

Manual for drafting ILO instruments

The Quick Guide



International
Labour
Office

Office of the
Legal Adviser



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The Quick Guide

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Welcome to the Quick Guide

Everyone involved in the drafting of instruments of the International Labour Organization (ILO) can contribute to the development of a coherent body of clearly written international labour standards (ILO Conventions and Recommendations).

This Quick Guide to the *Manual for drafting ILO instruments* (ILO, 2006)¹ aims to assist delegates and advisers in technical committees of the International Labour Conference that examine draft instruments. This Quick Guide supplements the full Manual.

Questions or comments? Please consult the full Manual or contact the Office of the Legal Adviser of the International Labour Office:

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This Quick Guide is also available at: <http://www.ilo.org/public/english/bureau/leg/manual.htm>.

1 The *Manual for drafting ILO instruments* (ILO, Geneva, 2006) may be purchased in hard copy and in an interactive format on CD-ROM. It is available at <http://www.ilo.org/public/english/bureau/leg/manual.htm>. The Manual was based on the outcome of a tripartite meeting of experts held in 2005.

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Glossary and abbreviations

Appendices	Manual for drafting ILO instruments, Appendices	MA
Conference	International Labour Conference	
Constituents of the ILO	Governments, employers and workers	
Constitution	Constitution of the International Labour Organisation (ILO)	
Convention	International labour Convention	
Instrument	International labour Convention or Recommendation	
Manual	Manual for drafting ILO instruments (full version)	M
Office	International Labour Office	
Recommendation	International labour Recommendation	
Standing Orders	Standing Orders of the International Labour Conference	SO
Tripartism	Principle of dialogue and cooperation among governments, employers and workers	

Symbols used



Important point



Care needed



Don't



Tip



Introduction

I. Introduction

The development of ILO instruments is the result of participation of many actors who are not necessarily familiar with ILO drafting practices. This Quick Guide is intended as a short reference work for those involved in developing such instruments and in particular for government, employer and worker delegates to the International Labour Conference and their advisers serving on technical committees for standard-setting.

This Quick Guide presents some basic drafting rules applicable specifically to ILO instruments. The rules have been developed over the years with the adoption of nearly 400 standard-setting instruments of the ILO (Conventions and Recommendations). It is advisable to take the rules into account when drafting amendments to proposed texts under consideration in Conference committees.

The focus of this Guide is on the standard-setting instruments of the ILO. The guidance given relates to both Conventions and Recommendations, unless otherwise indicated. However, it may also be helpful reference for other purposes, such as in drafting declarations, resolutions and codes of practice.

This Quick Guide covers the main points in the detailed *Manual for drafting ILO instruments* (2006),² which sets out many ILO drafting practices. The Manual shows how problems have been resolved in the past and offers guidance when innovation is needed.

The Manual explains the wording used in existing instruments (initially in the two authentic languages for the drafting of ILO standards – English and French). It shows the most frequently used terms and expressions and specifies their meaning and scope. Parallel drafting in English and French helps prevent ambiguities and improves the text, since it avoids formulations appropriate to only one language or particular legal tradition.

At the same time, a new instrument should also take into account the usage in previous texts in order to ensure coherence in ILO instruments.



The references to the Manual (M) and its Appendices (MA) in this Guide seek to facilitate the search for further information on a particular topic in the Manual.

2 The *Manual for drafting ILO instruments* (ILO, Geneva, 2006) may be purchased in hard copy and in an interactive format on CD-ROM. It is available at <http://www.ilo.org/public/english/bureau/leg/manual.htm>.

Table 1. The three main organs of the ILO

Each of the three main organs of the ILO has a specific function in the preparation, elaboration and adoption of ILO instruments. These functions are defined in the ILO Constitution and the Standing Orders of the International Labour Conference.

International Labour Conference

The general assembly of the ILO member States. The Conference sets ILO's broad policies, adopts and revises Conventions and Recommendations and approves the ILO's work programme and budget. Each member State is represented by a delegation consisting of two government delegates, one employer delegate, one worker delegate, and their respective advisers.



Governing Body

The executive body of the International Labour Office which meets normally three times a year. The Governing Body takes decisions on ILO policy, sets the agenda of the Conference, elects the Director-General and generally supervises the activities of the Office. It consists of 56 persons (28 representing governments, 14 representing the employers, and 14 representing the workers) plus deputy members.



International Labour Office

The permanent secretariat of the ILO, led by the Director-General, with headquarters in Geneva, Switzerland, and decentralized regional, subregional and area offices in more than 40 countries.

1. International labour standards

[For further detail, see MA 1]

International labour standards set out basic principles and rights governing the world of work. They take the form of **Conventions** and **Recommendations** which are drawn up by delegates (representing governments, employers and workers) to the International Labour Conference. These standard-setting instruments are adopted by a two-thirds majority of the votes cast at the Conference.

