



FOURTH ITEM ON THE AGENDA

Improvements in the standards-related activities of the ILO: Improving the coherence, integration and effectiveness of the supervisory system through a better understanding of its dynamics (further study from a substantive and practical standpoint)

1. Introduction: Purpose and scope of the further study and methodology followed in the light of the consensus reached at the 301st Session (March 2008) of the Governing Body

1. At the request of the Governing Body,¹ the Office submitted at its 301st Session (March 2008), an overview, from an historical and procedural standpoint, of the links between the supervisory procedures relating to the application of ratified Conventions, including the special procedure for the examination of complaints alleging infringements of trade union rights.² On the recommendation of the LILS Committee, the Governing Body invited the Office to include in the report to its 303rd Session (November 2008) on the interim plan of action to enhance the impact of the standards system, “a further study on the dynamics of the supervisory system, from a substantive and practical standpoint, based on an appropriate selection of cases, the terms of reference of which will be defined following appropriate consultations”.³ Consultations were held accordingly on the terms of reference of the further study.

¹ GB.300/LILS/6, para. 80, II(2).

² GB.301/LILS/6(Rev.), paras 39–79. This document will be made available to the members of the LILS Committee, as the overview contains useful background information for this discussion.

³ GB.301/11(Rev.), para. 84(d)(ii).

2. The study consists of seven representative case studies of the interactions between the supervisory procedures, which are presented in the appendix to this paper, and the following overview of the issues raised in the case studies, examining the way in which the various supervisory procedures have interacted and the effect of the interactions on the observance of ratified Conventions. The case studies should be read first if the overview is to be fully understood.
3. The seven case studies, selected with due regard to the need to ensure a balanced selection, are as follows:
 - Case study No. 1: Freedom of association, collective bargaining and industrial relations (Nepal);
 - Case study No. 2: Freedom of association, collective bargaining and industrial relations (Nicaragua);
 - Case study No. 3: Forced labour (Dominican Republic and Haiti);
 - Case study No. 4: Forced labour (Myanmar);
 - Case study No. 5: Equality of opportunity and treatment (Czech Republic and Slovakia);
 - Case study No. 6: Protection of wages (Congo);
 - Case study No. 7: Social security (Netherlands).
4. The issues considered in the case studies include: the respective roles of the supervisory bodies and the constituents at the various procedural stages; the extent to which there has been duplication in the work of the supervisory bodies; how the interaction between the procedures occurred in practice; how any difficulties were overcome; factors involved in the resolution of issues; and the conclusions that can be drawn with regard to the overall functioning of the system. While the names of countries have been retained, it should be emphasized that the objective is not to focus on the substance of the cases, reopen the discussion of cases that have been closed or intervene in pending cases. It is rather to focus on the procedural and practical issues that the particular case studies raise, while providing a cross-section of insights into the interactions between the supervisory procedures.
5. The present study completes the information gathering that the Office began in the overview of March 2008. The information is intended to provide a basis for an informed discussion by the Governing Body on the issues raised in relation to the overall functioning of the supervisory system,⁴ with a view to strengthening its impact.

⁴ Due to time and space limitations, the present study does not address the important and complex issue of the interpretation of international labour Conventions, an issue that the Office was requested to revisit in detail by the LILS Committee in March 2008. The Office proposes to submit a detailed study on this issue in 2009.

2. How do the interactions occur in practice? ⁵

6. The case studies show that: (a) the pattern of interactions between the various supervisory procedures is multifaceted; (b) the way in which the interactions occur depends on a number of factors, most notably the actions and approach of the constituents, the important role of the Governing Body and the subject matter of the case; and (c) the various supervisory bodies often become involved in the consideration of matters at different times, in no predetermined order.

2.1. *Pattern of interactions*

7. The case studies show that links are mainly established between the regular supervisory procedures and in particular the Committee of Experts on the Application of Conventions and Recommendations (CEACR), and the special procedures. In the light of the examination by the CEACR, the Committee on the Application of Standards (CAS) of the International Labour Conference may also choose to discuss the case. Case study No. 2 concerning freedom of association illustrates a specific instance where links are established between two special supervisory procedures (involving a complaint under article 26 that led to a commission of inquiry (COI) and complaints to the Committee on Freedom of Association (CFA)), in view of the primary role of the CFA in relation to allegations of violations of freedom of association. ⁶ In this case, the Governing Body requested the CFA's technical advice before deciding on the referral of the article 26 complaint to a COI.
8. The case studies show that links between the supervisory procedures may be established both when a special supervisory procedure is set in motion and when it is completed. The social security case study (No. 7) involves an unusual linkage between the examination of a representation under article 24 and examination by the CEACR; in other words, in recognition of the CEACR's technical competence, the Governing Body decided to wait for its technical assessment of a particular issue and accordingly deferred the establishment of the tripartite committee. As the case studies concerning freedom of association (Nos 1 and 2) underline, linkages between examination by the CFA and by the CEACR can occur only where the applicable Conventions on freedom of association have been ratified. ⁷

2.2. *Factors influencing interactions in practice*

Role of the constituents

9. The special supervisory procedures are complaint-based mechanisms and their activation therefore depends on the initiative of constituents. As a result, the interactions between the mechanisms often hinge on the choices of constituents regarding the procedure under which they wish matters to be examined. As is evident in a number of the case studies,

⁵ See GB.301/LILS/6(Rev.), paras 63–75 for an overview of the links between the supervisory procedures.

⁶ See GB.301/LILS/6(Rev.), para. 65, referring to the possibility for the Governing Body, when it receives a representation under article 24, to adopt at any time the complaint procedure provided under article 26 of the Constitution. The Governing Body has availed itself of this possibility on two occasions.

⁷ The 127th report of the CFA (1972) set out the first procedural rules concerning the transmission to the CEACR of the legislative aspects of complaints. Since then, out of the 223 reports of the CFA approved by the Governing Body, there have been approximately 340 transmissions in 108 reports.

follow-up by the CEACR of the recommendations made by tripartite committees or COIs also hinges to a considerable extent on the continuing contribution of constituents, either through comments sent in the context of article 22 reports or in the selection of cases for discussion by the CAS. The equality and wages case studies (Nos 5 and 6) suggest that the absence of continued attention by constituents may partly explain why matters are still pending under the regular supervisory procedure.

Role of the Governing Body

10. The case studies confirm the main conclusion of the March 2008 overview, namely that the Governing Body plays a central role in the interactions. Its role is set out in the Constitution and in the rules applicable to the Governing Body, and particularly the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the ILO Constitution. The equality and wages case studies (Nos 5 and 6) are the most common illustrations of the way in which the Governing Body exercises its statutory functions in the examination of article 24 representations by referring a representation that is found receivable to a tripartite committee. Additionally, the Governing Body can adapt the exercise of its functions according to its assessment of the requirements of the matter. For example, in case studies Nos 2 and 7 concerning freedom of association and social security, the Governing Body using its discretion sought preliminary advice from a supervisory body before deciding how to respond to a particular representation or complaint.
11. As highlighted by many of the case studies, coordination of the response by the supervisory system mainly falls on the Governing Body. Case study No. 4 concerning forced labour is a rather unique example of the active role that the Governing Body can play in following up the implementation of the recommendations of a COI, specifically as a result of three resolutions adopted by the Conference.

