has so far adopted six Protocols; the first in 1982 to partially revise the Plantations Convention, 1958 (No. 110) and the latest in 2014 to address gaps in the implementation of the force Labour Convention, 1930 (No. 29).

Q

QUESTIONNAIRE

List of questions addressed to all member States with a view to collecting the views and preferences of ILO's tripartite constituents for the purposes of preparing proposed conclusions and/or draft instruments. Whether under the single or the double-discussion procedure, the Office questionnaire requests governments to consult the most representative organizations of employers and workers before finalizing their replies and to give reasons for their replies. According to articles 38 and 39 of the Standing Orders of the Conference, questionnaires normally accompany a preliminary report setting out the law and practice in the different countries and must be communicated to governments not less than 18 months before the opening of the session of the Conference at which the standard-setting item is to be discussed while replies have to reach the Office not less than 11 months before the opening of that session. Office questionnaires as well as the responses of ILO's tripartite constituents are an essential part of the travaux préparatoires that lead to the adoption of standards and as such they may be particularly relevant for interpretation purposes.

See also DOUBLE/ SINGLE DISCUSSION

QUORUM

The minimum attendance required for a vote to be valid. In accordance with article 17(3) of the Constitution and article 20(1) of the Standing Orders of the Conference, the final vote for

the adoption of a Convention or Recommendation is void unless the total number of votes cast for and against is equal to half the number of the delegates attending the Conference and entitled to vote.

See also ADOPTION

R

RATIFICATION

Act by which a State expresses, on the international plane, its consent to be bound by a Convention and apply in good faith its provisions. Under article 19(5)(d) of the Constitution, "if the Member obtains the consent of the authority or authorities within whose competence the matter lies, it will communicate the formal ratification of the Convention to the Director-General and will take such action as may be necessary to make effective the provisions of such Convention". A formal instrument of ratification needs to be communicated to the ILO Director-General, in order for the ratification to become effective in international law. If this is not done, it may be that a Convention is regarded by a State as 'ratified' in its internal legal system, but it will produce no effect at the international level.

No specific requirements as to form are laid down in the Constitution. Each member State has its own constitutional provisions and practice. Nevertheless in order to be registered, an instrument of ratification must: (a) clearly identify the Convention being ratified; (b) be an original document (on paper, not a facsimile or photocopy) signed by a person with authority to engage the State (such as the Head of State, Prime Minister, Minister responsible for Foreign Affairs or Minister of Labour); (c) clearly convey the government's intention that the State should be bound by the Convention concerned and its undertaking to execute faithfully its obligations under the Convention.

See also DEPOSITARY FUNCTIONS, REGISTRATION

RECOMMENDATION

Instrument providing guidance as to national policy, legislation and practice which are not open to ratification. A recommendation may supplement a Convention in which case its provisions should be read in conjunction with those of the Convention, or can be a stand-alone instrument. To be adopted by the Conference, international labour recommendations require a majority of two-thirds of the votes cast by the delegates present. Under article 19(6)(d) of the Constitution, member States are required to report to the Director-General, at appropriate intervals as requested by the Governing Body, the position of the law and practice in their country in regard to the matters dealt with in the Recommendation.

REGISTRATION

For a Convention to be binding on Members, ratification must be registered by the Director-General. If a ratification communicated to the Director-General is for any reason not registered, the Member would not be bound by the Convention that had been ratified. The effect of ratification depends on a positive act, i.e. registration, by the depositary. This implies that the

Director-General can refuse to register a ratification, for instance, when the instrument of ratification includes or is accompanied by a declaration that constitutes a reservation.

RESERVATION

Under the international law of treaties, reservation is a unilateral statement, however phrased or named, made by a State when signing, ratifying or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State. As a matter of well-established principle, ILO Conventions may not be ratified subject to reservations. Although Conventions contain various flexibility clauses, including some that specifically enable ratifying States to limit or qualify the obligations assumed on ratification, no limitations on the obligations of a Convention other than those specifically provided for are possible.

The inadmissibility of reservations, as explained in the 1951 Memorandum to the International Court of Justice in the Genocide Case, is based on the premise that "the rights which the treaties have conferred on non-governmental interests in regard to the adoption of international labour Conventions would be overruled if the consent of governments alone should suffice to modify the substance and detract from the effect of the Conventions".