Table 2. Summary description of ILO standard-setting instruments

Standard-setting instruments	Description
Conventions	In the ILO context, Conventions create legal obligations under the ILO Constitution upon entry into force, and are subject to ratification by individual ILO member States. A Convention not ratified by a Member has the legal effects akin to a Recommendation for that Member.
Protocols	A Protocol is linked to a Convention which it may either partially revise or supplement. Under the ILO framework, a Protocol constitutes a Convention and is independently subject to the rules governing Conventions.
Recommendations	Recommendations give guidance and are not subject to ratification by ILO member States. Most Recommendations are linked to Conventions, whose content they supplement, or they may be autonomous. While the content of Recommendations is not binding, they create reporting obligations for member States.

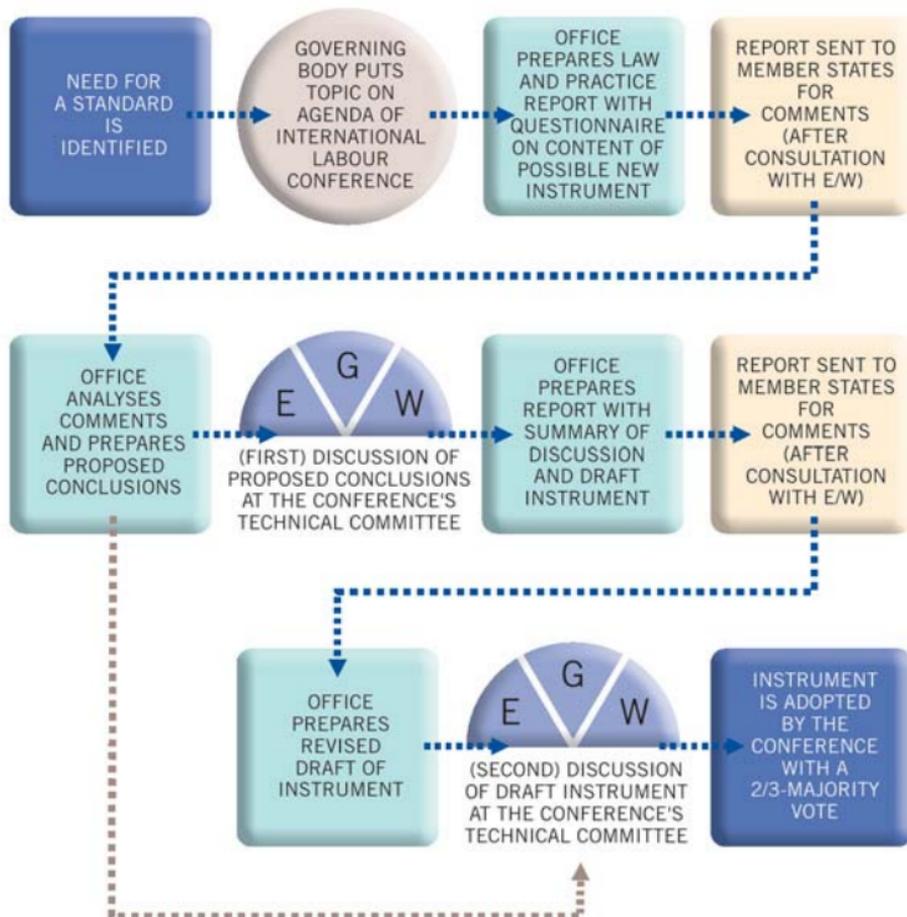
2. How an international labour standard is created

Once an issue which requires standard-setting by the ILO has been identified, the process of producing a Convention and/or a Recommendation starts, as illustrated in tables 3 and 4 below.³

First, the Governing Body discusses proposals for the Conference agenda in the form of background reports. It decides to include an item with a view to standard-setting on the agenda of the Conference. In most cases, the consideration of a proposed instrument is spread over two sessions of the Conference. This “double discussion procedure” gives Conference participants sufficient time to examine the draft instrument and comment on it. In special circumstances the Governing Body may decide that an instrument can be examined at a single session of the Conference (“single discussion procedure”).

3 For further information see ILO: *Handbook of procedures relating to international labour Conventions and Recommendations* (ILO, Geneva, rev. 2006), pp. 2-4, available at: <http://www.ilo.org/public/english/standards/norm/download/resources/handbook2006.pdf>.

Table 3. Single and double discussion procedures/ Adoption of international labour standards



G: Governments – E: Employers – W: Workers

Table 4. The path to an international labour standard

Once the Governing Body has decided to include an item on the agenda of the Conference:

A. The preparatory stage

1. The International Labour Office holds **consultations** with Governments and through them with the most representative employers' and workers' organizations (SO, arts. 38-39).
2. The Office prepares a **report** that analyses the laws and practices of member States on the question. The report, together with a **questionnaire**, is circulated to member States for their replies (to be done after consultation with the employers' and workers' organizations) on the form and content of a possible new instrument.
3. On the basis of these replies, the Office prepares either a set of **proposed conclusions** (first stage of a double discussion) or a **draft instrument** (single discussion) for submission to the Conference.