Subject matter of cases

12. Of the 26 complaints submitted under article 26, 21 relate either exclusively or primarily to the application of fundamental Conventions. The 11 COIs that have examined complaints to date have considered 11 of these 21 complaints. With regard to the distribution of representations between the different Conventions, 31 per cent relate to fundamental Conventions, 10 per cent relate to priority Conventions and approximately 44 per cent relate to other Conventions. The remainder of the representations concern the application of a combination of Conventions. As a result of constituents' choices in invoking complaints-based mechanisms, there is greater interaction between the various supervisory procedures in cases primarily involving the application of fundamental Conventions. Moreover, roughly half the representations under article 24 and the majority of complaints under article 26 relating to the fundamental Conventions concern the application of the freedom of association Conventions which, as case study No. 2 shows, can potentially give rise to a greater variety of interactions between all the various procedures, including the special procedure on freedom of association.

2.3. Pragmatic functioning

13. The case studies highlight what could be considered to be the key feature of the ILO supervisory system: its pragmatic functioning. In practice, the ways in which links have been established vary from one case study to the other. Links were formed according to the particular requirements of the issues in question, as determined by the constituents. This is possibly because the ILO Constitution does not provide for explicit links between the procedures, and in particular does not prescribe a specific order for the consideration of matters by the various supervisory mechanisms.

14. Furthermore, as pointed out in the March 2008 overview, on each occasion that the Conference and the Governing Body have decided to supplement the institutional framework of the supervisory system, emphasis has been placed on the distinctive nature of each procedure and on the fact that none of them could operate as a substitute for any other. There are two main practical consequences of this characteristic, as shown by the case studies. First, the examination of issues under one procedure does not constitute an impediment to the initiation of another procedure on the same issues or on some of them. Second, matters can be raised directly under any of the supervisory procedures, and in particular the constitutional special supervisory procedures, provided that the receivability requirements have been met. In practice, there is no predetermined order in which matters should be addressed.
15. The variety in the procedures chosen in the case studies as a first point of entry for examination by the supervisory system shows that constituents make full use of their freedom to choose the supervisory procedure which best suits their concerns. Case study No. 3 concerning forced labour is a striking example in this respect. In this instance, the matter was raised for the first time under the article 26 procedure so that the COI was the first supervisory body to examine the issues. In the equality and social security case studies (Nos 5 and 7), matters were raised directly under the article 24 procedure, even though they touched upon legal issues. The Governing Body dealt with this situation in the social security case study (No. 7) by choosing, on an ad hoc basis, a course of action similar to the one it had refused to include, in 1998 and 1999, as a rule in the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 of the ILO Constitution.⁸
16. Case studies Nos 2 and 4 concerning freedom of association and forced labour are examples of how matters can progress from the regular supervisory procedure (No. 4) and the special procedure on freedom of association (No. 2) through to constitutional procedures. Case study No. 4 can be viewed as being exemplary in this regard. The examination of reports under article 22 drew attention to difficulties in the application of the Convention which, after a certain time, justified recourse first to the representation procedure under article 24 and then to the complaint procedure under article 26, up to the implementation of article 33 of the Constitution.
17. The case studies also show that, while there are some simultaneous interactions, most interactions occur in sequence. Regular supervisory bodies (and the CFA, as the case may be) suspend their examination while the constitutional supervisory procedures examine the matter and reactivate it in the follow-up phase. The follow-up of the recommendations of COIs and tripartite committees falls, in the vast majority of cases, under the regular supervisory procedure. Most of the case studies point out the central role of the CEACR in this respect.

⁸ See GB.273/LILS/1, GB.273/8/1, paras 2–58, GB.276/LILS/2 and GB.276/10/1, paras 56–67. At the 273rd and 276th Sessions (November 1998 and 1999) of the Governing Body, the LILS Committee considered the question of a possible revision of the procedure for the examination of representations under article 24 of the Constitution. The issue under consideration was the automatic referral to tripartite committees of representations found to be receivable (and relating to Conventions other than the Conventions on freedom of association). At the time, the Office presented a set of possible solutions, in particular to widen the choice of available forms of examination in respect to any receivable representations. One solution was to refer the substance of representations raising strictly legal questions to the CEACR which, in the light of its origin, composition and permanence, was deemed to be in a better position to rule on questions of law. No consensus was achieved in the Governing Body to revise the procedure for the examination of representations under article 24 in this way. Indeed, the distinction between questions of fact and questions of law proposed by the Office was not unanimously approved, as it appeared difficult to implement in practice.

3. What is the impact of the interactions?

18. The case studies show that the nature of the interactions has an impact on the functioning of the supervisory system and observance of ratified Conventions.

3.1. *Impact on the functioning of the supervisory system*

19. Two questions serve to highlight the impact of the interactions in the case studies on the functioning of the supervisory system. The first is whether the interactions added to the amount of time taken in dealing with matters arising from the cases, and the second is whether these interactions occurred in a consistent and complementary manner, or whether there was duplication.

Increase or decrease in time taken?

20. It is not clear whether the interactions added or reduced the time taken to address the issues, as interactions occurred in six out of the seven case studies.
21. In the six case studies where interactions occurred, the issues were mainly considered consecutively by the various supervisory procedures, with the CEACR and the CFA suspending their consideration of the issue while it was examined by a tripartite committee or a COI. This may suggest that the time it takes for an issue to be examined by the supervisory mechanisms depends on the number of interactions that occur. In general, each step must be completed before the next one is taken. In case study No. 2 concerning freedom of association, the Governing Body did not establish a COI until two-and-a-half years after the submission of the article 26 complaint, as it had asked the CFA for its recommendations so that it could decide on referral to the COI. Another year and a half passed before the Governing Body noted the COI's report. The matter addressed in case study No. 4 concerning forced labour is the one which has been under consideration by the supervisory system for the longest period of time and which has also involved the greatest variety of interactions. The social security case study (No. 7) involved a simple interaction, as it was considered only by the CEACR and a tripartite committee. It is the only case study where the matter can be said to have been resolved. Almost four years passed between the submission of the representation and the final decision of the Governing Body. The unresolved and long-standing matters in the equality and wages case studies (Nos 5 and 6) each involved consideration by two tripartite committees in addition to examination by the CEACR. The matters were first examined in 1991 and 1994, respectively.
22. On the other hand, in case study No. 1 concerning freedom of association, where there was ratification of Convention No. 98 but no ratification of Convention No. 87, there was no interaction between the regular and special supervisory procedures. In this context, a lack of interaction did not necessarily result in a speedier resolution of the matter.
23. It is therefore also possible that examination of the same matter by more than one mechanism may lead to speedier resolution than might otherwise have been the case. In case study No. 3 concerning forced labour, thorough investigation of the matter by the COI facilitated the subsequent work of the CEACR and the CAS, which had not previously considered the matter. In case study No. 2 concerning freedom of association, it is possible that the prior examinations by the CFA, the CEACR and the CAS may have identified the issues to be examined by the COI, thereby reducing the time needed for its examination.
24. It is also possible that the duration and number of interactions are the result of intrinsically complex and difficult matters which take longer to resolve and involve the activation of

more supervisory mechanisms. Nearly all the case studies show that most issues considered by COIs and tripartite committees are deeply embedded in national circumstances and therefore involve issues that are complex to resolve.

Consistency or duplication?

