



TENTH ITEM ON THE AGENDA

**Reports of the Committee on Legal
Issues and International Labour
Standards**

First report: Legal issues

Contents

	<i>Page</i>
I. Possible improvements in the ILO's standards-related activities – Articles 19, 24 and 26 of the Constitution	1
II. Practices for the preparation of international labour Conventions.....	6
(a) Code of good drafting practices.....	6
(b) Questionnaire – Articles 38 and 39 of the Standing Orders of the International Labour Conference	7
III. Standing Orders of the Conference: Practical arrangements for the discussion, at the 92nd Session (June 2004) of the International Labour Conference, of the Global Report prepared under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work.....	9
IV. The role of the Credentials Committee	11

1. The Committee on Legal Issues and International Labour Standards (LILS Committee) met on 11 November 2003. It elected the following Officers:

Chairperson: Mr. G. Corres (Government, Argentina)

Employer Vice-Chairperson: Mr. B. Boisson

Worker Vice-Chairperson: Mr. U. Edström

I. Possible improvements in the ILO's standards-related activities – Articles 19, 24 and 26 of the Constitution

2. The Committee had before it a document¹ containing a number of proposals regarding possible improvements to the procedures for the examination and implementation of non-ratified instruments adopted by the Conference (article 19 of the Constitution) and to the application of ratified Conventions (articles 24 and 26).
3. The Legal Adviser recalled that, in view of the difficulties of implementing amendments to the Constitution, it was preferable to give more consideration to changing practices, which was the field of the Conference and the Governing Body, provided that all the ILO bodies concerned by the proposals were fully consulted and the widest possible consensus was obtained in support of any such changes.
4. The members of the Committee agreed that constitutional amendments were hard to envisage. The Employer and Worker members said that in their view, improving the ILO's standards-related activities could only mean strengthening the system, rather than weakening it. The representative of the Government of Nigeria, speaking on behalf of the Africa group, agreed, and added that it was nevertheless necessary to take into account the differing levels of development of member States. The Employer members considered that the document touched on issues that went to the heart of the ILO's activities, and initiatives to improve procedures should take into account the views of all the constituents.
5. The representative of the Government of the United States, speaking on behalf of the industrialized market economy countries (IMEC), recalled that the Office document was part of a general process of reform that had begun in 1994 with the aim of enhancing the effectiveness, transparency, visibility and consistency of the ILO's standards-related activities without reducing the protection given to workers. It would be desirable to have a document for a forthcoming session of the Governing Body that would catalogue, in a succinct and user-friendly manner, the measures adopted and the improvements introduced in the course of this process. The Employer and Worker members supported this request. The Employer said that this should not stop the process of reflection on possible improvements to the ILO's standards-related activities, but should rather provide guidance to facilitate the follow-up on decisions and proposals that had emerged from the process. In that regard, they stressed that the document should also clearly indicate which topics had not yet been reviewed. The Worker members requested that this should not lead to the reopening of closed debates.

¹ GB.288/LILS/1.

6. The representative of the Government of India, speaking on behalf of the Asia and Pacific group, also recalled the wider context of the current discussion. The reporting system needed to be made less burdensome overall, in order not to penalize countries that had ratified a large number of Conventions.

Procedures relating to standards adopted by the Conference (article 19)

