



## **Governing Body**

309th Session, Geneva, November 2010

GB.309/12/1(Rev.)

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### TWELFTH ITEM ON THE AGENDA

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

### **First report: Legal issues**

1. The Committee on Legal Issues and International Labour Standards (LILS Committee) met on 9 and 10 November 2010. The following members served as Officers:

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

*Employer Vice-Chairperson:* Mr J. de Regil

*Worker Vice-Chairperson:* Ms H. Yacob

### **Measures relating to the representation of Employers and Workers at the International Labour Conference: Addressing tripartite imbalance within delegations** (First item on the agenda)

2. The Committee had before it a document <sup>1</sup> for decision containing proposals aimed at addressing tripartite imbalance within delegations to the International Labour Conference.
3. Introducing the document, the Legal Adviser recalled that, for the purpose of the discussion, tripartite imbalance meant imbalance between the number of advisers accompanying, respectively, the Government, Employers' and Workers' delegates of a member State. The concept should be distinguished from the case of serious and manifest imbalance in the number of advisers whose travelling and subsistence expenses had been covered by the Government, which could be the subject of a complaint under the Standing Orders of the Conference currently in force.
4. Mr Funes de Rioja, speaking on behalf of the Employer Vice-Chairperson, stressed that tripartite imbalance was a substantive problem involving failure of effective implementation of tripartism and its inherent notion of "equality of arms". It affected the

<sup>1</sup> GB.309/LILS/1.

right of delegates to be accompanied by advisers in order to be able to cover all subjects discussed at the Conference. He emphasized that that issue was of particular concern because tripartite imbalance in Conference delegations had been pointed out by the Credentials Committee at every session of the Conference since 1965. He agreed that, as indicated in paragraph 3 of the paper, the identification of imbalances by numeric formulas was not sufficient and needed to be supplemented by the consideration of special allegations. Moreover, as reported in the same paragraph, in June 2010 the Credentials Committee had recalled that it did not have the mandate to fully address situations of imbalance other than those relating to the payment of advisers' expenses, and had "requested the Governing Body to continue its consideration of the matter, including the possibility of extending the Committee's mandate to specific submissions based on alleged tripartite imbalance in a delegation". Against that background, the Employer members disagreed with the statement in paragraph 4 of the document that there was currently no consensus in favour of amending the Standing Orders of the Conference to give the Credentials Committee the additional mandate regarding tripartite imbalance in delegations. While governments might not have spoken in favour of such amendments, the Employer members did not remember any Committee member speaking against the proposal. Moreover, they recalled that, in March 2010, the Workers' and the Employers' groups were in favour of the proposal. They therefore supported the point for decision but requested that it be amended to include the preparation by the Office, for review at the following session of the Governing Body in March 2011, of a draft amendment to the Standing Orders that would extend the mandate of the Credentials Committee of the Conference to enable it to address situations of serious imbalance within delegations to the International Labour Conference.

5. The Worker Vice-Chairperson stressed that significant tripartite imbalance in Conference delegations was incompatible with the principles of tripartism, and pointed in turn to the statement by the Credentials Committee at the previous session of the Conference and the view expressed by many at the previous meeting of the LILS Committee. She would have expected the Committee to agree on an amendment to the Standing Orders to extend the mandate of the Credentials Committee, as that appeared to be the rational and practical way forward. As such consensus had apparently not materialized, the Worker members supported the point for decision on the understanding that an amendment to the Standing Orders remained their preferred option and that the Office should present a new document to the Committee if that option gained support. Regarding the proposal to revise the letter of convocation of the Conference and the documents accompanying it, it was suggested that the Bureau for Workers' Activities and the Bureau for Employers' Activities should be consulted to make sure that the revisions achieved the objectives of the Workers' and Employers' groups.
6. The representative of the Government of Austria clarified that the statement she had made on behalf of the group of industrialized market economy countries (IMEC group) at the March 2010 meeting of the LILS Committee had favoured only some of the proposals for measures that could be implemented by the Credentials Committee under its current mandate. It thus rejected the proposal involving an amendment to the Standing Orders.
7. The representative of the Government of Germany, speaking on behalf of the IMEC group, noted that it remained difficult to define what constituted a serious case of tripartite imbalance. The use of numeric formulas was problematic as there were, in many cases, valid explanations for numerical imbalance. Therefore, any reasonable judgement required specific information on each case. The Credentials Committee was encouraged to continue its practice of asking the Government and the social partners concerned for explanations before reaching any conclusions. In the opinion of the IMEC group, the main consideration should be whether there was a reasonable balance in the capacity of all parts of a tripartite delegation to cover the committees and the final week of the Conference. The IMEC group