25. Three aspects of the supervisory system, two of which have already been mentioned, tend to raise the issue of consistency or duplication. First, the system is composed of a variety of procedures, each with a well-defined purpose and a specific mandate. The supervisory procedures are complementary in this respect. Second, the constant emphasis placed by the ILO policy organs on the distinctive features of the supervisory mechanisms means that, in practice, constituents are free to choose the procedures they wish to use for the examination of specific issues. Third, the supervisory mechanisms all pursue a common purpose, which is the effective observance of international labour standards and, in particular, ratified Conventions. This creates a need for coordination between the implementation of the various procedures and coherence in examination, as conflicting views within the supervisory system can only undermine its impact.
26. As shown by the case studies, the complementarity of the supervisory procedures appears to be reflected by a corresponding consistency in the examination of issues. In case study No. 2 concerning freedom of association, the CFA, the CEACR and the CAS each took into account the examination made by the other bodies, with the COI building on previous examinations by the three other bodies. In the case studies where the CEACR was entrusted with following up the recommendations of a tripartite committee or a COI, the CEACR largely focused its attention on monitoring and updating those recommendations and did not question the findings reached or the recommendations made.
27. The case studies suggest that the Office's technical support to the supervisory bodies, through the systematic provision of relevant information, assists in ensuring consistency of examination. This is particularly important when the matter has been examined under more than one supervisory procedure and by different bodies over a long period of time before being submitted for examination under a new procedure, such as an article 26 complaint procedure. In case studies Nos 2 and 4 concerning freedom of association and forced labour, the COI was able to build on the examinations undertaken in previous years by the other supervisory bodies (a process lasting seven years for case study No. 2 and 38 years for case study No. 4). The equality and social security case studies (Nos 5 and 7) suggest that, when a legal issue is raised directly under article 24, the tripartite committee will require the Office's support in the form of information on the previous consideration of similar issues and the legal aspects arising from the representation. In the two forced labour case studies (Nos 3 and 4), the Office's role of providing technical assistance complemented the operation of the supervisory system.
28. The common purpose of the supervisory mechanisms explains the importance of consistency in the manner in which issues are dealt with. At the same time, the complementarity of the supervisory procedures, and their consistency of approach, may involve an element of duplication. Nearly all the case studies show that the way in which the supervisory system functions leads to reconsideration of the same issues by different bodies. As all the supervisory bodies benefit from the Office's institutional support, some sources of information are necessarily shared. In case study No. 2, duplication of work was limited as only two mission reports were produced for examination by three bodies (the CFA, the CEACR and the CAS). In case study No. 4, the sharing of information under the various procedures and processes in place, combined with the necessity to ensure consistent examination throughout the consideration by the policy organs and supervisory bodies, may have led to a repetition of information.

29. As several procedures may be activated on the same issues to achieve effective observance, the functioning of the system involves some degree of necessary duplication. In case study No. 2, as has been mentioned, both the CFA and the CEACR considered the same mission reports, within their different mandates, as these contained information relevant to both examinations. Examination by the CAS was the result of the choice made by its members. In the equality case study (No. 5), the Governing Body appointed a second tripartite committee that considered the same matter following changes within the country concerned. In case study No. 4, given the absence of progress and serious breaches of a fundamental Convention, the matter was considered under all the procedures of the supervisory system, as well as by the ILO policy organs.
30. Responsibility for the overall coordination and management of interactions within the supervisory system lies with the Conference and the Governing Body, whose oversight role appears to have ensured complementarity, rather than excessive overlap, in the case studies.
31. The equality and social security case studies (Nos 5 and 7) do, however, raise the question of whether complementarity between the article 22 and article 24 procedures is fully ensured. Legal issues were first raised under the article 24 procedure and referred to a tripartite committee, rather than being considered in the first place by the CEACR through its examination of reports under article 22. Indeed, the first tripartite committee in the equality case study (No. 5) defined its task as assessing whether the national legislation was in conformity with the Convention. This is an assessment that falls directly within the mandate of the CEACR. As the legislation in question had not previously been examined by the CEACR, the examination was undertaken by the tripartite committee which referred to comments made by the CEACR in similar instances and to its 1988 General Survey. In the social security case study (No. 7), the tripartite committee undertook a thorough analysis of the national legislation in the field of social security. It should be noted that during this examination, the denunciation of the relevant Convention took effect.

3.2. *Impact on the observance of ratified Conventions*

32. The purpose of the supervisory system is to ensure optimum observance of ratified Conventions. It is interesting therefore to consider the extent to which the interactions in the case studies have enhanced the functioning of the system.
33. The obvious starting point is the question of the resolution of the issues raised in the case studies. Of the seven case studies, the issues remain unresolved in three of them. A partial resolution was reached in two of the case studies (in case study No. 2, a significant number of issues, but not all of them, were resolved and in case study No. 3, the main issues were resolved, but similar issues in different contexts are still outstanding). In the equality case study (No. 5), the matter has been fully resolved in relation to one of the countries involved, but remains unresolved in relation to the other country. It may be said that a full resolution has been reached in the social security case study (No. 7).
34. As already pointed out, many factors may have an impact on the effectiveness of the supervisory system. For instance, the partial resolution of issues in certain case studies can be seen to be intrinsically linked to changes in national political realities, combined with persistent attention by the ILO supervisory procedures. Most of the case studies show how the interactions between the supervisory procedures allowed for a thorough examination of national labour law, providing countries with tools to devise reforms of their national legislation, policies and practice. The real impact of the supervisory system may therefore lie in the provision of authoritative information and analysis and the regular monitoring of the different national labour laws and practices and the often complex issues that arise. It has also often been noted that dialogue and independent evaluation are key to the

supervisory system, as illustrated by most of the case studies. This is shown in case study No. 3 concerning forced labour, where dialogue between the supervisory bodies and the Office, on the one hand, and the countries concerned, on the other, has been crucial to a partial resolution of the matter.

35. The existence not only of different supervisory procedures, but also of different combinations of procedures, appears to ensure that the supervisory system can respond to a great variety of situations and to changing national circumstances over time, from different perspectives (technical and political).
36. The flexibility of the system and the ability of constituents to control how a matter may be raised and then processed appear to have had a less positive effect in the equality and wages case studies (Nos 5 and 6). As noted above in paragraph 9, when constituents do not maintain constant attention and do not provide regular contributions to the supervisory bodies, it may be more difficult to resolve issues under the regular supervisory procedure. Similarly, in case study No. 4 concerning forced labour, the only progress made to date essentially appears to have been a result of actions taken by the Conference and the Governing Body.
37. There may also be a risk of dilution, and therefore a fall in the level of attention, in relation to the follow-up of the recommendations of tripartite committees and COIs. In the equality and wages case studies (Nos 5 and 6), the examination, despite being focused on following up the conclusions of a constitutional special supervisory procedure, became an integral part of the dialogue between the Government and the regular supervisory bodies, in the same way as was the case with other issues arising from the application of Conventions.
38. The case studies suggest that the flexibility available to the Office helps to ensure the continuity of dialogue. For example, in two case studies, it was possible to overcome serious obstacles through the use of direct contacts missions for various purposes: first, to clarify and seek solutions to unresolved issues (case study No. 2); second, to ascertain facts in relation to the observance of Conventions (the second direct contacts mission in case study No. 3); and third, to examine and provide advice on the best means of implementing the recommendations of the COI (the first direct contacts mission in case study No. 3).