Submission to the competent authorities

7. The Worker members considered that the obligation of submission to the competent authorities constituted one of the fundamental features of the ILO. Although ratification of Conventions was not obligatory, submission to the competent authorities could be regarded as a first step towards ratification, and took advantage of a favourable momentum towards ratification while the officials involved were still familiar with the matter; it was more difficult to reopen the question after a number of years. In the view of the Workers, a simple report sent to national parliaments was not sufficient to fulfil the obligation of submission if it was not accompanied by specific proposals. The national tripartite committees had a role to play in the submission to the competent authorities in accordance with the provisions of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144). The Committee of Experts on the Application of Conventions and Recommendations monitored compliance with the obligation of submission. The Office should, nevertheless, intervene with governments to remind them of this obligation, and provide technical assistance where appropriate. The Worker members, supported by the representative of the Government of India, speaking on behalf of the Asia and Pacific Government group, endorsed the proposals contained in paragraph 12 of the Office document.
8. The Employer members also supported the proposals in paragraph 12 of the document. They recalled that there was a discrepancy between the mostly active participation of governments in the process leading to the adoption of a Convention, on the one hand, and their behaviour as regards subsequent ratification of the instrument, on the other hand. Ways should be sought to promote a more consistent attitude by governments in this respect. One possible way would be to strengthen the obligations derived from article 19 of the Constitution and to request governments that voted in favour of the adoption of a Convention but did not ratify it to state their reasons, e.g. two years after its adoption. That could introduce greater realism in the Conference debates. The Office was asked to explore possible ways to achieve this.
9. The Worker members objected that such a requirement might limit the support of certain Members for the adoption of a given Convention. Delegates to the Conference were not always able to rule out the possibility of legal or practical obstacles to ratification arising in their countries. Moreover a Member might wish to support a text that did not apply to its own territory by voting in favour of a Convention relevant to other countries.
10. The representative of the Government of Ecuador, speaking on behalf of the Group of Latin American and Caribbean States (GRULAC), considered that the relevant provisions of article 19 should be applied more rationally in order to ensure more effective promotion and visibility of standards adopted by the Conference. The representative of the Government of France agreed. The representative of the Government of Ecuador suggested that the Committee of Experts might, in view of its mandate in that area, indicate possible means of ensuring that the obligation of submission was met.

11. The representative of the Government of the United States, speaking on behalf of the industrialized market economy countries (IMEC), questioned the need to discuss the issue of submission to the competent authorities. The representative of the Government of Ethiopia considered that the proposals contained in the document would place too heavy a burden on the developing countries. The representative of the Government of France drew attention to the difficulty of carrying out the impact study in relation to ratification of a Convention and of involving the social partners within the required periods, in accordance with Convention No. 144.
12. The representative of the Government of Germany described the difficulties faced by his Government in the past in adhering to the deadlines for submission set out in article 19, owing to the necessity of involving the social partners, the constituent states in a federal State, and in some cases, European institutions. These difficulties had been overcome with the aid of a new procedure under which Parliament was first informed of the instrument, followed only later, following the necessary consultations, by a specific proposal. He did not support the proposal in paragraph 12 of the document that the Office should target the promotion of submission at the national parliaments, which in his view would be going beyond the obligations set out in article 19.
13. The representative of the Government of the Russian Federation observed that adhering to the deadlines for submission of an instrument presupposed that the official text would quickly be made available in the language of the country concerned. He also considered that the proposal in paragraph 12, to target promotion of submission at the national parliaments, needed to be clarified, given that such an initiative would be useful only once the instrument had been received by the parliament. The representative of the Government of the Islamic Republic of Iran considered that the proposal in question might even amount to a violation of the principle of non-interference in the internal affairs of States. The representative of the Government of France considered that promotional activities targeted at national parliaments might be possible through the existing links between the ILO and the Inter-Parliamentary Union.
14. Replying to the concerns expressed by speakers, the Legal Adviser clarified the proposal set out in paragraph 12. The reference to targeting promotion of submission “at those competent authorities themselves” did not imply that the Office was proposing to undertake such promotion directly to national parliaments, but rather to make use of agreements with the Inter-Parliamentary Union and the Latin American Parliament (PARLATINO) to draw attention to the general obligation of submission under the terms of the ILO Constitution and to the importance of submission in the ILO’s standards system.
15. Lastly, all members who had spoken on the subject had been in favour of revising the 1958 *Memorandum*. The representative of the Government of Brazil hoped that the role of governments would be clarified.