welcomed the proposals to improve the information provided with the convocation letter and added that the form for credentials could also be improved so as to better reflect the function of members of the delegation. Persons who accompanied a minister and who attended the Conference for a very short period and did not need to speak could be accredited as “persons accompanying the Minister” or “other participants”. The point for decision was supported in its entirety.

8. The representative of the Government of the Bolivarian Republic of Venezuela, speaking on behalf of the group of Latin American and Caribbean States (GRULAC), welcomed the proposals to provide better information to constituents on the balanced composition of delegations and on the functions of the various categories of participants. Regarding the Credentials Committee’s manner of dealing with communications concerning allegations of tripartite imbalance referred to in the document, the speaker insisted on the obligation of all ILO bodies to remain within the limits of their mandates in order to safeguard institutional order and legal certainty in the ILO. Therefore, the Credentials Committee could only invite the governments concerned to voluntarily provide information so that alleged imbalances in delegations could be analysed. That would allow it to establish whether there was a wider problem of significant imbalance in delegations or whether there were only isolated cases. The Credentials Committee did not have the mandate to reach conclusions on the substance of such communications and it would be premature to extend its mandate by means of an amendment to the Standing Orders. GRULAC therefore supported the point for decision but not the revision to it proposed by the Employer members.
9. The representative of the Government of Nigeria, speaking on behalf of the Africa group, favoured a more proactive role for the Credentials Committee in drawing attention to cases of significant tripartite imbalance, and considered it necessary to establish what constituted significant imbalance in terms of figures. The Africa group also welcomed enquiries by the Director-General on the reasons for tripartite imbalance, as that would send a strong signal to Members. The proposed amendment to the Standing Orders should be further explored but no decision on it was necessary at the current meeting. Preventive action in the form of awareness-raising and information on applicable rules was favoured. His group supported the Office’s proposal to amend the letter of convocation of the Conference and also the suggestion that use should be made of the categories of “persons accompanying the Minister” or “other participants” in order to avoid delegations whose composition might appear imbalanced. The group supported the point for decision.
10. The representative of the Government of Australia, while supporting the IMEC group’s statement and the decision point in paragraph 9 of the document, was surprised, based on his recollection of the discussions that had taken place, that some of the earlier Office proposals had not been reiterated in the document. He doubted that the measures now proposed would achieve much progress and stressed the need to further address the question of significant tripartite imbalance in Conference delegations.
11. *The Committee recommends that the Governing Body request the Office to:*
  - (a) *review and, as appropriate, revise the information concerning the composition of Conference delegations relevant to the question of tripartite imbalance in delegations, which is provided with the letter of convocation of the Conference;*
  - (b) *bring the content of the debate on this question in the Governing Body to the attention of the Credentials Committee of the Conference; and*

- (c) *submit a new document, taking into account the discussion in the Committee and any relevant developments and findings, for review by the LILS Committee at the 312th Session (November 2011) of the Governing Body.*

**Constitution of the International Labour  
Organization: Proposals to introduce inclusive  
language for the purpose  
of promoting gender equality  
(Second item on the agenda)**