Contrary to reservations, interpretative declarations are permissible. Interpretative declarations do not intend to exclude or modify the scope of certain obligations arising from a Convention but simply to put on record the Member's understanding of a particular provision. In registering a ratification accompanied by an interpretative declaration, the ILO Director-General generally indicates that the understanding does not in any way qualify the acceptance by the Member concerned of the obligation to make effective the provisions of the Convention but simply constitutes a formal record of the interpretation that the Member attaches to the Convention. The use of interpretative declarations or understandings remains fairly limited; recent instances include the interpretative declarations attached to the ratification of the Indigenous and Tribal Peoples Convention, 1989 (No. 169) by Denmark in 1996, the Worst Forms of Child Labour Convention, 1999 (No. 182) by the United States in 1999, and the Labour Relations (Public Service) Convention, 1978 (No. 151) by Brazil in 2010.

See also FLEXIBILITY CLAUSES

REVISION

The formal revision of a Convention, whether in whole or in part, may involve the adoption of a new self-contained Convention or a Protocol. For instance, the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173) revises article 11 of the Protection of Wages Convention, 1949 (No. 95) whereas the MLC, 2006 revises and replaces 37 maritime labour Conventions. The intention to revise an earlier Convention is explicitly or implicitly stated in the title (e.g. Convention No. 185), preamble (e.g. Convention No. 96) or operative provisions (e.g. Convention Nos. 181 and 183) of the later Convention. In some cases (e.g. Convention No. 131), a Convention specifies that it may not be regarded as revising any existing Convention.

The Standing Orders of the Conference and the Governing Body include specific provisions applicable to revision of standards. In practice, the revision of an instrument is placed as an item on the agenda of the Conference and may result in the adoption of a revised instrument

through double or single discussion. Unless a new Convention revising an earlier one provides otherwise, its ratification involves the automatic denunciation of the earlier Convention while the earlier Convention ceases to be open to ratification as from the date when the new Convention comes into force. The revision of Recommendations has lesser consequences. When a Recommendation expressly provides that it 'revises' or 'supersedes' an earlier one (e.g. the Human Resources Development Recommendation, 2005 (No. 195) and the Employment and Decent Work for Peace and Resilience Recommendation, 2017 (No. 205), the earlier instrument is deemed to have been 'juridically replaced'. When a new Recommendation overrides the provisions of an earlier instrument without making explicit reference to revision, the earlier instrument is considered 'de facto replaced'.

By revision of standards, it is sometimes understood the work of ad hoc working groups set up with a view to evaluating the continued relevance of existing instruments and identifying the needs for formal revision. As of the mid 1970s, the Governing Body established three such ad hoc working groups - all best known after the names of their respective chairpersons. The first Ventejol Working Party on International Labour Standards, was established in 1977. It concluded its work in 1979 and led to the adoption by the Governing Body of a classification of existing standards, including instruments to be revised. A second Ventejol Working Party on International Labour Standards, was established in 1984. It concluded its work in 1987 and led to the adoption by the Governing Body of a revised classification of existing instruments. The Cartier Working Party on Policy concerning the Revision of International Labour Standards was established in 1995 and concluded its work in March 2002. It carried out a case-by-case examination of the instruments adopted prior to 1985 with the exception of the fundamental and governance Conventions. The recommendations of the Working Party resulted in the decision by the Governing Body that 22 Conventions and 15 Recommendations should be revised, 71 Conventions and 71 Recommendations should be promoted and that 60 Conventions and 68 Recommendations were outdated.

See also STANDARDS REVIEW MECHANISM; TACIT AMENDMENT

S

SIMPLIFIED AMENDMENT

The possibility to revise specific provisions of a Convention through an accelerated or simplified amendment procedure that does not necessitate formal ratification of a revising instrument. First introduced in the MLC, 2006 , tacit amendment is largely inspired from a similar technique applicable to IMO Conventions that permits to adapt legal prescriptions to rapidly evolving technical standards. Under article XV of the MLC, 2006, amendments to the Code (Standards and Guidelines) adopted by the Special Tripartite Committee - an expert tripartite body responsible for keeping the working of the Convention under continuous review - may be tacitly accepted and come into effect two and a half years after having been approved by the International Labour Conference unless 40 per cent of the ratifying Members formally express their disagreement. Another two Conventions, the Seafarers Identity Documents Convention (Revised), 2003 (No. 185) and the Work in Fishing Convention, 2007 (No. 188) also provide for tacit amendment of their annexes. To date, four sets of amendments to the MLC, 2006 and to Convention No. 185 have been accepted and come into force through the tacit amendment process.