Reports requested by the Governing Body

16. The Worker members emphasized the importance of the general surveys, and considered that the Office should provide technical assistance in this area. The view was endorsed by the representative of the Government of India, speaking on behalf of the Asia and Pacific Government group, who also emphasized the importance of article 19 in terms of promotion by, for example, allowing obstacles to ratification to be identified.
17. The representative of the Government of Nigeria, speaking on behalf of the Africa group, and the representatives of the Governments of Italy and South Africa, acknowledged the flexibility of article 19 with regard to the use of reports requested, it being understood that

it was for the Governing Body in each particular case to indicate the type of information it was seeking. The representative of the Libyan Arab Jamahiriya, nevertheless, requested that replies to reports should not be used for inappropriate purposes. With the support of the representative of the Government of Brazil, he considered that the form of the reports and report forms could be improved.

Procedures relating to ratified Conventions – Representation procedure (articles 24, 25 and 26, paragraph 4)

18. In reply to a question raised by several members on the relationship between the representation procedure and article 26 of the Constitution, the Legal Adviser recalled that one of the possible outcomes of the representation procedure, in cases where the Governing Body was not satisfied with the reply of the Government concerned, was that the Governing Body could launch the complaints procedure of its own motion, in accordance with article 26, paragraph 4.

Procedural transparency

19. The Worker members and the representative of the Government of Germany considered that if, in fact, the number of representations was increasing (no figures had been provided), the trend should not necessarily be viewed negatively, given the increasing number of Members of the Organization, the number of ratifications and improved knowledge of the procedures.
20. The representative of the Government of India, on behalf of the Asia and Pacific group, and the representative of the Government of Nigeria, on behalf of the Africa group, wished for greater transparency and fairness in the procedures in question. The representative of the Government of Ecuador, on behalf of GRULAC, supported the request, but wanted the reports of tripartite committees to remain confidential, which would not prevent greater transparency as to how they functioned. The Officers might present a further document on the matter.

Conditions of receivability

21. With regard to the condition that a representation must come from an industrial association, the Employer and Worker members and the representative of the Government of Italy expressed the wish that the definition of “industrial association” used for this procedure be as clear as that applied by the Committee on Freedom of Association. The representative of the Government of Ethiopia and the representative of the Government of Ecuador, on behalf of GRULAC, also expressed a wish for a clear definition. The latter pointed out that the Governing Body might develop criteria that were different from those applied by the Committee on Freedom of Association.
22. With regard to the body authorized to make decisions regarding the application of conditions of receivability, the Employer members expressed the wish that such a decision be left entirely to the Officers of the Governing Body, unless they disagreed among themselves, in which case the decision would pass to the Governing Body. For the Worker members, the decision as to whether an organization was an industrial association could be taken by the Officers of the Governing Body, but the questions concerning the point on which the representation was made were a matter for the Governing Body itself. The representative of the Government of Ecuador, speaking on behalf of GRULAC, suggested exploring the possibility of setting up a permanent tripartite committee charged exclusively

with examining the receivability of representations. The Employer members noted the suggestion with interest and requested that the Office examine the question. The Worker members considered that such a committee would serve no purpose, and that the examination of whether or not a representation was receivable should be left to the Officers, as there was no doubt that they were a tripartite body.

23. The representative of the Government of the Libyan Arab Jamahiriya considered that certain representations should not be considered receivable unless domestic means of redress had previously been sought before the competent authorities of the countries in question. However, the introduction of such a condition would require amendments to article 24 of the Constitution, which did not stipulate that all domestic means of redress had to have been exhausted.

Repetitive nature

24. The representative of the Government of Ecuador, speaking on behalf of GRULAC, said that the principle of *res judicata* was not applicable in the context of the representation procedure, since the supervisory bodies, which are based on the principle of tripartite dialogue, cannot make legal pronouncements.
25. Many speakers, including the Employer members, considered that the Governing Body should not have to deal with representations of a repetitive nature. The Workers regretted that no figures had been provided as to the number of representations that could be considered repetitive. They wondered whether repetitive representations were not sometimes the only way to draw attention to continued violations of Conventions and to insufficient follow-up of Governing Body decisions.
26. The speakers, including the Employers, generally approved the second solution proposed in paragraph 29 of the Office document, namely the possibility of postponing the examination of representations pending receipt of the report of the Committee of Experts. The Worker members accepted the proposal on condition that they could be assured that the Committee of Experts would examine substantive aspects of cases.