4. Conclusions

39. The effective functioning of the supervisory system is based on the existence of links between the various mechanisms, which means that ensuring the optimal implementation of these links is crucial. The constituents, the Governing Body, the Conference and the Office play a key role in this regard, as the pragmatic flexibility of the system relies on responsibility being taken by those concerned in the exercise of their respective mandates.
40. The dynamic interaction between the supervisory mechanisms impact upon the functioning of the system, and may involve some element of duplication. However, the most significant conclusion to be drawn from this study is the central role given to tripartism in the functioning of the system. The tripartite constituents, in fact, hold the keys to promote and ensure the effective observance of Conventions. The flexibility in which the interactions operate also allows the supervisory system to respond more easily to a broad variety of issues and to difficult political or national situations, and as a result may have an influence on the observance of ratified Conventions.

41. *The Committee on Legal Issues and International Labour Standards may wish to:*

- (a) take note of the information contained in the present document;***
- (b) provide any guidance that it deems appropriate; and***
- (c) recommend to the Governing Body that it invite the Office to prepare a study on the interpretation of international labour Conventions in 2009.***

Geneva, 14 October 2008.

Point for decision: Paragraph 41.

Appendix

Case studies

Case study No. 1: Freedom of association, collective bargaining and industrial relations (Nepal)

This case study concerns the observance by Nepal of the principles of freedom of association and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). As the country has not yet ratified Convention No. 87 and only ratified Convention No. 98 in 1996, consideration of trade union rights in the country by the supervisory system is sourced largely in the country's fundamental obligation to promote the principles of freedom of association and collective bargaining based on its ILO membership. The case study involves consideration of four complaints by the Committee on Freedom of Association (CFA) and, following ratification of Convention No. 98, examination by the Committee of Experts on the Application of Conventions and Recommendations (CEACR). It is also an example of the manner in which the informal interventions made by the Director-General and the Office's technical assistance complement the operation of the supervisory system. Additionally, objections concerning the nomination of the workers' delegate to the Conference were raised with the Conference Credentials Committee, the most recent of which, in June 2005, referred to the impact of the national political situation on the observance of the principles of freedom of association.

The first complaint was submitted to the CFA by an international workers' organization in May 1985 alleging violation of teachers' trade union rights. The complaint was examined a number of times between June 1986 and May 1991. As the country had not ratified either of the two freedom of association Conventions at that time, the CFA was the first supervisory body to examine the situation of trade union rights in the country. During the first three years of its examination, the CFA faced difficulties in obtaining an adequate reply from the Government and both its Chairperson and the Director-General intervened to that end. Additionally, technical assistance was offered to the country by the Office. When the case was closed by the CFA in 1991, changes in the national political situation had already led to some improvements in the exercise of trade union rights.

In 1996, the country ratified Convention No. 98 and submitted its first report in 1998. While all regular reports have been provided, the Government has not replied to comments from workers' organizations nor has it always provided full replies to the CEACR.

The second complaint to the CFA was lodged in March 2001 by national and international workers' organizations and concerned the right to strike for workers in certain sectors in relation to the application of a specific Act concerning essential services. The case eventually lapsed without any information having been received from the Government. In its 2000 observation, the CEACR had requested a copy of the legislation in question, in response to a reference to it in the Government's report, but it was never supplied.

The third complaint was submitted to the CFA in April 2004, again by national and international workers' organizations, and was examined between March 2005 and November 2006. It concerned similar issues to those referred to in the second case, but in relation to the application of the abovementioned Act to a wider category of workers, as well as allegations concerning the detention of trade unionists. It was classified as an "urgent" case under the CFA's procedure, and two sets of observations were received from the Government. In March 2005, the CFA brought this complaint to the special attention of

the Governing Body because of its extreme seriousness and urgency and reminded the Government of the possibility of technical assistance. After a final examination by the CFA in March 2006, on the basis of information provided by the Government, the case was closed in November 2006.

The fourth complaint was lodged by national and international workers' organizations in the same month that the third case was brought to the Governing Body's attention, following a coup d'état and the declaration of a state of emergency in the country. The complainants alleged that all trade union rights had been suspended, and trade union leaders had been arrested, mirroring certain aspects of the first complaint. It was also considered an "urgent" case. The CFA examined the case between March and November 2006. The Government submitted a reply and additional observations. Once again, the CFA brought the complaint to the attention of the Governing Body due to its extreme seriousness and urgency, and raised the possibility of a direct contacts mission to promote the full implementation of freedom of association.

There were no direct links established between the regular supervisory procedure and the special supervisory procedure relating to freedom of association, with the first procedure dealing with the application of the ratified Convention No. 98 and the second mainly focusing on principles of freedom of association laid down in the unratified Convention No. 87. As a result there has been no duplication between the two procedures. Nonetheless, the existence of parallel procedures, each of which highlighted different sets of issues, provided a more comprehensive picture of the national situation in law and in practice than might have resulted from an examination by only one procedure, thus enabling the Office to identify the relevant issues for technical assistance.

In fact, the more urgent violations were resolved through informal interventions by the Director-General, rather than through the direct actions of the supervisory procedures. These interventions were in response to various requests by workers' organizations following the declaration of the state of emergency and resulted in the eventual release of all the arrested or detained trade union leaders. In addition, the Office also provided significant technical assistance in a number of areas. As regards freedom of association, this technical assistance was provided outside the examination of the CFA; thus a mission was undertaken in 2006 to enable the country to consider ratification of Convention No. 87. The ILO's response to the issue of trade unions' rights in the country has been driven by workers' organizations, which have continually brought the matter to the attention of the Office and the supervisory bodies.

Case study No. 2: Freedom of association, collective bargaining and industrial relations (Nicaragua)

This case study concerns the observance by Nicaragua of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144).¹ It covered a broad range of infringements and in particular harassment and unequal treatment of employers' organizations (and, to some extent, trade unions), principally in association with the enforcement of a state of emergency. It involved both the regular supervisory procedure – with consideration from the CEACR and the Conference Committee on the Application of Standards (CAS) – and the special supervisory procedures through complaints to the CFA and a complaint under article 26 that led to a Commission of Inquiry (COI). At the same time, objections raised with the Conference Credentials Committee concerning the

¹ The case study will focus on the application of the freedom of association Conventions as this was the primary subject matter of the case.

nomination of Employers' delegates and advisers were based on the same infringements of freedom of association, one of which referred to the cases pending before the CFA, leading the Conference Credentials Committee to express concern at the situation of employers' organizations in the country. For the most part the matter can be considered resolved, although some aspects of current CEACR comments reflect similar concerns to those at the basis of the COI report.

Although the CEACR had raised in earlier comments some of the legislative issues that resurfaced, it can be said that this case originated in a complaint submitted by an international employers' organization to the CFA in 1980. This complaint was followed by another 22 complaints until 1989 when the matter was referred by the Governing Body to a COI, following an article 26 complaint. The 22 complaints were lodged by the same employers' organization and by workers' organizations. These complaints involved breach of freedom of expression, murders, detentions and arrests, assaults, discriminatory searches of premises, land confiscations, and lack of tripartite consultations. Both social partners argued that the Government was attempting to stifle all organizations that were unsupportive of it. During this time, the Government provided some information to the CFA, although on many occasions this was incomplete and, in relation to some cases, no information was sent.