See also REVISION

STANDARDS REVIEW MECHANISM

Permanent mechanism established by the Governing Body in November 2011 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. It operates through a tripartite working group which is composed of 32 members and a chairperson and meets annually for one week. Under paragraph 9 of its terms of reference adopted in October 2015, the SRM tripartite working group is mandated to review the international labour standards with a view to making recommendations to the Governing Body on: (a) the status of the standards examined, including up-to-date standards, standards in need of revision, outdated standards, and possible other classifications; (b) the identification of gaps in coverage, including those requiring new standards; (c) practical and time-bound follow-up action, as appropriate.

To date, the SRM tripartite working group has had four meetings. It has completed the examination of 160 of the 235 instruments listed in its programme of work, including the review of 68 maritime instruments that were referred to the Special Tripartite Committee of the MLC, 2006 for expert consideration. It has recommended the abrogation or withdrawal of 10 Conventions, and the withdrawal of five Recommendations. It has identified gaps in coverage requiring standard-setting action in five areas: apprenticeships, biological hazards, chemical substances, guarding of machinery, ergonomics and manual handling. It has also adopted a simplified classification of standards.

STANDARD-SETTING

ILO's core activity that consists in drawing up of international labour instruments in the form of international treaties, called international labour Conventions, and of soft instruments known as international labour Recommendations. International labour Conventions, upon ratification, create legally binding obligations for State parties. International labour Recommendations are not open to ratification but give guidance as to policy, legislation and practice. Together, these normative texts are commonly referred to as international labour standards. To date, the body of ILO standards, metaphorically called 'international labour Code', comprises 402 instruments, including 190 Conventions, six Protocols and 206 Recommendations. Of these instruments, 17 Conventions and 39 Recommendations have been abrogated or withdrawn as outdated. In 93 cases, standard-setting exercises have resulted in the adoption of a Convention supplemented by a Recommendation whereas in 107 cases, only stand-alone Recommendations have been adopted.

See also DOUBLE / SINGLE DISCUSSION

SUBMISSION

Constitutional obligation of all member States to bring every new Convention or Recommendation within one year (or in exceptional circumstances within 18 months) from the closing of the session of the Conference at which it was adopted, before the competent national authority for the enactment of legislation or other appropriate action, and to report to the

Director-General on the action taken by the competent authority. All instruments adopted by the Conference without exception and distinction between Conventions and Recommendations must be placed before the competent authorities. The Governing Body has adopted a Memorandum to assist governments to discharge their constitutional obligation. The obligation to submit the instruments to the competent authorities does not imply any obligation to propose the ratification of the instrument in question and governments have complete freedom as to the nature of the proposals to be made when submitting Conventions and Recommendations to the competent authorities. Failure to submit Conventions and Recommendations to the competent authorities is reported to and monitored by the Committee of Experts on the Application of Conventions and Recommendations and by the Conference Committee on Application of Standards.

See also COMPETENT AUTHORITY

SUBSTANTIAL EQUIVALENCE

Aimed at ensuring flexibility in the implementation of maritime instruments, the concept of substantial equivalence is defined in article VI(3) of the MLC, 2006 which provides that a ratifying State may, unless expressly provided otherwise in the Convention, implement the rights and principles of the Convention in a manner different from that set out in mandatory Standards if it satisfies itself that the relevant legislation or other implementing measure is conducive to the fill achievement of the general object and purpose of the provisions of those Standards and gives effect to those provisions.

The obligation of the ratifying State is to "satisfy itself", which nevertheless does not imply total autonomy, since it is incumbent on the authorities responsible for monitoring implementation at the national and international levels to determine not only whether the necessary procedure of "satisfying themselves" has been carried out but also whether it has been carried out in good faith.

The notion of substantial equivalence was also included in article 2(a) of the Merchant Shipping (Minimum Standards) Convention, 1976 (No. 147) to reflect the idea that deviations from the terms of the Convention could be admitted as long as the general level of protection remained the same. In its 1990 General Survey on Convention No. 147 , the Committee of Experts clarified that "the test for substantial equivalence may be, first, whether the State has demonstrated its respect for or acceptance of the main general goal of the Convention and enacted laws or regulations which conduce to its realisation; and if so, secondly, whether the effect of such laws or regulations is to ensure that in al material respects the subordinate goals of the Convention are achieved."

SUPERVISION

The system of interrelated processes and bodies responsible for monitoring the effective implementation of international labour Conventions by States parties. It comprises two sets of procedures: examination of periodical reports examined by independent experts and a tripartite Conference committee (regular supervision) and adversarial proceedings initiated by ad hoc complaints (special procedures).