B. At the International Labour Conference: Consideration of the texts

4. The Conference normally sets up a **committee** to examine the reports and proposed text(s) (SO, art. 40).
5. The Conference committee **considers the proposed texts** prepared by the International Labour Office and written amendments to the proposed texts submitted in the committee by its members (SO, arts. 63-67). Amendments may be sub-amended orally during the discussion.
6. The committee **adopts** a final draft text and a report of its deliberations.

Double discussion

7. In the case of a double discussion, the first discussion ends with the adoption of "proposed conclusions with a view to a Convention" (or Recommendation), which sketches out the content of a possible instrument.

Single discussion

7. The committee adopts the final draft of the proposed instrument.

8. Following adoption by the Conference of the conclusions, the International Labour Office prepares a draft text and circulates it to member States for comment (to be prepared after consultation with the employers' and workers' organizations).

On the basis of those comments, the Office prepares a revised draft, and submits the draft and comments to the Conference the following year for a second discussion. The Conference committee considers the proposed texts prepared by the Office on the basis of the replies and examines written amendments to the proposed texts submitted by its members (SO, arts. 63-67). Again, these may be sub-amended orally during the discussion.

Single and double discussion

9. Draft conclusions or a draft instrument(s) are submitted to the **committee's drafting committee** (SO, art. 59: comprising tripartite members designated by the technical committee and the Legal Adviser to the Conference). The drafting committee prepares the English and French texts, which are equally authoritative, solves drafting problems raised by the committee and ensures that both texts are legally and linguistically coherent. The drafting committee informs the technical committee of any legal or drafting problems encountered and the solutions proposed to overcome them. The committee then adopts the proposed conclusions or the draft instrument(s) and submits them along with its report to the Conference.
10. Once the Plenary of the Conference has adopted the report of the committee, the final draft instrument is submitted to the **Conference Drafting Committee** (SO, art. 6: comprising three persons plus the members of the relevant committee drafting committee). The Conference Drafting Committee prepares the definitive texts, which are then submitted to the Conference for adoption.
11. The Conference **votes** on the texts presented by the Conference Drafting Committee (SO, art. 40). A two-thirds majority of the votes cast is needed to adopt a Convention or a Recommendation.



Structure of international labour Conventions and Recommendations

II. Structure of international labour Conventions and Recommendations

This section explains the structural elements of Conventions and Recommendations and the names of their sections.

Table 5. Structural elements of international labour standards

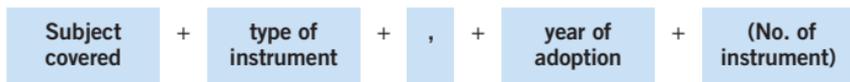
CONVENTION	RECOMMENDATION
Title	Title
Preamble	Preamble
(Operative provisions) <ul style="list-style-type: none"> • Part I Scope and definitions • Part II Rights and obligations • Part III Means and methods of implementation and supervision 	(Operative provisions) <ul style="list-style-type: none"> • Part I Scope and definitions • Part II Rights and obligations
<ul style="list-style-type: none"> • Part IV Final provisions 	
Annexes (if used)	Annexes (if used)

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1. Title

[For further detail, see M, paras. 2-9]

The basic formula for the title is:



e.g. **Indigenous and Tribal Peoples Convention, 1989 (No. 169)**.

This is known as the **“short title”**.

If the instrument has a sectoral focus, the sector should be included in the title in parentheses after the subject, e.g. **“Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152)”**.

If a Convention revises an existing text, it should use the wording of the original text and add simply **“(Revised)”**, e.g. **“Social Security (Seafarers) Convention (Revised), 1987 (No. 165)”**.



The term **“revised”** should **not** be used in the title of a Recommendation (see sections II.2.(c) and (d) below).

The number of the instrument is added following adoption, and thereafter is included in the short title.

2. Preamble

[For further detail, see M, paras. 10-36]

The Preamble clarifies the context and circumstances in which the instrument has been negotiated and adopted. It should be **concise**.

While the preamble has no legally binding effect as such and can never take precedence over an operative provision with which it would be incompatible, the preamble is of value for interpretation of the instrument.

(a) Essential information

The following elements should be included in the preamble:

- the **context** of the instrument's adoption;
- the **reasons** for which it was adopted;
- any **gaps** in existing standards which the new instrument is intended to fill;
- the text's **relationship to existing ILO standards**;
- any relationship to instruments of **other** international organizations;
- the formal paragraphs describing the **adoption** of the instrument.

(b) References to other instruments and international organizations

[For further detail, see M, paras. 18-20, 25, 28-30, 36]

Duplication or discrepancies between different instruments should be avoided. Drafters should include, if necessary, a reference to relevant existing texts in the preamble, introduced by "Recalling", in the following order:

- provisions of the ILO Constitution;
- references to the Declaration of Philadelphia;
- references to other instruments, in reverse chronological order; such references should be limited to instruments to which the text has a **direct relation**, such as when a new text revises, supersedes or supplements a previous Convention or Recommendation, or arises from an obligation stated in another instrument. This also applies where the text is closely re-

lated to instruments of other international organizations. In such cases, the reference should be introduced by the term “Noting”.

For the sake of conciseness, the inclusion of references to other instruments should be limited to those absolutely necessary.