Prescription

27. The Employer members and the representative of the Government of Italy shared the view that the principle adopted by the Committee on Freedom of Association was a sound one, being based on the fact that it could be very difficult, even impossible, for a government to give detailed replies regarding events dating back far into the past. The Governing Body therefore needed to consider developing a similar principle that would apply to representations.

Follow-up to Governing Body decisions

28. Several speakers underlined the importance of technical assistance provided by the Office in helping governments to comply with the decisions of the Governing Body. The Worker members suggested that, in their report to the Governing Body, the tripartite committees could remind the government concerned that technical assistance was available from the Office. The representative of the Government of the Libyan Arab Jamahiriya expressed regret that technical assistance regularly requested by Members before the Conference Committee on the Application of Standards had not been forthcoming. The representative of the Government of the Republic of South Africa said that technical assistance should not be imposed on governments, but provided only when they requested it.

29. The Employer members requested that the Office draw up proposals for possible amendments to the relevant provisions of the Standing Orders concerning the procedure for the examination of representations under articles 24 and 25 for a future session of the Committee.. The Worker members considered that no revision to the text was necessary.

Procedures relating to ratified Conventions – Complaints procedure (articles 26 to 29 and 30 to 34)

30. It was generally agreed that no reform of the complaints procedure was needed.
31. *The Committee recommends that the Governing Body request the Office to prepare for its 289th Session (March 2004) a document that takes into account all of the opinions expressed during the debate and that, placing emphasis on the consensus that was reached, it propose concrete amendments.*

II. Practices for the preparation of international labour Conventions

(a) Code of good drafting practices

32. The Committee had before it a document² containing further information on the proposal concerning the preparation of international labour Conventions, in particular a code of good drafting practices that was prepared in response to the invitation issued by the Governing Body at its 286th Session (March 2003).³
33. The Legal Adviser, introducing the document, explained that the proposed time frame for the completion of the plan of work was the end of 2004, with a view to submitting a final draft to the Governing Body at its 292nd Session (March 2005). Concerning the assessment of the cost of this exercise, the proposed budget as stated in the document in paragraph 9 had been revised upwards to US\$105,000. That figure was reflected in a document⁴ submitted to the Programme, Financial and Administrative Committee for its consideration.
34. The Employer members agreed with the proposal that the term “digest” or “handbook” of good drafting practices be employed, as both terms more accurately reflected the intention of flexibility and non-restrictiveness. They reiterated the need to ensure that, prior to their submission to the Governing Body for its consideration, such good drafting practices would be examined by a tripartite group of experts after appropriate consultations with the respective groups. The importance of uniformity both in form and substance in the two authentic languages was emphasized by the Employer members.

² GB.288/LILS/2/1.

³ GB.286/13/1, para. 43.

⁴ GB.288/PFA/14/2.

35. The Worker members endorsed the proposal, within the time frame set forth by the Office, as it could serve as a “handbook”. In addition to facilitating translation into the two authentic languages, they proposed that provision be made for Spanish.
36. The representatives of the Governments of Mexico and Brazil supported the proposal, which could serve as a guide to a Conference Drafting Committee. Both representatives supported the Workers’ proposal regarding Spanish, and the proposal that provision be made for publication in Spanish in addition to the two authentic languages.
37. The representative of the Government of Nigeria, on behalf of the Africa group, endorsed the proposal. He added that the issue of what to call the document could be determined at a tripartite meeting of experts, and that the budget should be examined closely.
38. The Employer members sought assurances from the Office that a further document on final provisions of the international labour Conventions discussed at the Committee’s last meeting in March⁵ would not be set aside and would therefore be discussed at a future session of the Governing Body.
39. *The Committee accordingly recommends to the Governing Body that it invite the Office to prepare a final draft on good drafting practices with a view to its submission at its 292nd Session (March 2005) and, subject to the recommendation of the Programme, Financial and Administrative Committee, that a tripartite meeting of experts be held in 2004 to that effect.*

