



THIRD ITEM ON THE AGENDA

The role of the Credentials Committee

I. Introduction

1. At the 90th Session of the Conference (June 2002), the Credentials Committee requested the Governing Body in the following terms, through the Conference, to examine as a matter of urgency the question of the effectiveness of the mechanism under which it is required to exercise its mandate:

53. For the balance of interests between the Government and the social partners to function – as reflected in the composition of national delegations to the Conference required by article 3, paragraph 1, of the Constitution – to function, it is essential that only true representatives from each group participate in the Conference. To achieve this purpose the Constitution affords the Conference the possibility, under certain conditions, of invalidating the credentials of any delegate or adviser whose nomination is deemed to be contrary to the provisions of article 3 of the Constitution, and in particular of those in paragraph 5. Pursuant to this paragraph, “the Members undertake to nominate non-Government delegates and advisers chosen in agreement with the industrial organizations, **if such organizations exist**, which are most representative of employers or workpeople, as the case may be, in their respective countries”. Such is the framework in which the Credentials Committee has exercised its mandate throughout 80 years. However, with the adoption of the 1998 Declaration, it became clear that membership in the Organization in the twenty-first century entailed an obligation on all Members, irrespective of their ratification of the corresponding Conventions, to respect, promote and realize the fundamental principles and rights at work, including freedom of association.

54. The principle of freedom of association is today, more than ever, premised on tripartism, one of the very founding principles of the ILO. Thus, in 1999, the Committee considered that member States, irrespective of the reservation in Article 3, paragraph 5, had an obligation under paragraph 1 of the same article, to ensure that the Employers’ and Workers’ delegations to the Conference are as representative as possible of the employers and the workforce of the Member and that they are chosen in full independence by the employers and the workers themselves. Since 1999, there continues to be a significant number of cases of serious interference by governments in the free election, by notably, the workers themselves of their representatives to the Conference as well as of cases where governments do not recognize freedom of association altogether. While in most cases the Committee believes that the means at its disposal permit it to contribute to ensuring respect for tripartism, where problems arise from a lack of political will to respect the principles of the ILO, the Committee is of the view that the conditions under which the remedies provided for in the Constitution can be exercised do not permit the organization to guarantee the proper functioning of tripartism and that other remedies should be envisaged. The Committee would accordingly

like to request the Governing Body, through the Conference, to examine this situation as a matter of urgency.¹

2. This question was to have been examined at the 285th Session of the Governing Body (November 2002)² but, given its complexity and ramifications, the Office preferred to postpone the presentation of a document to the present session to ensure better preparation.
3. In order to define more clearly the context of Credentials Committee's request, it would appear useful, before considering the functioning of existing mechanisms and possible solutions for increasing its effectiveness, to recall briefly the Committee's historical background and how its role has evolved. In order to facilitate reference to the provisions which will be quoted below, extracts from constitutional and regulatory provisions relating to credentials are attached in an annex.

II. The Credentials Committee

4. The historical background of the Credentials Committee is doubtless one of the most colourful in the Organization's history. Established at the First Session of the Conference in 1919 to perform the latter's duties pursuant to article 3, paragraph 9, of the Constitution, it subsequently became one of the standing committees of the Conference. Such a committee was also subsequently established at regional conferences and meetings convened pursuant to article 38 of the Constitution. Owing to the diversity of situations which it has examined from the outset, it has had to specify the content of and modalities for applying the principle governing the composition of delegations to the Conference, as set out in article 3, paragraph 5, of the Constitution. The performance of this task soon resulted in a request for an advisory opinion made to the Permanent Court of International Justice by the Council of the League of Nations. The opinion issued in 1922³ thus established the basis for interpretation of this constitutional provision on which the Credentials Committee has been able to build a considerable set of precedents.
5. The Committee's mandate, structure and working methods have undergone little change throughout more than 80 years of its existence. Its composition has not varied since its origin, it consists of three members only, (one Government delegate, one Employers' delegate and one Workers' delegate). The only significant changes to its procedure and mandate date from 1932 and 1997 respectively. In 1932, the Conference made the lodging of objections dependent on certain conditions of receivability, which have remained virtually unchanged to this day and are set out in article 26, paragraph 4, of the Standing Orders. The purpose of the recent reform of 1997 was to extend the mandate of the Committee to include the consideration of complaints regarding non-payment of Conference travel and subsistence expenses.
6. Today, the Credentials Committee performs four main tasks under the Standing Orders of the Conference:
 - formal examination of the instruments by which delegations' credentials are submitted, verifying that they are issued by an authority which acts on behalf of the

¹ Extract from the third report of the Credentials Committee, 90th Session of the Conference, Provisional Record No. 5D.