12. The Committee had before it a document<sup>2</sup> containing proposals to introduce inclusive language into the Constitution of the International Labour Organization for the purpose of promoting gender equality, based on prior Committee discussions and informal tripartite consultations.
13. The Legal Adviser explained the three non-exclusive options presented: proposed amendments to the Constitution which, if adopted, would require further elaboration for alignment of the different language versions; an editor's note that the Office could attach to the text of the Constitution; and a draft resolution to be adopted by the Conference.
14. The Worker Vice-Chairperson stressed the importance of the discussion, acknowledging its impact on all ILO instruments. She supported the adoption of the draft resolution contained in Appendix IV and noted in particular the importance of paragraph 5 for the drafting of future texts. She also suggested deleting the words "wherever possible" from paragraph 5 while retaining the rest of the proposed text. The Worker members reasoned that, while the grammatical language rules of different languages should be respected, every effort should be made to reflect gender equality through the use of appropriate language in official legal texts. They also supported the introduction of an editor's note and suggested that the text proposed in Appendix III be simplified to refer solely to the new resolution, once the Conference had adopted it. The change proposed would retain only the first sentence and then add after it the following text: "The principle of gender equality has been repeatedly affirmed by the General Conference of the Organization, most recently in the resolution concerning the ILO Constitution and gender equality adopted in [2011]." The Worker members had concluded that a Constitutional amendment, whose implications on the meaning and interpretation of existing Conventions and Recommendations would in any case have to be carefully examined, was not an adequate solution. The proposed changes addressed both linguistic and substantive issues and resulted in a cumbersome text for French and Spanish. They would entail a complex and long process, coupled with the risk of approving an amendment that, for different reasons, might not enter into force, thereby undermining the ILO's commitment to gender equality.
15. Mr Funes de Rioja, speaking on behalf of the Employer Vice-Chairperson, as a preliminary matter, asked the Office to explain the criteria used to determine whether a legal question should be presented first to the LILS Committee or be directly submitted to the plenary of the Governing Body. For instance, the Employer members had noted that document GB.309/18/3 referring to the 1986 Instrument of Amendment of the Constitution of the ILO would only be examined by the plenary. As to the point under discussion, they were in favour of a simplified approach and supported the Worker members' proposal for adjustments to the editor's note in Appendix III. While endorsing the resolution proposal, they noted that the draft in Appendix IV exceeded the purpose of the exercise and should

<sup>2</sup> GB.309/LILS/2.

be shortened to contain only current paragraphs 5 and 6 addressing the subject under examination. The focused resolutions of other organizations, such as the Food and Agriculture Organization of the United Nations (FAO) and the World Health Organization (WHO), could be used as models.