(b) Questionnaire – Articles 38 and 39 of the Standing Orders of the International Labour Conference

40. The Committee had before it a document⁶ which contained further information on the proposal concerning questionnaires prepared under articles 38 and 39 of the Standing Orders of the International Labour Conference.
41. The Employer members expressed disappointment that the document marked a step backwards from the discussion that had occurred at the Committee’s last meeting in March 2003.⁷ They reiterated the importance of questionnaires, but highlighted as obstacles to their completion their excessive length and detailed questions, which called for only “yes” and “no” replies, without provision being made for more substantive replies. Their preparation could be improved through earlier consultations with the respective groups prior to their submission to the Governing Body for approval, and in this way efficiency at the International Labour Conferences could be increased. They added that this could be done by having preparatory meetings with the groups, and requested that the Office re-examine this possibility. Further, the Employer members considered the inclusion of a draft instrument annexed to a questionnaire as likely to dilute potential responses.
42. The Worker members, considering that an amendment to articles 38 and 39 of the Standing Orders of the International Labour Conference would be required for employers’ and

⁵ GB.286/13/1, paras. 45-47.

⁶ GB.288/LILS/2/2.

⁷ GB.286/13/1, paras. 32-38.

workers' organizations to receive questionnaires directly from the Office, supported the proposal to make questionnaires available online. Two issues would need to be addressed – whether access would be given only to the most representative organizations, and by whom would that access be given. The Worker members also supported the proposal that a survey be conducted of the member States that had ratified the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144), so as to determine the number of Members that had actually undertaken to operate procedures which ensured effective tripartite consultations. They also asked the Office to find out how many of the 110 Members that had ratified the Convention had set up tripartite ILO committees, which should deal with replies to questionnaires. The Worker members concurred that further work on the matter could be undertaken by the Office with a view to improving the form and content of future questionnaires and, wherever possible, that they be placed online, in addition to the printed versions. The Worker members supported the practice of including an indicative preliminary draft and asked for training assistance to be provided to the labour ministry officials concerned.

43. The representative of the Government of Mexico endorsed the view that questionnaires could be made accessible to employers' and workers' organizations by placing them online, but that only governments should forward the reply to the Office for two reasons: this would ensure effective tripartite consultations; and that the information received from the employers' and workers' organizations would assist the governments to formulate informed replies.
44. The representative of the Government of Germany sought clarification as to the scope of the proposals contained in paragraphs 8 and 9, whether they applied to instruments subject to single versus double discussion, and the impact on the integrated approach. Except for the length and detail of the questionnaires, he added that no fundamental changes were required.
45. The representative of the Government of Nigeria, on behalf of the Africa group, agreed that a review of the form and contents of questionnaires was warranted and that efforts should be made to increase the number of replies. He emphasized that tripartite consultations were the bedrock of the Office, and that if questionnaires were dispatched directly to the employers' and workers' organizations, it would only serve as a hindrance. He sought clarification with regard to paragraph 11 of the document.
46. The Employer members and the representative of the Government of Brazil supported the view that questionnaires could be made available online and that consultations should be held prior to their dispatch.
47. The Legal Adviser, replying to the questions put to him on the two documents, clarified that recent experience, as described in paragraph 11 of the document, showed that the inclusion of a text in a questionnaire, that could perhaps be the basis for an instrument, did not in practice restrict the amendment procedure. He also clarified that the Office remained available for further consultations on the issue of final provisions of international labour Conventions.
48. ***The Committee accordingly recommends to the Governing Body that it invite the Office to continue consultations on the practices regarding questionnaires prepared pursuant to articles 38 and 39 of the Standing Orders of the International Labour Conference with a view to having such findings presented in a subsequent session of the Governing Body.***