Within the examination of these complaints by the CFA, a variety of missions and other actions – including interventions by the Director-General – were undertaken. This included a direct contacts mission in 1981; a second direct contacts mission under the regular supervisory procedure in 1983, during which time the CFA adjourned examination of its pending cases; and a study mission in 1988 in the context of the CFA's examination of the article 26 complaint, that also gathered information relating to issues raised by the CEACR.

While most of the CFA cases involved freedom of association in practice, some legislative issues were raised. In 1982, on the basis of the report of the first direct contacts mission, the CFA drew the attention of the CEACR to the legislative aspects of the case. In 1986, the CFA noted CEACR and CAS examination. In 1988, the CFA indicated that it would take the CEACR's comments into account when making its recommendations to the Governing Body in relation to the eventual establishment of the COI.

The CEACR commented on legislative aspects associated with the state of emergency from 1982. It inserted special notes in some observations requesting the Government to provide full particulars to the Conference and, at times, early detailed reports.² In addition to the information provided by the Government under article 22, the CEACR considered mission reports also discussed in the CFA, and noted the discussions in the CAS and the CFA cases.

The CAS discussed the case five times between 1982 and 1989. In 1983, at the request of the Government, a direct contacts mission was carried out. During the mission, the Director-General's representative also gathered information on the cases pending before the CFA and his report was examined by both the CEACR and the CFA. The CAS held intense discussions on the case in 1985, 1987 and 1989. In its 1985 conclusion, the CAS specifically requested the CEACR "to take into consideration all the information received following the mission of direct contacts as well as the examination of the cases by the CFA so as to be able to examine the situation actually existing both in law and practice".

² These special notes were inserted in the 1981, 1982, 1983, 1987, 1988 and 1989 observations under Convention No. 87 and in its 1988 observation under Convention No. 98.

In June 1987, several Employers' delegates to the Conference submitted a complaint pursuant to article 26, in the first use by the Employers of the constitutional complaint procedure. When it first discussed the complaint in November 1987, the Governing Body considered that "where various complainants have resorted to different procedures established by the Organization concerning the application of Conventions and the protection of trade union rights, it would be desirable to co-ordinate the procedures and to take account of the role entrusted to the CFA for the examination of complaints concerning these matters". It accordingly requested the CFA to make recommendations on the article 26 complaint and the cases still pending before it, in order to reach a decision on the referral of the article 26 complaint to a COI. The CFA examined the matter six times, presenting corresponding reports to the Governing Body based on developments in the situation. In its final report in November 1989, the CFA recommended the referral of the matter as a whole to a COI. Consequently, the Governing Body established the COI in November 1989. As a result, the examinations of the matter by the CEACR and the CFA were suspended. At its May–June 1991 session, the Governing Body took note of the COI's report.

The longer than usual procedure was due to change in the political leadership of the country that occurred during the same month as the COI's first session and resulted in a complex interaction with the Government. Disputing the validity of the COI process, the new Government suggested that the COI should not reopen matters that had been overtaken by events and which had already been the subject of the CFA's conclusions. The COI pointed out that the Governing Body had submitted the matter to a COI because it considered that the situation was still not satisfactory with regard to the pending cases. As a result, the COI would examine the article 26 complaint, the pending cases, and any developments in relation thereto. In accordance with the procedure followed by previous COIs, the Commission took into account not only the information provided by the parties, but also the CFA's previous observations, the study mission in 1988, and information from the CEACR and the CAS. It also visited the country twice. In its recommendations, the COI considered that the Government should indicate, in its article 22 reports for 1991, measures taken to give effect to those recommendations so that the CEACR could review progress and decide the periodicity with which the Government should continue to include information in its future reports. When the Governing Body took note of the COI's report, the Government indicated that it accepted the COI's recommendations.

The CEACR made reference to the COI's recommendations until 1994. Although it was not explicitly stated, it can be assumed that follow-up of the COI recommendations came to an end in 1998 when the CEACR noted "with satisfaction" that the provisions on freedom of association in the new Labour Code repealed and amended a significant number of provisions which had been the object of its comments for many years. The CEACR has continued to make comments about the new Labour Code afterwards.

In the early stages, the CFA, CEACR and the CAS operated in tandem. While the CFA mostly considered issues of practical implementation of the Conventions, the CEACR principally dealt with the legislative elements, and the CAS was a forum for tripartite discussion. Both the supervisory bodies in the regular supervisory procedure and the CFA made explicit reference to the need to consider the examinations under the other supervisory procedure. Mission reports covered issues raised under both procedures and were considered by both. On the other hand, the lead role in dealing with the case was taken by different procedures at different times. When the article 26 complaint was lodged, the CFA provided the technical advice and the Governing Body took an overall managerial role, ensuring a constant and consistent response to the matter, when it appointed the COI. The COI used the material gathered by the previous examinations of the matter and reached its own independent conclusions. Following the adoption of the COI report, the CEACR took over the examination of the matter, gauging follow-up and ensuring that the matter remained under the ILO's scrutiny. Throughout, it was mainly due to

communications from employers' organizations that the matter continued to be addressed by the various supervisory procedures.

Case study No. 3: Forced labour (Dominican Republic and Haiti)

This case study principally concerns the observance by the Dominican Republic and Haiti of the Abolition of Forced Labour Convention, 1957 (No. 105) but also the Forced Labour Convention, 1930 (No. 29), the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), the Right to Organise and Collective Bargaining Convention, 1949 (No. 98) and the Protection of Wages Convention, 1949 (No. 95).³ The question of observance of these Conventions was raised in relation to alleged abuses of Haitian workers employed on state-owned sugar plantations in the Dominican Republic. Accordingly, it is a matter that involved both the country from which the recruited labour came, and the country in which the work took place. It was first raised in 1980 concerning the application of Convention No. 95 by the Dominican Republic and related issues are still pending in relation to this country's observance of Convention No. 29. The matter has involved interactions between the regular supervisory procedure and the constitutional complaint procedure, with consideration by the CEACR and the CAS, two article 26 complaints leading to the establishment of a COI, and decisions taken by the Governing Body. Further, the case study illustrates the manner in which the Office's technical assistance complements the supervisory system.

In the context of its consideration of the application of Convention No. 95 in 1980, the CEACR considered alleged abuses in the recruitment, conditions of work and payment of wages of Haitian workers employed on Dominican Republic sugar plantations. In June 1981, the case was discussed by the CAS, at which time concern was expressed. At the same time, two article 26 complaints were brought by workers' delegates to the Conference against both of the countries involved in relation to the application of Conventions Nos 29 and 87. In March 1982, the Governing Body established one COI to consider the two complaints, notably adding consideration of Convention No. 95 in relation to the Dominican Republic, despite it not being included in the complaints. The COI heard further information from one government and a number of trade unions and undertook hearings and visits to both countries. Its report was noted by the Governing Body in June 1983. The two Governments "accepted in principle" the COI's recommendations.

The COI recommended that full particulars of action taken on its recommendations should be included in reports due under article 22. The CEACR decided that its follow-up examination would fall under Convention No. 105, including consideration of comments made by workers' organizations on the application of the Convention. Between 1984 and 1988, the matter was examined by the CEACR and the CAS almost every year. The CEACR inserted special notes in its observations under which it asked both Governments to provide detailed information to the Conference, and the CAS regularly mentioned the cases in special paragraphs of its reports when considering that the Governments did not fully cooperate or failed to demonstrate willingness to take the necessary steps.⁴ At the request of the countries in the context of the discussion before the CAS, a direct contacts

³ The case study focuses on the forced labour Conventions, as this was the primary subject matter of the case.