² GB.285/LILS/2.

³ ILO, *Official Bulletin*, Vol. VI, No. 7.

State and that the composition of the delegation meets the requirements laid down in the Standing Orders (article 5, paragraph 2);

- determination of the quorum necessary for votes at the Conference to be valid (article 20, paragraph 1(1));
- examination of objections concerning the conformity of nominations of Conference delegates and advisers with the provisions of article 3 of the Constitution (article 5, paragraph 2, and article 26, paragraphs 3-8);
- examination of complaints concerning non-payment of Conference delegates' and advisers' expenses (article 5, paragraph 2, and article 26, paragraphs 9-11).

Apart from the first two tasks, which are essentially formal and similar to those of any other international conference credentials committee, the purpose of the other two is to ensure proper implementation of one of the founding principles of the Organization: tripartism and its corollary, the autonomy of each of the three constituent groups. This was the reason for the extension in 1997 of the Committee's mandate to the examination of complaints concerning the non-payment of delegates' expenses.⁴ Even though the Conference brings together the tripartite representatives of the member States for only a few weeks each year, as the supreme organ of the Organization, which is responsible not only for international labour standards and all major decisions on the Organization's programmes and priorities but also for the composition of the other organs of the Organization responsible for their implementation (such as the Governing Body and, consequently, all the other committees and meetings established or convened by the latter), its decisions affect all the Organization's activities. Consequently, it is not difficult to see the importance of the role of the Credentials Committee beyond issues relating to the composition of tripartite delegations to the Conference.

III. The guarantees of tripartism

7. The Constitution of the ILO establishes two mechanisms to ensure the balance of interests within member State delegations to the Conference, as laid down by article 3, paragraph 1, of the Constitution, under conditions which allow delegates to express their individual points of view on all issues submitted to the Conference, in accordance with article 4, paragraph 1, of the Constitution.
8. The first mechanism, contained in article 4, paragraph 2, of the Constitution, provides that if, in a delegation to the Conference, only one non-governmental delegate (Employers' delegate or Workers' delegate) is nominated instead of the two stipulated, that delegate shall not be allowed to vote at the Conference and in its committees. The second is the procedure for the invalidation of credentials laid down by article 3, paragraph 9, of the Constitution and developed in article 26, paragraph 7, of the Standing Orders of the Conference. Under this procedure, the Conference has the power, by qualified majority voting, to reject the credentials of a delegate or adviser, thereby depriving him/her of the right to participate or vote at the Conference and in its committees. Under article 4, paragraph 3, of the Constitution, in the event of invalidation of the credentials of one of the non-governmental delegates, the other non-governmental delegate also loses the right to take part in voting at the Conference and in its committees. The purpose of both mechanisms is to guarantee that the absence of one of the non-governmental delegates

⁴ GB.265/LILS/1.

does not jeopardize the balance of interests which each national delegation must be able to maintain.