16. The representative of the Government of the Bolivarian Republic of Venezuela, speaking on behalf of GRULAC, affirmed its support for the principle of gender equality. His group favoured the use of a simplified mechanism and for that reason supported the adoption of a resolution at the Conference, as envisioned in Appendix IV.
17. The representative of the Government of India appreciated the proposal to introduce inclusive language for the purpose of promoting gender equality in the ILO Constitution. India supported the amendments to the ILO Constitution in order to make its text acceptable to the times, and to strongly convey the Organization's commitment to gender equality.
18. The representative of the Government of Austria, speaking on behalf of the IMEC group, called on the ILO to make a clear, short and visible statement of commitment to gender-inclusive language and a gender-inclusive reading of the Constitution. The IMEC group endorsed the proposal for a Conference resolution. Stressing that the resolution should focus on linguistic aspects like those adopted by the FAO and the WHO, the IMEC group proposed a more succinct version of the draft in Appendix IV, which would include paragraphs 1, 2 and 6 of the preamble, as well as paragraphs 6 (without the word "likewise") and 7 of the operating clauses. The IMEC group did not oppose the adoption of an editor's note but reiterated the need to have it focus solely on language matters.
19. The representative of the Government of France, endorsing the IMEC group's position, emphasized that spoken language had to be distinguished from legal terminology. While in the former, numerous expressions were employed to stress the inclusion of both sexes, in the latter the need for clarity and simplicity could not allow the drafting techniques proposed by the Office, which were, in any event, devoid of added value from a legal point of view. Furthermore, such a reformulation exercise could have important undesirable effects for the other texts of the Organization, as well as for national law, burdening their language to the detriment of the ILO's work. He also highlighted the need to ensure a perfect equality of treatment among all languages as regards the impact of such reformulations. Consequently, the most suitable approach was to adopt a simple resolution clarifying once and for all that the use of the masculine in French legal texts should be considered as neutral and encompassing both genders.
20. The representative of the Government of Brazil, appreciating the clear formulation in the document of the options available, stressed the need to have legislative texts that reflected the principle of non-discrimination and ensured the visibility of women. She noted that the options presented were not mutually exclusive and could all be supported. A brief editor's note could be coupled with a Conference resolution relating to both the Constitution and all other ILO texts in the future. Her Government also supported the option of amending the Constitution. While the essence of the text should not be altered, the anachronistic terms of articles 3(2) and 9(3) should be revised in line with the proposals in Appendix I, reflecting the role of women in the Organization today.
21. The representative of the Government of Spain endorsed the IMEC group's statement and wished to express her appreciation for the proposals presented by the Office. Noting that those proposals embodied a willingness to advance gender equality, she stressed the importance of ensuring gender equality in the wording of all provisions, based on the values the ILO had defended throughout its history. Language was not neutral, but had

been used to reinforce stereotypes the ILO had long fought to supersede. The opportunity afforded by the discussions must be seized.

22. The representative of the Government of Nigeria, speaking on behalf of the Africa group, endorsed the promotion of gender equality, and supported the proposals of the Worker members concerning the editor's note, as complemented by those of the Employer members.
23. The representative of the Government of Canada, endorsing the IMEC group's statement, expressed her support for the initiative to make the ILO Constitution and future ILO instruments gender neutral. She added that the option of including gender neutral amendments in a future Constitutional amendment should not be excluded. While identifying an approach that would be acceptable in all languages would be challenging, there were various options for achieving the objective and the ILO should aspire to do so before entering its second century.
24. The representative of the Government of China expressed his agreement with the action taken to reflect the commitment to promote gender equality, and supported the Conference resolution proposal. He also requested that the Chinese version of the Constitution be checked for conformity with the official text currently in force and that the resulting updated version be published.
25. Responding to the question raised by the Employer members concerning the criteria used for drawing up the agenda of the Committee, the Legal Adviser explained that the Governing Body Standing Orders only required Committee examination before plenary decision on questions of financial expenditure, which had to first go through the Programme, Financial and Administrative Committee; thus, there was a certain flexibility in drawing up the agenda depending on the specificities of the particular question, unless otherwise decided during the ongoing discussions concerning the functioning of the Governing Body. The Legal Adviser also observed that, while for the time being there was no agreement to move forward on the proposals for amendment of the Constitution, there seemed to be a consensus to request the Office to prepare a revised resolution and editor's note on the commitment of the Organization to gender-inclusive language, taking into account the discussion and the various suggestions made.
26. The Director of the Bureau for Gender Equality stressed the importance of language in written texts in realizing the ILO's commitment to gender equality, which had recently been affirmed in the conclusions concerning gender equality at the heart of decent work adopted by the Conference in 2009. She recalled the availability of the Office to assist in ensuring the use of non-sexist language in the drafting of official texts.
27. ***The Committee recommends that the Governing Body request the Office to prepare revised texts of a draft resolution of the International Labour Conference and an editor's note, taking account of the discussion in the LILS Committee, for submission to the Committee at the 310th Session of the Governing Body (March 2011).***

Geneva, 12 November 2010

*Points for decision:* Paragraph 11  
Paragraph 27