⁴ The CEACR inserted a special note in its 1984, 1985 and 1986 observations addressed to Haiti and in its 1984, 1985, 1986, 1987 and 1988 observations to the Dominican Republic. The CAS mentioned the cases under special paragraphs of its report in 1984 and 1985 for Haiti and in 1984 and 1988 for the Dominican Republic.

mission took place in October 1988 and from 1989, the CEACR ceased to comment on the matter in relation to Haiti. In 1989 and 1990, both the CEACR and the CAS expressed serious concerns at the lack of progress on the part of the Dominican Republic.⁵ At the request of the country, a second direct contacts mission was undertaken in 1991. On the basis of a comprehensive mission report, the CEACR updated and reinforced the COI's recommendations in a lengthy observation, requesting additional information from the Government as to measures taken. The Office further undertook a mediation mission later in 1991, as a part of which it mediated between the two Governments following the forced repatriation of Haitian workers. In 1992, in its last discussion of the case, the CAS acknowledged the measures taken by the Dominican Republic to improve the legal rights of Haitian workers; the CEACR referred to the COI's recommendations until 1995. Thereafter, it has continued to make comments on the matter under Convention No. 29, but the problem has decreased in magnitude and changed in scope to concern privately owned plantations.

It is due to workers' organizations that the matter was first brought to the attention of the Governing Body. Thereafter, workers' organizations continued to provide comments and information during the COI process and the CEACR's subsequent examination, and to the CAS. It was as a result of the referral of the two complaints to a COI that the application of the forced labour Conventions by both countries was examined for the first time by the supervisory system. While the two Governments cooperated with the COI and accepted its recommendations in principle, at the stage of the follow-up, both Governments at different times indicated disagreement with the procedure in the discussion of the matter before the CAS. Nevertheless, concrete improvements in response to the COI's recommendations were evident in later years, perhaps influenced by changes in the political and economic situation in the two countries as well as, in the case of the Dominican Republic, by the impact of international pressure through the linkage of labour standards to the granting of trade preferences.

The interactions of the supervisory bodies in this case study can accordingly be characterized as having been controlled and consistent, with the matter having received fairly constant attention from one or another supervisory body for approximately 20 years. A noticeable aspect of the case study is that the COI was the first supervisory body to examine the issue in the context of the forced labour Conventions. The COI considered its role as ascertaining the facts in relation to the complaints and the obligations under the Conventions. While during the COI's existence, consideration of the matter was suspended by the CEACR, it subsequently took responsibility for securing implementation of the COI's recommendations, analysing all the information in this respect, including mission reports. While there is no specific rule governing its discussion of cases having been subjected to an article 26 complaint, the CAS highlighted the importance of implementation of the COI's recommendations, by inviting, as soon as it had the opportunity to do so, the two Governments to report on the progress made in relation to these recommendations.

The involvement of the CEACR and the CAS was constant throughout that time, both bodies systematically calling on the Governments to implement the recommendations of the COI and making efficient use of the tools available under their respective methods of work and procedures. Their comments were complementary in terms of technical assessments and tripartite concern directed at the countries. While the examination of the matter by both these bodies could be seen as duplication, it emphasized its seriousness and

⁵ The CEACR inserted a special note in its 1989 and 1990 observations addressed to the Government requesting it to provide full information to the Conference and the CAS decided to mention the case in a special paragraph of its report in 1989 and as a case of "Continued failure to implement" in 1990.

the bodies had different roles to play pursuant to their mandates. Additionally, the matter has not been considered under different procedures simultaneously, and each supervisory body has referred to the previous examination undertaken by another body.

The Office's various missions to the countries provided further information to the supervisory bodies, technical assistance to the Governments, and created a dialogue between the two Governments. This case study is an example of the manner in which, over an extended period of time, dialogue, consistency on the part of the supervisory bodies and political will contributed to the adoption of concrete measures, although the issue of the conditions of work in force on certain plantations remains an issue to be followed-up by the CEACR.

Case study No. 4: Forced labour (Myanmar)

This case study concerns the observance by Myanmar of the Forced Labour Convention, 1930 (No. 29). The matter was first raised in 1960 and is still unresolved. In terms of the interactions under the supervisory system, it has involved consideration by the CEACR, the CAS, an article 24 representation with a referral to a tripartite committee, an article 26 complaint with a referral to a COI, a resolution by the International Labour Conference in relation to the previously unused article 33 of the Constitution, and the establishment of a special sitting of the CAS to discuss the country's observance of the Convention.

Since 1961, the CEACR has been raising questions concerning forced labour in the country; its attention was focused in 1991 by a comment submitted by an international workers' organization alleging the widespread use of compulsory portage by the military in the country. The matter was discussed by the CAS in 1992. In January 1993, the same international workers' organization made an article 24 representation in relation to the matter and, as a result, the Governing Body set up a tripartite committee in March 1993. At this time, the CEACR suspended its consideration of the issue of forced labour for portage, but it received further information relating to the use of forced labour for public work and to other forms of labour for the military, which it raised with the Government in an observation in 1993. In November 1994, the tripartite committee concluded that there were breaches of the Convention, and the Governing Body requested the Government to include in its reports under article 22 information as to the measures it was taking to ensure implementation of the Committee's recommendations.

The CEACR continued its examination both as a follow-up to the tripartite committee's recommendations on the issue of compulsory portage and on the issue of imposition of forced labour for public works, until March 1997. During the same period, the CAS discussed the case twice, including by mentioning it in a special paragraph of its report in 1995 and, in 1996, as continued failure to eliminate serious deficiencies in the application of the Convention. An article 26 complaint was brought by Workers' delegates to the Conference in June 1996, and in March 1997 the Governing Body established a COI to examine the matter; the CEACR's examination of all aspects of the matter was suspended. The COI presented its report in July 1998, having found evidence of the pervasive use of forced labour throughout the country, and the report was noted by the Governing Body in November 1998. The COI procedure involved the receipt of further written material, the hearing of witnesses in closed sessions and a mission to neighbouring countries in the region to gather supplementary material, the Government having refused permission for the COI to visit the country.

In June 1999, in the absence of information showing any steps to have been taken by the Government to implement the COI's recommendations, the CAS again included the case in a special paragraph of its report and mentioned it as a case of continued failure to implement a ratified Convention; the Conference adopted a resolution on the matter,

reaffirming that the Governing Body should further consider it and resolving that the Government should cease to benefit from technical cooperation except for the sole purpose of securing implementation of the COI's recommendations.

Upon a recommendation to that effect made by the Governing Body at its March 2000 session, the Conference adopted, in June 2000, a resolution concerning measures under article 33 of the Constitution. This recommended, among other things, that governments, employers and workers take measures to ensure that the country could not take advantage of any relations they may have with it to perpetuate or extend the system of forced labour. It invited the Director-General to submit periodic reports to the Governing Body on the outcome of the measures. In fact since its consideration of the COI's report, the Governing Body has discussed the observance of the Convention by the country at each of its March and November sessions. In addition to following up on the measures within the framework of the 2000 resolution, the Governing Body has also discussed the arrangements implemented by the Office (on the basis of the report of a high-level team which had visited Myanmar in late 2001) to cooperate with the Government for the purpose of ensuring the implementation of the COI's recommendations.