9. Unlike the first mechanism, which applies automatically, the second necessitates a decision by the Conference, on a proposal from the Credentials Committee or one of its three members. Even though the Committee has not hesitated throughout its history to have recourse to this power to propose, in most cases where it has considered that the nomination of delegates or advisers was not in conformity with the provisions of the Constitution, it has often preferred to use other means, such as dialogue or advice, in order to promote solutions in the long-term which are compatible with constitutional obligations, taking account of each State's particular circumstances. Hence it is not unusual, for example, during the examination of an objection alleging violations, for the Committee to explain to the government in question the reasons why such a nomination or consultation procedure is incompatible with constitutional provisions, and to have the government rectify the situation during the same session of the Conference. In many cases it plays an advisory role, identifying any defects in the consultation procedure adopted for nomination, and inviting governments to rectify the situation in the future. A brief glance at the Committee's reports shows that this method succeeds in most cases. This constructive approach doubtless explains why, in respect of nearly 700 objections lodged during the 90 sessions of the Conference, the Committee has proposed invalidation only 12 times.
10. For nearly 80 years, the Conference has considered that article 3, paragraph 5, of the Constitution did not give competence to the Credentials Committee to examine objections based exclusively on the absence of representative employers' or workers' organizations in a given country. However, analysis of the grounds invoked in support of each of the 12 proposals for invalidation, as well as a number of other reports of the Committee over the years, provides confirmation of an evolving interpretation of the Constitution. In these cases, it was not so much the conformity of nominations with article 3, paragraph 5, of the Constitution which was in question as national situations not providing the guarantee that Employer or Worker representatives nominated by the government were able to act fully independently of their respective government delegation.
11. For example, in two cases (ILC, 27th Session, 1945; and ILC, 33rd Session, 1950), invalidation was proposed and accepted on the ground that the governments in question having suppressed essential civic liberties and rights which are incorporated in the Constitution of the ILO and in the Declaration of Philadelphia, the Worker members of the delegations had not been appointed under those conditions of liberty which are presumed by the agreement referred to in article 3, paragraph 5, of the Constitution and consequently, "they cannot be considered as representatives chosen without any compulsion by workers' organizations enjoying freedom of association as laid down by the Constitution of the Organization".⁵ In the four other cases where invalidation was actually pronounced by the Conference (ILC, 40th Session, 1957; ILC, 42nd Session, 1958; ILC, 43rd Session, 1959; and ILC, 47th Session, 1963), and on the six occasions when the Conference ruled on invalidation proposals but without accepting them (ILC, 40th Session, 1957; ILC, 39th Session, 1956; ILC, 46th Session, 1962; ILC, 60th Session, 1974; ILC, 61st Session, 1975; and ILC, 71st Session, 1985), the invalidation proposals also reflected misgivings as to the independence of non-governmental delegates in view of the denial of freedom of association by the ruling regimes in the countries concerned. Very often these proposals were preceded by cautions from the Committee at previous sessions of the Conference.

⁵ Fifth Report of the Credentials Committee, *Record of Proceedings*, ILC, 27th Session, 1945, Appendix I.

12. In other reports, without proposing invalidation, the Credentials Committee had occasion to recognize that even in the absence of employers' or workers' organizations, it might receive objections alleging that the delegates concerned did not truly represent the employers or the workers, and to recall that, given that the requirements laid down in article 3, paragraph 5, of the Constitution could only be met where genuine freedom of association existed, Members were bound either to maintain conditions of freedom of association, where it existed, or to create them.⁶
13. Two conclusions seem to be possible. The first is that, in all cases, invalidation was proposed after other efforts failed, in situations deemed to be sufficiently serious to compromise the proper functioning of tripartism. The second is that the fact whether invalidation was proposed, or the outcome of votes at the Conference on these proposals, depended more on the balance of forces within the Organization at a certain point in its history than on the relative importance of the situations in question, as borne out by the fact that no invalidation was accepted by the Conference after the early 1960s, even though there were later situations causing just as much concern which gave rise to invalidation proposals.
14. Since the last invalidation proposal in 1985, the changes which occurred in the international community following the dismantling of the blocs born of the Cold War opened the way for the Credentials Committee, beginning in 1999, to confirm and consolidate its earlier attempts at a dynamic interpretation of the Constitution. The legal basis for this interpretation is contained in article 3, paragraph 1, of the Constitution which, in absolute terms and independently of the existence or recognition of freedom of association, calls for compliance with the minimum requirement that the delegates of the three groups at the Conference be representative of the interests that they defend. It is also based on recognition that freedom of association is the best means of meeting this obligation, and on the commitment made by each member State to endeavour to realize this fundamental principle, which is now universally recognized irrespective of whether or not the State has accepted the relevant Conventions, and recalled in the ILO Declaration on Fundamental Principles and Rights at Work adopted in 1998.
15. As a result of this reading (which has not been challenged so far, either by the Conference when it approved invalidation proposals by vote, or by the Members referred to in the conclusions of the Credentials Committee), the Committee's work has been facilitated through use of information available under the Organization's supervisory procedures concerning freedom of association. The Committee has consequently dealt with the merits of an increasing number of cases of objections based precisely on situations in which, in the absence of representative organizations – either because they have been prohibited or because they are not yet permitted – or in cases of serious interference by the government in the process of nominating non-governmental delegates, there is no guarantee as to the capacity of the delegates concerned to perform their duties at the Conference in full independence of the government. If, despite recourse to other methods, the Committee repeatedly meets with a lack of clear willingness by the government to comply progressively with its constitutional obligations, the Committee is likely to conclude that the only possible outcome is to propose the invalidation of the credentials of the delegates in question.