Collaboration with other international organizations may be mentioned in the preamble to indicate the instrument’s place within the wider context of the international system, introduced by “Noting”.

(c) Revision

[For further detail, see M, paras. 21-22, 36]

Revision is the process of amending a previously adopted instrument. Revision should be reserved for Conventions, and therefore should not be applied to Recommendations (or to Conventions superseding Recommendations).

In the case of a revising Convention, the preamble should state the effect it has on a previous Convention. The following wording is suggested:

“Having determined that these proposals shall take the form of an international Convention revising the [short title of the Convention being revised]”.

(d) In Recommendations

[For further detail, see M, paras. 31-33, 36]

The preamble of a Recommendation should specify whether it **supersedes** or **supplements** one or more previously adopted Recommendations.

If a Recommendation is adopted at the same time as a Convention on the same subject, its preamble should always indicate that it **supplements** the Convention in question. The accompanying Recommendation should not repeat the preamble of the Convention.

Example: “The provisions of this Recommendation supplement those of the Worst Forms of Child Labour Convention, 1999”.

3. Operative provisions

[For further detail, see M, paras. 37-40]

This section presents the generally followed formal structure of Conventions. As a rule, Recommendations should be arranged in the same way (except for the Parts of Conventions that deal with means and methods of implementation and final provisions, which do not apply to Recommendations).

(a) Scope and definitions

A Part specifying the instrument's subject-matter and relevant definitions should be included immediately after the preamble. Recommendations should use the same definitions of scope as the Conventions they accompany, or refer to them. Where the Convention so permits, this first Part should also contain any provisions allowing member States to specify the extent of the obligations they choose to undertake in respect of the instrument they have ratified.

(b) Rights and obligations

The section on rights and obligations is the core of the instrument. It follows the section on scope and definitions, and comes before the Part concerning implementation measures. It can be arranged in various ways, depending on the particular circumstances, and may indicate the following:

- the obligations of member States;
- the rights and duties of employers and workers and of their respective organizations;
- the obligatory or suggested content of policy or legislation to be developed, enacted and implemented by the competent authorities of member States after consultation with organizations of employers and workers.

(c) Means and methods of implementation and supervision of Conventions

Procedural provisions regarding implementation in the broader sense should be grouped together and placed immediately before the final provisions. This means placing in one separate Part all general provisions relating to **national measures for implementation and supervision**, including possible penalties,

and the obligation to conduct **prior tripartite consultation**. It might also be possible to include in a separate Part (or annexes) any provisions regarding practical means of meeting the obligations specified in the Convention.

For Recommendations, see section II.5. last paragraph below.

4. Final provisions of Conventions

[For further detail, see Manual, section, 1.4]

Final provisions concern

- the binding nature and entry into force of the Convention;
- possibilities for denunciation;
- obligations of the International Labour Office concerning the notification of all ratifications to member States and to the United Nations;
- the role of the Governing Body in monitoring application;
- the legal effects of any subsequent revising texts; and
- the equal authenticity of the English and French texts.

The Part containing final provisions is largely standardized. The standard final provisions are added by the Conference Drafting Committee when it prepares the definitive text for adoption by the Conference.

The content of final provisions may be discussed in technical committees. For example, some Conventions stipulate conditions for the entry into force of a Convention that depart from the normal requirement of two member States. In the absence of a decision on any of the final clauses by the committee, the Conference Drafting Committee will include the corresponding standard final clauses in the instrument submitted for adoption.

5. Annexes

[For further detail, see M, paras. 74-89]

Lastly, schedules and lists should always be placed together at the end of the instrument in Parts called "annexes", identified by a Roman numeral when there is more than one annex, and followed by a title identifying the content. The legal force of the annex should be made clear in the instrument itself, either by a specific provision to that effect or by the wording of the provision referring to the annex. **In the absence of such a provision, annexes have the legal effect of the instrument itself.**

Technical provisions such as lists, including lists of ILO instruments, classifications or provisions concerning periodic payments of benefits to beneficiaries should be included in annexes.

Conventions with annexes should include provisions for amending the annexes, where appropriate, to allow them to be brought up to date without the need for a new Convention or Protocol. Amended annexes should be clearly indicated as such.

In Recommendations, annexes should, in addition, be used where possible to propose means of application and model codes or agreements to facilitate giving effect to the Conventions which the Recommendations supplement.

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**Table 6. Names of sections (within Parts)
of Conventions and Recommendations**

[For further detail, see *M*, paras. 166-168]

Convention		Recommendation	
Article (article) [artículo]	The term “Article” is set out in the middle of the page with the appropriate number in Arabic figures, all in italics (e.g. <i>Article 1</i>)	<i>Paragraph</i> (paragraphe) [párrafo]	The text of the paragraph is preceded by a number in Arabic figures
Paragraph (paragraphe) [párrafo]	A division of the Article, the text of which begins with a number in Arabic figures	<i>Subparagraph</i> (sous-paragraphe) [subpárrafo]	A division of the paragraph, again preceded by a number in Arabic figures in brackets
Subparagraph (alinéa) [apartado]	A division of the paragraph, or of the Article where this is not divided into paragraphs, identified by small letters, such as (a), (b), (c), etc.	<i>Clause</i> (alinéa) [apartado]	A division of the subparagraph or of the paragraph where this is not divided into subparagraphs, identified by small letters, such as (a), (b), (c), etc.
Clause (sous-alinéa) [inciso]	A division of the subparagraph, numbered (i), (ii), (iii), etc.	<i>Sub-clause</i> (sous-alinéa) [inciso]	A division of the clause, numbered (i), (ii), (iii), etc.