III. Standing Orders of the Conference: Practical arrangements for the discussion, at the 92nd Session (June 2004) of the International Labour Conference, of the Global Report prepared under the follow- up to the ILO Declaration on Fundamental Principles and Rights at Work

49. The Committee had before it a document⁸ the purpose of which was to propose the examination of the arrangements of the Global Report provided for in the annex to the ILO Declaration on Fundamental Principles and Rights at Work in the light of the experiences acquired during the discussions of the third and fourth Global Reports at the 90th and 91st Sessions of the Conference in 2002 and 2003, and whether the same arrangements should be used without change for the 92nd Session of the Conference or whether changes should be made, for example with a view to extending the thematic discussion in relation to the general discussion.
50. The Executive Director of the Standards and Fundamental Principles and Rights at Work Sector, introducing the document, recalled that the functioning of the International Labour Conference would be discussed the following week by the Governing Body.⁹ Thus, any proposals made by the Committee regarding the Global Report would have to be considered within the framework of that discussion, and together they could form the basis of a document that could be submitted to the Committee for its consideration during the next session of the Governing Body (March 2004). The Executive Director welcomed all suggestions by the Committee and future consultations on the matter.
51. The Employer members considered that an examination on the functioning of the International Labour Conference should encompass the Global Report, and agreed that proposals, including new modalities, should be submitted to the next session of the Governing Body after consultations with the groups. That would enable the Committee to draw on the experiences gained during the first cycle of the Global Report.
52. The Worker members, recalling that the Global Report was one of two follow-up mechanisms linked to the ILO Declaration on Fundamental Principles and Rights at Work, expressed the hope that the Global Report to be discussed at the next session of the Conference (June 2004) would contain all the facts and provide an accurate picture. They noted that the interactive discussion was viewed positively by participants, but that steps needed to be taken to increase participation and that further attention needed to be given by those that did participate to replying to the questions posed, rather than using the discussion as an opportunity to make a statement. Prior consultations with the Workers' and Employers' secretariats and the regional coordinators could perhaps improve the points for discussion.
53. The representative of the Government of Norway, speaking on behalf of the IMEC group, encouraged the Office to consider alternatives to the current format, structure and content when preparing proposals for the next Governing Body session, since he noted that the manner in which the Global Report had been discussed during the last two Conferences (2002 and 2003) had not been truly interactive. The proposals could include: smaller round

⁸ GB.288/LILS/3.

⁹ GB.288/4/1.

table discussions; specific themes; and discussions moved forward by a moderator. Results of smaller interactive groups could then be presented in the form of a report to a panel of experts, which could be summarized by the chairperson. In addition, with the completion of the first cycle of the Global Report, an overall review of the procedure of the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work could be included in the proposals, and would measure progress and good practices, identify overlap and repetition, and increase cost-effectiveness and the reporting rate. Such a review could involve the use of expert advisers. With such an approach, the next cycle could be simplified, have identified objectives, enhanced credibility and be more transparent. Priority should also be given to technical cooperation.