⁶ See, for example, Fourth Report of the Credentials Committee, *Record of Proceedings*, ILC, 37th Session, 1954, Appendix II, or Third Report of the Credentials Committee, *Record of Proceedings*, ILC, 32nd Session, Geneva, 1949, Appendix I.

16. While recent reports of the Committee show that such situations are not hypothetical cases, the conditions required for invalidation to be approved by the Conference, namely the need for a two-thirds majority of the votes cast, nevertheless make the adoption of such a decision highly unlikely, in particular because of the Organization's practice of favouring consensual solutions.
17. In addition, from the point of view of the purpose of the invalidation procedure, the effect of such a decision with respect to a non-governmental delegate does not in itself ensure a genuine tripartite balance at the Conference, for a number of reasons. Firstly, although invalidation may prevent the participation at the Conference of a representative who is not legitimately entitled to represent the workers' or employers' interests, it also deprives the other non-governmental delegate of the right to vote, and in reality it is the latter, not the government itself, which suffers the consequences of a government's unwillingness to meet its obligations. This also means that, when decisions are being adopted by the Conference, one of the two non-governmental groups is deprived of a number of votes without any weighting of the votes of the other two groups, unlike in the Conference committees or in the Governing Body. The same problem also arises where non-governmental delegates to the Conference are absent as a result of insufficient funds to allow their participation for the whole duration of a session.
18. The second reason is of a practical nature. Owing to the length of the procedure for the verification of credentials, which requires a detailed examination following the principle of hearing both sides of the case, and because of the structure of the Conference, the Credentials Committee is not able to present a detailed report to the Plenary on the subject of the objections it has received until near the end of its work. However, under the terms of article 26, paragraph 8, of the Standing Orders of the Conference, any delegate or adviser whose credentials are challenged continues to enjoy all his rights pending a decision by the Conference. Hence, even if the Conference were to approve invalidation of the delegate's credentials, the consequences with regard to the delegate in question would be very limited, insofar as invalidation is not retroactive and therefore does not render null and void any action (such as amendments or votes in committees, votes in plenary or speeches made) taken by that delegate or adviser in the meantime.
19. Finally, since any invalidation decision applies exclusively to the Conference session at which it is adopted, such a measure would be valid for a limited time and might result in the Conference devoting time, effort and resources year after year to the examination of identical problems. Besides, there is an additional difficulty here, which no doubt explains the caution shown by the Credentials Committee in recent years, relating to the Conference quorum rules and one of the conditions for the receivability of objections, set out in article 26, paragraph 4(d), of the Standing Orders of the Conference. If an invalidation proposal could not be adopted for want of a quorum, in view of the number of abstentions, the Conference could be prevented, pursuant to the aforementioned provision, from examining objections in future based on the same facts or allegations. Apart from the problem of credibility that that would pose for the Committee and the Conference, such a scenario would contribute towards perpetuating situations where a State fails to comply with its constitutional obligations, since the Committee would no longer be able subsequently to exercise its control.
20. These circumstances justify the Credentials Committee's considering the effectiveness of its action with regard to extreme cases of clear unwillingness to make any progress.

IV. Possible solutions

21. In view of the above, the most direct and effective legal remedy in extreme cases as regards limitations in the invalidation procedure as envisaged at the founding of the Organization in 1919 would probably be to bring the letter of the provisions of the Constitution into line with the changes that have occurred in the challenges and demands which the Organization is now facing 80 years later. Other possibilities exist, however, which, without amending the Constitution or waiting for it to be amended, might – in particularly serious and recurring cases and subject to certain procedural guarantees – allow the available means to be made more effective.