These arrangements included, on the basis of an Understanding adopted in March 2002 by the Government and the ILO, the appointment of an ILO Liaison Officer in Myanmar to assist the Government in its efforts to ensure the elimination of forced labour in the country. In the following years, the Liaison Officer began to receive an increasing number of complaints alleging forced labour which, if he considered founded, he passed on to the authorities. However, there was evidence of complainants being harassed, punished or even prosecuted as a result. This problem continued until February 2007, when following a 2006 Conference resolution concerning further action needed to ensure compliance with the Convention, a Supplementary Understanding relating to the role of the Liaison Officer with respect to forced labour complaints was reached. It is still functioning.

In so far as it affects the supervisory procedures, the 2000 resolution decided that the application of the Convention by the country should be discussed at future sessions at a special sitting of the CAS. In the absence of significant progress towards the full application of the Convention, such a special sitting has been held at each session of the Conference since then, on the basis of the CEACR's continuous examination of the matter (and, more recently, reports submitted by the Liaison Officer).

This case study covers the most comprehensive combination of the procedures available in the ILO's supervisory system, including two previously unused means (the application of article 33 and the use of special sittings of the CAS). The matter has achieved continual attention by the supervisory procedures due, in no small part, to the consistent submission of comments and requests thereon by the constituents, combined with equally consistent treatment and innovative responses from the Governing Body, the Conference and the Office. This case study illustrates the importance of the tripartite structure of the ILO in ensuring the impact of the supervisory system, since it was essentially information and pressure from international workers' organizations that both triggered consideration of the matter, as well as ensured its continued progression through the various supervisory procedures.

The Governing Body has taken a leading role in following up the implementation of the recommendations of the COI through a recurrent item on its agenda, in negotiations with the Government and proposals to the Conference. In essence, the Governing Body has concentrated on stimulating practical measures aimed at leading to the implementation of the Convention; the CEACR has focused on following up on the implementation of the recommendations of the COI. The CAS has based its discussions primarily on the observations of the CEACR but also on the documents made available to it by the Governing Body. The regular supervisory procedure has continued to function in parallel

to the actions of the Governing Body and the different supervisory and policy bodies can be said to have dealt with the matter in a complementary manner. It is possible to see a “double” nature to the follow-up of the country’s observance of the Convention: a combination of the classical interactions between the regular supervisory procedure and the constitutional special supervisory procedures which have operated consistently, with exceptional high-level political follow-up by the Governing Body, the Conference and the Office. In particular, it was only following the adoption by the Conference in 2000 and 2006 of resolutions in the context of article 33, that the Understandings of 2002 and 2007 were concluded.

Case study No. 5: Equality of opportunity and treatment (Czech Republic and Slovakia)

This case study concerns the observance by the Czech and Slovak Federal Republic (subsequently the Czech Republic and Slovakia) of the Discrimination (Employment and Occupation) Convention, 1958 (No. 111). The matter was raised by workers’ organizations in 1991, shortly after the adoption of an act by the Czech and Slovak Federal Republic concerning issues relating to discrimination on the basis of political opinion. It involved three representations under article 24 leading to the establishment of two tripartite committees and consideration by the CEACR and the CAS.

Two representations were made by national-level workers’ organizations in October and November 1991 alleging that the abovementioned act violated the Convention. This was the first time that its compatibility with the Convention had been raised under the ILO supervisory procedures. The workers’ organizations used the article 24 procedure to raise the matter in the international forum after they had failed to influence the national-level legislative process. In November 1991, the Governing Body decided that both representations were receivable and referred them to the same tripartite committee. The report of this Committee, approved by the Governing Body in March 1992, requested the Government to include in its reports under article 22 measures to implement the Committee’s recommendations. Accordingly, the CEACR followed up the implementation of these recommendations and did not enter into any examination of the substantive elements itself. In 1992, the Czech and Slovak Federal Republic was dissolved leading to the creation of the two countries, the Czech Republic and Slovakia, both of which retained the Act.

In April 1994, a national-level workers’ organization made a further article 24 representation in relation to the Czech Republic, alleging again that the Act was not in compliance with the Convention. In June 1994, the Governing Body found the representation to be receivable and established another tripartite committee. At that time, the question of the suspension of the examination of the matter by the CEACR did not arise because the first report under the Convention by the Czech Republic was not yet due and therefore the CEACR had not yet examined the matter in relation to this new member State. The second tripartite committee examined the events since the previous committee’s report and, in November 1995, concluded that not all the recommendations had been implemented; therefore, rather than undertaking a new analysis, the second tripartite committee integrated the conclusions and updated the recommendations of the earlier committee. The report of the second tripartite committee was approved by the Governing Body in November 1995 and the CEACR was once again entrusted with the follow-up of the Committee’s recommendations.

The CEACR’s consideration of the matter in relation to Slovakia ended in 1997, when it noted with satisfaction that the country had repealed the legislation in question. The CEACR is still following up the recommendations of both tripartite committees in relation to the Czech Republic. While no further comments were received from the authors

of the representations during the follow-up phase, an international workers' organization submitted a comment in 2001 which, *inter alia*, addressed the issue of the compatibility of the Act with the Convention. The CEACR inserted a special note in its 2007 observation, requesting the Government to supply full particulars to the Conference and a detailed report in 2008. The matter was discussed as an individual case by the CAS in 2008.

In the absence of a specific rule concerning the way in which the CAS should deal with cases involving article 24 follow-up, this case was dealt with in the same way as other individual cases. However, the CAS specifically referred to the tripartite committees' reports as approved by the Governing Body. On the other hand, while the Governing Body *invited* the Government to amend the Act in 1995, in 2008 the CAS *urged* the Government to do so.

The Governing Body exercised its responsibilities in declaring the representations under article 24 admissible, appointing the tripartite committees, and approving their reports. The role played by the workers' organizations was pivotal, as the matter was only considered by the supervisory procedures upon the submission of article 24 representations by them. Workers' organizations contributed to a certain extent to the follow-up of the implementation of the tripartite committees' recommendations under article 22 and both the Workers' and Employers' groups were involved in the selection and discussion of the CAS case in 2008. The countries concerned cooperated with the tripartite committees, but in the follow-up phase, the CEACR at times faced difficulties in obtaining information on the situation in practice.

Recourse to the article 24 procedure and the resulting follow-up had real effect, as in relation to one of the two countries, Slovakia, the legislation was repealed. In the case of the Czech Republic, it has expressed its intention to take the same measure. However, this has not yet taken place.

The various supervisory procedures have been consecutive and complementary in their actions, with the two tripartite committees, the CEACR and the CAS, dealing with the same subject matter within their respective mandates. While the matter had not been examined by the CEACR when the first representations were submitted, the first tripartite committee, when elaborating the requirements of Convention No. 111, drew extensively on the conclusions set out by the CEACR in its 1988 General Survey on the Convention, and incorporated the CEACR's earlier comments, either general or concerning individual countries, as well as comments of other ILO supervisory bodies. The second tripartite committee was established because the second representation was submitted against a new member State although the allegations were similar to those which had been the subject of the first representation. When the matter was referred to it, the CEACR chose to confine its examination to the implementation of the committees' recommendations. The same holds true for the examination undertaken by the CAS. In this way, there was consistency in terms of the substantive assessment of the application of the Convention, as each supervisory body built on the previous assessments. In turn, this considered approach to the matter appears to have contributed to developing the analysis by the supervisory bodies of Convention No. 111 in relation to discrimination on the basis of political opinion. The degree of consistency suggests little duplication by the various supervisory bodies in relation to the article 22 and article 24 procedures.