Notes: The term “Arabic figures” means 1, 2, 3, etc. “Roman numeral” means I, II, etc. The major *divisions* of Conventions and Recommendations are called “Parts”. In Conventions (**not** in Recommendations) the word “Part” precedes the Roman numeral in the centre title introducing the division.



Substantive content

III. Substantive content

1. Terminology and definitions

[For further detail, see M, paras. 91-94 and MA 4 and 5]

A glossary of terms currently defined in ILO instruments is appended to the Manual (Appendix 5).

If definitions are considered necessary in an instrument, they should be placed at the beginning of the operative part in the section concerning its scope. However, if the definition concerns only one article, it should be given within that provision and expressly state that the definition applies only to that provision.



Newly coined terms should be avoided where they can be replaced by terms currently in use.



Definitions of terms should be **avoided** in cases where they:

- add nothing to the usually accepted meaning;
- obscure the usual meaning;
- are circular and thus tend to be defined with reference to the underlying terminology;
- refer to national law for the definition of a term (unless the provision requires prior consultations with organizations of workers and employers concerning the definition);
- involve an expression such as “**branches of economic activity**”, “**competent authority**” and “**national laws and regulations**”, which is frequently used in ILO instruments and already has a well-established meaning acquired through practice. Unless it is necessary to attribute to them a different scope or meaning within a particular Convention, **do not define such terms**.

Table 7. Some expressions with a well-established meaning

Expression	Established meaning
“branches of economic activity”	Means branches in which workers are employed, including the public service. Its inclusion in certain instruments might imply that instruments in which it is not included do not apply to the public service.
“competent authority”	In the context of leaving the determination of methods and means of implementation of detailed provisions to “competent authorities”, the expression should normally be left undefined, since its aim is to permit States to decide which of their authorities is competent to handle the issue at stake.
“national laws and regulations”	Covers regulations, decrees, and ordinances, as well as customary law where it has legal force. Wider than the English term “legislation” but does not cover collective agreements or judicial and arbitral decisions.

2. Clauses and terms frequently used with a commonly understood meaning

A number of clauses and terms are frequently used in ILO instruments and have gained over time a commonly understood meaning which is specified below.

(a) Implementation measures and related consultations

[For further detail, see M, paras. 96-102]

In Conventions all **application and implementation measures** can be grouped together in a single Part immediately before the final clauses (see also above section II.3.(c)).

This should cover national-level consultation and supervision of the application of the Convention. It may also include specific implementation and application measures addressing specific needs. If so, it should be clear

that the general provisions on application are supplementary to such specific provisions, using the phrase “subject to the preceding provisions” or an equivalent.

Reference can be made to **other methods** by which States may apply the Convention which are consistent with national practice, such as collective agreements, arbitration awards or court decisions. The following formula may be used: “Subject to the preceding provisions, the provisions of this Convention shall be applied by means of laws or regulations, collective agreements, arbitration awards, court decisions, a combination of these means or in such other manner appropriate to national conditions and practice”.



Particular attention should be paid to **prior consultation of employers’ and workers’ organizations** in determining methods and means of application consistent with national practice.



It may be useful to refer to an obligation to disseminate, promote and provide information about Conventions in consultation with employers’ and workers’ organizations. Those responsible for doing so and the recipients should be defined. The nature and details of educational or promotional measures mentioned could be defined in a Recommendation accompanying the Convention.

(b) Consultation measures

[For further detail, see M, paras. 103-109]

In the section on implementation measures, a clause may be included to provide a form of consultation suitable to the instrument concerned. An appropriate consultation clause should be expressly included to strengthen consultation mechanisms when they are of particular importance for the application of a given provision.

The term “organization” should normally be used for the body participating in consultations. It is also important to define clearly which organizations are to be consulted. The terms “concerned”, “representative” or “the most representative” are useful to refine the definition of the organizations to be consulted.



Consultation clauses should be carefully worded: there is a difference between one-time prior consultation (“after consultation”) and a continuing process (“in consultation”).

(c) Supervision measures

[For further detail, see M, paras. 110-115]

Provisions can be included on necessary supervision at the national level, accompanying the provisions on implementation, to ensure that the obligations arising from the instrument are met.

Like consultation measures, supervision can be covered in the Part preceding the final clauses and can include means and methods of implementation (see also above section II.3.(c)), such as labour inspection, permits, licences, certificates, legal remedies at national level and penalties.

When supervision involves permits, certificates or licences, the text should state the **minimum conditions** to be applied, while leaving some discretion to the authorities. The instruments may also stipulate the minimum mandatory content of registers and reports.