(a) The constitutional solution

22. Irrespective of the question of the interpretation by the Credentials Committee of the provisions of article 3, paragraphs 1 and 5, of the Constitution, which only the International Court of Justice would be competent to decide on, should the need arise, under article 37, paragraph 1, of the Constitution, given that most of the limitations in the invalidation procedure are due to the conditions required for implementing it and the consequences set out in articles 3 and 4 of the Constitution, any initiative aimed at improving the system would appear to involve an amendment of the relevant provisions of the Constitution. However, even by limiting such a reform to strengthening tripartism and linking it to certain guarantees, it might encounter political and practical obstacles. On the one hand, any reform aimed at facilitating the possibility of restricting rights or increasing obligations often creates a certain reticence which can only be overcome by negotiation in a broader framework. On the other hand, the path of constitutional reform takes time, even where there is consensus, quite apart from the unknown factors inherent in the process for ratification of the amending instrument, before any reform can become effective. Such a path would therefore not allow the gaps in the existing legal framework to be filled with the speed desired by the Credentials Committee.

(b) Strengthening the control and monitoring functions of the Credentials Committee

23. As a non-constitutional solution aimed at improving the existing mechanism for the verification of credentials, it would, for example, be conceivable to empower the Credentials Committee either to conduct an investigation, *ex officio*, or to take the initiative to refer the case to the existing supervisory procedures concerning freedom of association, as the case may be.

24. Today, the Committee can only act on the basis of objections and complaints that are brought before it. This circumstance is largely the cause of the difficulties referred to in paragraph 18 above and prevents the Committee initiating on its own behalf any follow-up of situations deemed at previous sessions of the Conference to be a source of particular concern or likely to jeopardize the smooth functioning of the Conference and the independence of the groups. By means of a simple amendment to the Standing Orders of the Conference, the Credentials Committee might thus, in cases involving serious and repeated violations of the obligations laid down in paragraph 1 or paragraph 5 of article 3 of the Constitution, initiate the investigation procedure on its own behalf in order to ensure that previously formulated recommendations are implemented in practice. Thus the new rules might provide that the investigation procedure should begin before the start of the Conference, with the Credentials Committee of a given session of the Conference instructing the Office to request certain governments to supply information, on the form for the submission of credentials for the following session of the Conference, with regard

to the nomination procedure followed and the measures adopted for giving effect to the Committee's recommendations.

25. This possibility would be in full accordance with the text of the Constitution. Article 3, paragraph 9, thereof reads as follows: "The credentials of delegates and their advisers shall be subject to scrutiny by the Conference, which may, by two-thirds of the votes cast by the delegates present, refuse to admit any delegate or adviser whom it deems not to have been nominated in accordance with this article." This provision, which establishes in very broad terms the latitude available to the Conference for verifying the validity of credentials, does not mention who shall take the initiative of verification. In addition, the original text of the Standing Orders of the Conference provided for the initiation of the invalidation procedure either following an objection or on the initiative of the Chairperson of the Governing Body, through the brief report on credentials which he or she must submit at the start of the Conference pursuant to article 26, paragraph 2, of the Standing Orders. Even though this provision was amended very early, in 1922, thenceforth referring only to examination following an objection, the Conference's ability to initiate the procedure by itself or through one of its organs still remains implicit.
26. This role of conducting an investigation *ex officio* would be especially effective in cases of progressive implementation, in the absence of genuine employers' or workers' organizations, of mechanisms to ensure that Employers' and Workers' delegates to the Conference are truly representative. However, when the cases examined by the Committee concern allegations of serious violations of freedom of association or acts of interference which have not been the subject of conclusions by the competent supervisory bodies of the ILO, the Committee could not and should not carry out an investigatory role, for this might mean encroaching upon the mandate and responsibilities of the competent bodies.
27. Accordingly, in such cases it could be envisaged to empower the Credentials Committee to take the initiative of requesting a procedure before the Committee on Freedom of Association; in other words, at its own initiative to refer, through the Conference, to that Committee any objection which raises issues having a bearing on freedom of association. This power was conferred on the Credentials Committee in 1950, when the Fact-Finding and Conciliation Commission on Freedom of Association was established by the Governing Body.⁷ It will be recalled that the fact-finding and conciliation procedure led to the establishment of the Committee on Freedom of Association. Although initially, the role of that Committee was to carry out a preliminary examination of complaints referred to the Fact-Finding and Conciliation Commission either by the Governing Body or by the Conference at the recommendation of the Credentials Committee, it was not long before it was charged with the entire procedure of examining such complaints. Thus, it would be possible to reactivate the Credentials Committee's role of requesting the procedure, which the Organization had conferred on the Committee in 1950, by amending the Standing Orders of the Conference to include specific provisions on this role and the manner in which it should be carried out.
28. In that case, when the Credentials Committee had before it objections concerning acts allegedly contrary to the principles of freedom of association, and where there were no conclusions on those acts by the Committee on Freedom of Association on which it could base its own conclusions at the end of its examination, the Credentials Committee could recommend that the Conference refer the relevant aspects of the objection to the Committee on Freedom of Association. In the event that another objection based on the same allegations was presented to it, the Credentials Committee could thus base its own