Regular supervision is carried out by the Committee of Experts on the Application of Conventions and Recommendations and the Conference Committee on the Application of Standards. The Committee of Experts was set up in 1926 by a Conference resolution and comprises 20 independent experts appointed by the Governing Body and serving in their personal capacity. It meets once a year and adopts its report which contains individual observations and direct requests addressed to member States. The Conference Committee is a standing tripartite committee, which reviews and debates at each annual session of the Conference a limited number of cases of non-compliance among those contained in the report of the Committee of Experts. Based on the oral, and sometimes written explanations of the government concerned, the Committee adopts conclusions which seek to ensure the government's follow-up action to rectify discrepancies by offering assistance while at the same time maintaining the situation under the scrutiny of the supervisory bodies.

As regards special procedures, these may take the form of either complaints – filed by any member State, the Governing Body of its own motion or by a delegate to the Conference – or representations which may be made by an employers' or workers' organization on the ground that a member State contravenes the requirements of a Convention to which it is party. Under the complaint procedure, the Governing Body may appoint a Commission of Inquiry to establish the facts and draw up recommendations. The government concerned must indicate within three months whether it accepts the Commission's recommendations or whether it proposes to refer the complaint to the ICJ whose decision shall be final. As for representations, if found receivable, they are examined in the first place by an ad hoc tripartite committee of three members which submits its conclusions and recommendations to the Governing Body for adoption.

Moreover, a special machinery exists in the field of freedom of association, which was set up in 1950, and empowers governments or employers' and workers' organizations to file complaints with the tripartite Committee on Freedom of Association – composed of nine members of the Governing Body and an independent chairperson.

T

TACIT ACCEPTANCE

See SIMPLIFIED AMENDMENT

TITLE

The title of a Convention has no normative value under international law. The title must be precise and reflect as much as possible the purpose and scope of the instrument. Conventions and Recommendations are named by a long title, which appears at the top of the instrument, and by a short tile, set forth in the last paragraph of the preamble, which specifies the title to be used for the purpose of citing the instrument. The title, either long or short, of an instrument is not required to follow the wording of the item placed by the Governing Body on the agenda of the Conference. The numbers of instruments – introduced by the Governing Body in 1932 – do not appear in either the long or the short titles. The number does not appear on the instrument when it is signed by the President of the Conference and the Director-General but is inserted when certified copies are being communicated to all member States.

U

UP-TO-DATE STANDARDS

A classification category for standards as determined by the SRM tripartite working group and the Governing Body. It comprises instruments which are fit for purpose. Up-to-date instruments are promoted by the Office, are fully supervised by the Committee of Experts on the Application of Conventions and Recommendations, and are to be included in all relevant ILO publications. They should serve as reference for new instruments, codes of practice and development cooperation. Follow-up action for up-to-date Conventions may include promotional initiatives, such as ratification campaigns, and technical assistance to improve application in practice.

See also CLASSIFICATION OF STANDARDS

W

WITHDRAWAL

The Conference decision by which a Convention which has never entered in force or is no longer in force due to denunciations or a Recommendation is found to be obsolete and is removed from the body of standards.

The term ‘withdrawal’ is used for Conventions which have never entered into force or are no longer in force due to denunciations, and to Recommendations whereas the term ‘abrogation’ refers to Conventions in force. Withdrawal and abrogation follow the same procedure set out in article 45bis of the Conference Standing Orders. The only difference is that the Conference based on an amendment of its Standing Orders could withdraw an instrument even before the entry into force of the 1997 constitutional amendment by which the Conference was empowered, by two-thirds majority and upon recommendation by the Governing Body, to abrogate a Convention in force if it appears that it has lost its purpose or that it no longer makes a useful contribution to attaining the objectives of the Organization (article 19(9) of the Constitution).

In accordance with article 45bis of the Conference Standing Orders, when an item on abrogation or withdrawal is placed on the agenda of the Conference the Office must communicate to the governments of all member States not later than 18 months before the opening of the session of the Conference at which the item is to be discussed, a short report and questionnaire requesting them to indicate within a period of 12 months their position on the subject of the said abrogation or withdrawal. On the basis of the replies received, the Office draws up a report containing a final proposal which is distributed to governments four months before the opening of the Conference.

As at September 2019, the Conference had withdrawn seven Conventions and 39 Recommendations. All these instruments were found to have had lost their purpose with regard to the Organization, either because they have been replaced by more modern instruments or because they no longer reflect current practices and conceptions.

See also ABROGATION

See also CLASSIFICATION OF STANDARDS