When legal remedies at national level are provided in an instrument, they could be further characterized as **expeditious, accessible** and **inexpensive**.



In all cases, the instrument should recall the importance of **consulting employers’ and workers’ organizations** in or before framing and administering an effective system of national supervision.

(d) Reasonably practicable measures

[For further detail, see M, paras. 116-120; see also section III.3 below]

Expressions such as “so far as is practicable”, “reasonably practicable”, and “reasonable and practicable” introduce a degree of flexibility in the process of implementation of a particular provision. Whenever they are used, the desired objective, consequence and justification must be considered. Such expressions are intended to facilitate implementation, since they make it possible to match the measures taken to the means available, and they establish an obligation to deploy the necessary resources or adopt the sort of conduct expected.



However, it is not easy to define or measure what is “reasonable”. The legal consequences of these expressions hence vary, and they should to the extent possible therefore be **avoided**, since the inclusion of such clauses can water down protection to a level below that intended.

Even when obligations are defined in absolute terms, some legal systems assume that implementation measures will have to be reasonable and subject to the constraints of practicality and resources. To avoid problems in this respect, Conference technical committees should indicate in their **reports** their own ideas as to how provisions in proposed texts should be interpreted. Such a paragraph is then part of the context in which the instrument will have to be interpreted, and removes any need to include such indications in the text of the instrument itself.



If it is necessary to use expressions such as “reasonably practicable”, then general formulas similar to those mentioned above should be **avoided**. Instead, provide elements that **suggest what is reasonable**. For example, in the Safety and Health in Agriculture Convention, 2001 (No. 184), the provision for employers to ensure appropriate training for workers in agriculture states that account must be taken of the level of education and differences in language.

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(e) Some common terms:

Member, Worker, Workers' representative, Employer

Member

[For further detail, see M, paras. 121-123]

“Member” means member State of the ILO.

The expression “**each Member**” in ILO instruments is intended to individualize every member State responsible for applying a given instrument.

In the case of a **Convention**, refer to “each Member which ratifies this Convention” when the expression first appears in the text, and subsequently use the shorter expression “each Member”. The expression is accordingly understood to mean each ratifying Member. Where other Members of the ILO are covered, this needs to be clearly spelt out in the instrument. This is the case, for example, in final clauses, where information concerning ratification has to be communicated to “**all Members**”, meaning all ILO member States, whether or not they have ratified the instrument in question.

Recommendations usually refer to “Members” since Recommendations are addressed to all ILO member States.

Worker

[For further detail, see M, paras. 124-127]

It has been difficult to define the word “worker” consistently in ILO instruments. Some instruments propose their own definitions and many simply do not define it. The practice at the Conference has been to give the broadest possible meaning to the term “workers”. If the subject-matter of a given instrument is not limited to employees, and the instrument does not exclude specific categories of workers, then “worker” is understood to cover all workers.

Employment, employee, employed person: where instruments refer to “employment” and “employee” or “employed person”, the intention is generally to indicate a more specific meaning. See for example, the Employment Relationship Recommendation, 2006 (No. 198).

Workers' representative

[For further detail, see M, paras. 128-130]

A number of Conventions require consultation with workers' representatives in the undertaking on specified areas and issues. Some stipulate that these representatives must be recognized as such in national law or practice, in accordance with the Workers' Representatives Convention, 1971 (No. 135).

That Convention defines “workers’ representatives” to mean persons who are recognized as such under national law or practice. This means that the term applies to both of the following:

- (a) trade union representatives namely, representatives designated or elected by trade unions or by members of such unions;
- (b) elected representatives namely, representatives who are freely elected by the workers of the undertaking in accordance with provisions of national laws or regulations or of collective agreements and whose functions do not include activities which are recognized as the exclusive prerogative of trade unions in the country concerned.

Practice is sufficiently established in this regard, and this does not need to be repeated in instruments.

Employer

[For further detail, see M, paras. 131-132]

The term “employer” is generally used in ILO instruments in its ordinary meaning. The Manual gives details of cases where it has been thought necessary to define the term more closely to specify those required to assume the obligations of the employer under the instruments concerned.

3. Options available to Members concerning the scope and means of application of obligations in Conventions

A range of flexibility measures makes it possible to maintain the universality of developed standards taking into account differences in national conditions. These measures provide exceptions to the established rule and, each time they are used, it is necessary to bear in mind why they are needed and for what purpose they are used. In this regard, the scope of application of such measures, in particular if they affect the instrument’s substantive provisions, must be understood.

Flexibility measures may concern:

- (i) ratification, where they influence the scope of application of the instrument;
- (ii) substantive provisions, where they afford in particular the possibility of choosing between options concerning the level of protection afforded by the instrument;
- (iii) means of application.

(a) Flexibility measures to facilitate ratification

[For further detail, see M, paras. 135-145, 163]

Flexibility measures linked to ratification may permit the adjustment of the scope of application of a Convention with regard to a number of parameters: persons, branches of activity, enterprises or occupational categories covered.