Case study No. 6: Protection of wages (Congo)

This case study concerns the observance by Congo of the Protection of Wages Convention, 1949 (No. 95). The matter arose in 1994 and remains, as yet, unresolved. It involves two article 24 representations considered by two tripartite committees and a follow-up by the CEACR within the framework of its examination of the Government's reports under article 22. The matter was directly brought up under the article 24 procedure.

The first of the article 24 representations was made by an international workers' organization in September 1994. It concerned the non-payment, by a multinational company which had ceased operating in the country, of wages owed to its employees. Upon declaring that the representation was receivable, the Governing Body established a tripartite committee in November 1994. Due to delays in receiving replies from the Government, the report of the tripartite committee was approved by the Governing Body in March 1996. At the same session, the Governing Body established another tripartite committee to consider a second article 24 representation submitted in October 1995 by a national workers' organization, also in relation to the application of Convention No. 95. This representation concerned the delayed payment of wages to public servants and workers of national public enterprises. There were also delays in receiving replies from the Government, and the tripartite committee's report was approved by the Governing Body in March 1997. Both tripartite committees recommended that the Government supply information on the implementation of their respective recommendations in its reports due under article 22.

The CEACR was thus entrusted with the follow-up of these recommendations, and chose to consider the two sets of recommendations together. Since then, it has been requesting the Government to supply information on the implementation of the recommendations in its regular reports as well as in early reports requested through the special notes on five occasions between 1996 and 2004. The requested reports were submitted irregularly, thus leading to the repetition of some CEACR observations. In its 2004 observation, the CEACR noted some positive developments in relation to the implementation of the tripartite committees' recommendations but these developments have yet to be confirmed, mainly due to the absence of reports between 2005 and 2007. A report has been submitted in 2008.

Following the original article 24 representations, no further comments were received from any workers' organization either concerning the implementation of the tripartite committees' recommendations or the application of the Convention in general. The representations reflected to a certain extent upon the political situation that existed at the time. The first representation led to a diplomatic crisis, as it arose from the actions of a foreign company operating in the country. The second representation highlighted the difficulties of the Government in relation to its own employees in the context of an economic restructuring funded by the International Monetary Fund.

The tripartite committees examined the representations in the absence of any previous examination by the CEACR of the issues raised. In fact, until the submission of the representations, the CEACR had not raised any particular difficulties concerning the application of the Convention. It has now been a matter of consistent attention for 12 years. The first tripartite committee recalled that its competence was limited to the application in law and in practice of the Convention and noted that the relevant provisions of the national labour legislation giving effect to the provisions of the Convention had not been subject to any comments by other supervisory bodies. Given the specific political circumstances of the first representation, it included the less usual recommendation of suggesting that the Governing Body request the Director-General to propose his good offices to the two countries concerned in order to consider how an equitable settlement might be arrived at. The second tripartite committee underlined that its role was to examine the allegations in light of the provisions of the Convention to enable the Governing Body to make appropriate recommendations as to the future application of the Convention in the country concerned. Rather than re-examining the technical issues, the CEACR has focused its attention on monitoring and reaffirming the tripartite committees' recommendations. The CEACR has used its authority to go beyond monitoring regular article 22 reports, to requesting additional reports. This is a direct response to the interaction between the article 24 and the article 22 procedures.

The interaction between the supervisory bodies has been consecutive and complementary, with a classic relay from the examination of article 24 representations by tripartite committees to a follow-up by the CEACR. The Governing Body has had a managerial-type role in the matter. It has declared the representations admissible, appointed the committees, and approved their reports.

Case study No. 7: Social security (Netherlands)

This case study concerns the observance by the Netherlands of the Equality of Treatment (Social Security) Convention, 1962 (No. 118). The matter arose in 2003 and consideration of it was completed in March 2007. It involved an article 24 representation and the consideration by the CEACR of a specific technical issue arising from it – at a preliminary stage. This approach differed from the more usual approach when the CEACR is entrusted with the follow-up of the tripartite committee's recommendations. The matter was brought up directly under the article 24 procedure.

A Turkish workers' organization made a representation under article 24 in June 2003, alleging that the Government had not complied with the provisions of the Convention due to the termination of the payment of a supplementary benefit established under the national legislation, to receivers of the Netherlands permanent disability benefit residing in Turkey. The representation was based on a decision rendered in March 2003 by the highest Netherlands court in social security matters, under which the Government was found to be in breach of the Convention. In May 2003, the Government communicated to the Office a statement concerning the scope of its obligations under the Convention in relation to the supplementary benefit (the payment of which was questioned in the representation). The Government was informed that the statement would be submitted to the CEACR for examination at its November–December 2003 session.

The Governing Body considered the representation in November 2003. However, noting that the CEACR was due to examine the legal implications of the Government's statement, the Governing Body decided to defer its decision to establish a tripartite committee until its March 2004 session, in order to have at its disposal the CEACR's technical analysis.

In November 2003, the CEACR considered the Government's statement which it deemed to be valid. To analyse the exact nature of the supplementary benefit, it requested the Government to provide a complete set of the applicable legislation through a detailed report for 2004. The CEACR also took note of the submission of the representation. In March 2004, the Governing Body established a tripartite committee to examine the representation. At its November–December 2004 session, the CEACR noted the Government's detailed report. It invited the Government to respond to comments submitted by national workers' organizations replying to the Government's statement and the consultation procedure regarding its intention to denounce the Convention. At the same time, noting the establishment of the tripartite committee, the CEACR decided to suspend its examination of the application of the Convention while awaiting the outcome of the article 24 procedure.

In December 2004, the Government deposited an instrument of denunciation in relation to the Convention, which took effect in December 2005. Nevertheless, the tripartite committee continued its consideration of the representation, limiting its examination to the period prior to the denunciation taking effect which it determined it still had competence to consider. The tripartite committee's report was considered by the Governing Body in March 2007, three years after the Committee had been established. On the basis of its examination of the social security legislation provided by the Government with its detailed report and of the social security system in general, the Committee concluded that the Government was not in breach of the Convention as the supplementary

benefit – the payment of which had been terminated – fell outside the scope of application of the Convention.

This case study illustrates a less usual interaction between the supervisory procedures, in that the Governing Body did not automatically refer the representation found to be receivable to a tripartite committee, in order to benefit first from the CEACR's technical assessment of a particular issue. It is an example of the way in which the Governing Body may use its discretion in relation to representations in sculpting its response in accordance with the needs of the matter. The technical difficulties in assessing the validity of a Government's statement involved expertise that the CEACR had, and which the Governing Body took advantage of, by postponing the establishment of a tripartite committee. The validation of the Government's statement by the CEACR gave the necessary legal basis to the tripartite committee's examination. Further, the information obtained through the report under article 22 submitted in 2004, provided the Committee with all the elements for a proper consideration of the representation. In this way, it can be said that the examinations of the two supervisory bodies complemented one another.