54. The representative of the Government of India, speaking on behalf of the Asia and Pacific group, took note of the Office document and endorsed the interactive discussions, in so far as they allowed constructive dialogue and were not solely a reporting mechanism. He agreed that proposals should be submitted at the next Governing Body session, including methods for enhancing participation at higher levels.
55. While endorsing both the statements made on behalf of the IMEC group and the Asia and Pacific group, the representative of the Government of Japan attached greater importance to the ILO Declaration on Fundamental Principles and Rights at Work as it had led to more ratifications of fundamental Conventions.
56. The representative of the Government of Brazil sought further information on the number of countries where technical cooperation on the ILO Declaration on Fundamental Principles and Rights at Work had taken place. He added that more detailed study of the Global Report would be possible if it were published earlier.
57. The Worker members reiterated the importance of the Global Report, as it had resulted in an increased number of ratifications of the fundamental Conventions. The Global Report served to reflect the situation in the world, and that should not be diminished through restricting it to good examples. Further, it assisted in determining technical cooperation needs.
58. The Executive Director of the Standards and Fundamental Principles and Rights at Work Sector recalled that the format of the Global Report was established by the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work. The Global Report was intended to be a dynamic picture relating to each category of fundamental principles and rights noted during the preceding four-year periods, to reflect experiences as a basis for assessing the effectiveness of the assistance provided by the Organization, and served as a plan of action for future activities.
59. *The Committee accordingly recommends to the Governing Body that it invite the Office to prepare, for its 289th Session (March 2004), a document specifying, in the light of the views expressed by the Committee, both the regulatory and practical ad hoc arrangements necessary for the examination of the Global Report, which will be proposed for adoption at the 92nd Session of the Conference.*

IV. The role of the Credentials Committee

60. The Committee had before it a document¹⁰ prepared at the request of the Governing Body at its 286th Session (March 2003), which, at the urging of the 90th Session of the International Labour Conference (June 2002), had undertaken as a matter of urgency to examine the effectiveness of the mechanism through which the Credentials Committee was permitted to exercise its mandate.

Practical improvements to the operations of the Credentials Committee

61. The Employer members endorsed the overall approach of the document. They approved the idea of attaching a clear and concise information brochure to the invitation to the Conference or to the *Memorandum*. Concerning the proposed data bank, it would be sufficient if it covered only the last few years, which could make its cost acceptable. As regards the issue of the limited time available for the work of the Credentials Committee, governments should respect the time limit for submitting the credentials of their delegations (not less than 15 days before the start of the Conference). Regarding the submission of objections, the time limit could be fixed in an absolute fashion if provisions were made for the possibility of exceptions. However, any such deadline for objections should not be as short as for the Regional Meetings, since time was needed to contact employers' organizations so as to obtain the necessary information. In this regard, a period of 48 hours after the opening of the Conference might be appropriate.
62. The Worker members emphasized that the Credentials Committee had a pivotal role to play in ensuring the effective functioning of tripartism at the International Labour Conference and, in this regard, improvements were urgently needed, as reflected by the Conference's own request to the Governing Body that it consider the matter. In the light of the extreme improbability of a successful invalidation proposal, which would require a qualified majority of two-thirds in plenary, the Worker members supported non-constitutional solutions aiming at improving the actual functioning of the Credentials Committee. They also supported the proposal to have an information brochure to guide governments on the conditions in which the nominations to the Conference should be made, as in their view the information provided in the *Memorandum* was insufficient. The establishment of a data bank was, likewise, considered useful. Regarding the time limit for the presentation of objections, the proposal contained in paragraph 15 of the document was not considered practical, nor were the arrangements of the Regional Meetings considered applicable to the Conference. Accordingly, the Workers expressed their support to have the proposal contained in paragraph 13 initiated on a trial basis. Several conditions were considered essential for this proposal to function: Governments would need to adhere strictly to the time limit for the submission of credentials; the positions of the delegates and advisers would have to be included; and online publication of the list was necessary in the interests of transparency.
63. Statements were made on the subject by the representatives of the Governments of the United States, Italy, Mexico, Norway, Germany and Nigeria, speaking on behalf of the Africa group. All the speakers concerned endorsed the view that improvements should be made to the operations of the Credentials Committee. The representative of the United States added that if the Credentials Committee were more open with regard to its work, then it could increase its effectiveness. The information brochures as described in

¹⁰ GB.288/LILS/4.

paragraph 9 of the document could be useful in this respect. To permit a more rapid examination of objections, the representatives of the United States, Italy and Mexico considered that the fixing of the time limit for the presentation should not be tied to the publication of the list of delegations, but rather be set in a manner similar to that provided for in the Rules for Regional Meetings. These rules permitted consideration if there was a valid reason for delay. The representative of the Government of Nigeria added that governments should be encouraged to reply, but that in many cases the information required depended on the employers' and workers' organizations and that in this respect dialogue needed to be instituted.