Where a Convention permits the **exclusion or inclusion of certain categories in a declaration made at the time of ratification**, the Convention should provide for the obligation to inform other Members.

The **obligation of Members to make a new declaration** each time the initial declaration accompanying the ratification is modified or annulled should also be provided.



When the Convention allows a member State to **choose between options relating to the scope** of the obligations it is undertaking, **prior consultation of employers' and workers' organizations** should be considered.

(b) Flexibility measures concerning substantive provisions

[For further detail, see M, paras. 146-154, 163]

Where flexibility measures affect **substantive provisions**, they should be worded so as to emphasize that they are **exceptional** measures, and that it is for the member State using them to demonstrate their necessity. The term “unless” should hence be used to introduce a flexibility measure where necessary to emphasize that is an exception.



In describing flexibility measures, avoid wording that allows subjective appreciation, such as “by a great majority” or “an unduly high percentage.”



Use of the expression “according to national legislation” or any similar expression should be avoided as much as possible when it refers to the substance of a provision rather than to its implementation. If it is nevertheless desired to include it in a Convention, certain **conditions** should accompany it, such as references to **prior consultation** with organizations of employers and workers, or respect for applicable international standards in national laws and regulations.

(c) Flexibility measures concerning choice of means of application

[For further detail, see M, paras. 155-158, 163]



Where a Convention sets objectives to be achieved **over time**, the obligation of a member State to establish a **time-frame** for their realization should be provided wherever possible. Similarly, where a Convention provides for **application in stages**, it is advisable to stipulate that the member State should establish a **time-frame** for such application.

(d) Safeguard measures

[For further detail, see M, paras. 159-162, 163(j)]

As for **safeguard measures**, preference should be given to the dual obligation of a Member to:

- make a declaration at the time of ratification which specifies the scope of the derogation desired;
- indicate in subsequent periodic reports on ratified Conventions (under article 22 of the ILO Constitution) the measures taken with a view to extending the instrument to the categories initially excluded.

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The full **Manual** includes special appendices on the following:

- Exclusion, exception, inclusion (Appendix 6)
- Terms such as adequate, appropriate, suitable, proper, relevant, consistent, convenient, (in)compatible, satisfactory (Appendix 7)
- Reasonable, practicable, possible, reasonably practicable (Appendix 8)
- Application by stages (Appendix 9).

IV

Drafting rules

IV. Drafting rules

In this part the Quick Guide explains why certain ways of describing things in ILO instruments are better than others – because of the requirements of clarity, the need for consistency between different language versions and with existing standards, and in order to apply to the widest possible range of contexts.

The following considerations apply specifically to the language of ILO instruments and are based on ILO practice.

1. Style and usage

The two principles of “be simple” and “be concise” should be respected. This means, for example, to prefer verbs to nouns, and concrete nouns to abstractions.

(a) Verbal forms and nouns

[For further detail, see M, paras. 215-218]

Simple constructions are always preferable to unnecessarily complicated one.

Verbal constructions are preferred to abstract nouns and to impersonal constructions because they are more precise, direct and clear.

Table 8. Verb usage: definition, obligation, guidance, discretion

[For further detail, see M, paras. 202-206]

For definitions, obligations, guidance and when the aim is to leave certain matters to the discretion of those concerned, four main verbal forms are used:

Definition

The present **indicative** for definitions, scope, and setting out the undertakings of ratifying States; e.g. "This Convention **applies** to all women workers...."

Obligation

The word "**shall**" is used for obligations set out in a Convention; e.g. "Each Member **shall** describe the measures taken..."

Guidance

In **Recommendations** the operative word "**should**" is used instead of "shall", e.g. "Members **should** identify human resources development, education, training and lifelong learning policies which ..."

Discretion

The word "**may**" is used where the aim is to allow discretion; e.g. "However, each Member which ratifies this Convention **may**, after consulting the representative organizations of employers and workers concerned, exclude wholly or partly from the scope of the Convention limited categories of workers when its application to them would raise special problems of a substantial nature."

(b) Active and passive *[For further detail, see M, paras. 209-210, 212-213]*

Active voice should be used wherever possible, except where it is difficult to specify the subject or where gender considerations require neutral phraseology. (For the use of gender-inclusive language, see section IV.3. below.)

(c) Pronouns

[For further detail, see M, paras. 219-221, 224-225]



Impersonal pronouns such as “anyone” and “whoever” should be avoided, unless they permit the avoidance of a gender-specific term. The words “the latter” should also be avoided, since this frequently results in ambiguity.

If a pronoun can refer to more than one person or entity in a sentence, avoid ambiguity by repeating the name of the person/entity in question.

(d) Singular and plural *[For further detail, see M, paras. 207-208]*

Use the **singular**, except where the **plural** form may be useful to ensure more gender-inclusive language (see also section IV.3. below).

2. References

[For further detail, see M, paras. 169-174; see also sections II.1 and II.2(b) and table 6 above]



Use references sparingly. Avoid heavy and complicated cross-references as well as **cumbersome phrases** (e.g. use “above” instead of “above-mentioned”).

References to **other Conventions or Recommendations** should use their **short titles** as they appear in their own preambles, including their number.

3. Gender-inclusive language

[For further detail, see *M*, paras. 254-266]

In international labour standards it is essential to avoid any suggestion that the text does not apply to both men **and** women, unless it is so intended. Drafters should consider ways of giving concrete expression to the principle of gender-inclusive language as follows:

In general:

- avoid assumptions that the reader will accept a male-specific text as inclusive of all workers and employers;
- use plurals, repeat the subject, or introduce a general noun to avoid using “he” (e.g. not “the worker ... he” but “workers ... they”, or not “the worker ... his rights” but “the worker ... that person’s rights”);
- use constructions that avoid gender-biased terms (e.g. not “men and their wives” but “spouses”);
- do not use parentheses, slashes, hyphens or square brackets when introducing feminine and masculine forms (e.g. “she or he” rather than “he/she” or “(s)he”);
- restructure sentences whenever necessary (to avoid for instance unnecessary references to “his”, “him”, etc.).



When referring to persons of unspecified sex who could be either men or women, avoid

- terms which, although apparently covering both sexes, may appear to be insufficiently inclusive of women – again, the plural is a useful solution to this;
- formulas that reflect a stereotyped idea of gender roles;
- titles and common nouns including or ending in “man” (e.g. use “seafarer” rather than “seaman”; “chairperson” rather than “chairman”; “work-hours” rather than “man-hours”).

Drafters should avoid words such as “man”, “men”, “mankind”, “businessman/woman”. Try to replace them by words like “person”, “human being”, “people”, “community”, “society”, “humanity”, “humankind”, “entrepreneur”, etc.

4. Special problems

(a) Positive and negative

[For further detail, see M, paras. 211, 214]

A legislative provision should be written in the **positive** form because it is usually more direct and therefore easier to understand, and is less prone to ambiguity.

However, the negative can be used whenever the intent behind a legislative provision requires it –

- to indicate **prohibitions**, which can be expressed using phrases like “may not” or “shall not”, e.g., “**During the periods referred to in paragraph 1 of this Article ... a woman worker shall not be dismissed**”. In such cases drafters should take care to **avoid double or multiple negatives**;
- when specifying exclusions from the scope of the instrument. “For the purpose of this Convention the term agriculture does not cover ...”

Where there is more than one object of a **negative** verb, the link is “or”, **not** “and”, unless the two objects are indivisible or would sound unusual with or. For example: “**the Committee would not accept any reduction or increase (both are excluded) in the ILO Programme and Budget (indivisible concept).**”

(b) “And/or”

[For further detail, see M, paras. 229-238]

Use of the term “**and/or**” should always **be avoided**, since it leads to ambiguity, especially with negative constructions and statements. Therefore use “**and**” when all the conditions given must be met; use “**or**” in cases where the provision indicates that only one or some of the conditions must be met.

(c) Qualifying term: only

[For further detail, see M, paras. 222-223]

In order to avoid ambiguity, care is needed in placing “only” to restrict meaning. Place it as close as possible to the word or phrase that it qualifies.

Selected references and information resources

Basic documents

- *Constitution of the International Labour Organisation*, available at: <http://www.ilo.org/public/english/about/iloconst.htm>.
- *Standing Orders of the International Labour Conference*, available at: <http://www.ilo.org/public/english/standards/relm/ilc/ilc-so.htm>.
- *ILOLEX*: A trilingual database containing ILO Conventions and Recommendations, ratification information, General Reports of the Committee of Experts on the Application of Conventions and Recommendations (1987) and of the Conference Committee on the Application of Conventions and Recommendations (1987), Cases and Decisions of the Committee on Freedom of Association, representations, complaints, unofficial interpretations, General Surveys (1985), and numerous related documents, available at: <http://ilolex.ilo.ch:1567/english/index.htm>.

Guides and handbooks

- *Manual for drafting ILO instruments*. ILO, Office of the Legal Adviser (Geneva, 2006), available at: <http://www.ilo.org/public/english/bureau/leg/manual.htm>.
- *Labour legislation guidelines*, available at: <http://www.ilo.org/public/english/dialogue/ifpdial/llg/main.htm>.
- *Handbook of procedures relating to international labour Conventions and Recommendations*. ILO, International Labour Standards Department (Geneva, rev. 2006), available at: <http://www.ilo.org/public/english/standards/norm/download/resources/handbook2006.pdf>.
- *Rules of the Game: A brief introduction to International Labour Standards*. ILO, International Labour Standards Department (Geneva, 2005), available at: <http://www.ilo.org/public/english/standards/norm/download/resources/rulesofthegame.pdf>.
- *International Labour Conference. Handbook for delegates. The Standing Orders at a glance*. ILO.

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- *The ILO at a glance*. ILO (Geneva, 2006), available at: <http://www.ilo.org/public/english/download/glance.pdf>.
- *The ILO: What it is. What it does*. ILO (Geneva, 2004), available at: http://www.ilo.org/public/english/bureau/inf/download/brochure/pdf/broch_0904.pdf.