64. With regard to a fixed time limit for the submission of credentials to the Office, as proposed in paragraph 15, the Worker members reiterated their concerns and once again expressed support for the proposal contained in paragraph 13 of the document.

Strengthening the control and monitoring functions

65. The Employer members approved the principle of a referral of certain objections to the Committee on Freedom of Association, subject to the two guarantees: first, unanimity among the members of the Credentials Committee; and second, that any referral proposal should be endorsed by the Conference. In addition, the attention of the Conference should be drawn to serious cases, and the government concerned should be invited to report on measures taken when submitting its credentials the following year.
66. The Worker members reiterated their preference that the Credentials Committee be allowed to refer cases to the Committee on Freedom of Association, if the situation involved very serious infringements of freedom of association. Necessary safeguards could include the conditions that the case had not yet been examined by the Committee on Freedom of Association, and that there should be full agreement of the Credentials Committee and ratification by the Conference. They also expressed their support for a mechanism that would permit the Credentials Committee to follow up its earlier recommendations in repeated and serious cases, as outlined in paragraph 23, but not necessarily with the application of the guarantees expressed in paragraph 20 of the document.
67. The representative of the Government of the United States supported further exploration of a mechanism for referral by the Credentials Committee to the Committee on Freedom of Association and, in this regard, endorsed the proposal that the Governing Body invite the Committee on Freedom of Association to examine the practical consequences of cases being referred to it by the Credentials Committee. She likewise supported the ability of the Credentials Committee to follow up repeated and serious cases, as a means for enhancing its effectiveness where there was tripartite agreement.
68. In the view of the representative of the Government of Italy, the impact of referrals on the Committee on Freedom of Association would not be great as it appeared that a large majority of situations submitted to the Credentials Committee for examination were also the object of procedures before the Committee on Freedom of Association. On condition that there be unanimity and approval by the Conference, he endorsed such a proposal, as it would serve to avoid inconsistent findings by the two Committees.
69. The representative of the Government of Mexico did not agree that the rules of the Committee on Freedom of Association permitted referral by the Credentials Committee.

Implementation of existing means of action

70. The Employer members agreed with the proposals contained in paragraphs 25 to 30 of the document.
71. The Worker members said that the existing means of action by the respective groups could be modified only to the extent of allowing an aggrieved delegate to appeal to the Credentials Committee instead of the Selection Committee and they therefore did not agree with the proposal contained in paragraph 29 of the document, as it impinged on the sovereignty of the groups.

The mandate of the Credentials Committee as regards incomplete delegations

72. The Employer members were in favour of broadening the Committee's mandate to cover objections concerning a government's voluntary failure to nominate an Employers' or Workers' delegate. The time limit for those objections would be the same as for the others. It would also be useful to publicize failure by governments to comply with their obligations. The speaker also recalled that the roles of delegates and advisers at the Conference should be based on the functions that they exercise at the national level, so as to ensure that they have been correctly designated.
73. In the view of the Employer and Worker members, the mandate of the Credentials Committee should be extended to permit examination of incomplete delegations to the Conference.
74. The representatives of the Governments of Italy and Mexico expressed their support for giving the Credentials Committee the mandate to examine objections as regards incomplete delegations. The representative of the Government of Mexico added that the roles of participants not assigned to a committee should be examined.
75. *The Committee accordingly recommends to the Governing Body that it request the Office to prepare a document for its 289th Session (March 2004) with a view to enabling the Conference to implement, on an experimental basis, the measures agreed upon by the Committee.*

Geneva, 14 November 2003.

Points for decision: Paragraph 31;
Paragraph 39;
Paragraph 48;
Paragraph 59 ;
Paragraph 75.