⁷ *Official Bulletin*, Vol. XXXIII, No. 2, 1950.

conclusions as to whether the nominations were in conformity with the provisions of article 3 of the Constitution on the findings of the Committee on Freedom of Association.

29. These two complementary solutions could contribute to strengthening the role of the Credentials Committee without having to change its mandate and to encouraging a spirit of constructive dialogue, especially in the former case, with regard to the adversarial procedure that is characteristic of any system based on the lodging of objections or complaints. At the same time, this should help to ensure that the examination of such situations is more neutral, inasmuch as the initiative to request an examination of the case would lie with a tripartite body appointed by the Conference and not necessarily, as is the case at present, with employers' and workers' organizations, whose intentions are sometimes perceived by the governments concerned as not being strictly confined to matters relating to the composition of delegations to the Conference and independence of the groups.
30. These approaches would allow better monitoring of situations deemed to give cause for concern, but would not in themselves provide the Conference with the means of rectifying rapidly any serious violation of the relevant constitutional provisions.

(c) Adjustment of existing means of action

31. An approach aimed at ensuring directly by other means that the balance of interests in the Conference is upheld, would be to confirm the possibility already available to the employers' and workers' groups to the Conference to draw the conclusions themselves of any serious violation of the smooth functioning of tripartism or of their independence. This approach might, however, also centre on the Credentials Committee and be combined with the preceding solutions.
32. Because of the autonomy conferred on them by article 70 of the Standing Orders of the Conference, the groups have the right to decide who shall be admitted to their meetings, without there being any possibility of appeal against such decisions. As a result of this autonomy and pursuant to article 9 of the Standing Orders of the Conference, they also have the right to determine their membership in the various Conference committees, and even to decide to exclude a particular delegate from a committee, though the delegate in question is entitled to appeal against this decision. The relevant provisions of article 9, as amended at the last session of the Conference, read as follows:

The following rules shall apply to all committees appointed by the Conference with the exception of the Selection Committee, the Credentials Committee, the Finance Committee of Government Representatives and the Drafting Committee:

- (a) once the various committees have been established and their initial membership appointed by the Conference, it shall be for the groups to determine subsequent changes in the composition of such committees;
 - (b) if a delegate has not been nominated by his group to sit on any committee, he may bring the matter to the notice of the Selection Committee which shall have power to place him on one or more committees, enlarging the number of members of such committee or committees accordingly. Any such request shall be made to the Chairperson of the Selection Committee.
33. The content of subparagraph (b), introduced in 1932 before the system of weighting votes in the committees was formalized in 1945, certainly focused more on the numerical, technical and geographical balance of the committees than on the status or legitimacy of a delegate as regards representing the interests of the group to which he belongs. When questions of this nature have been raised at the Conference, in particular regarding the

representativeness of Employer members of countries with a centralized economy during the Cold War and the refusal of the Employers' group to include them in the voting sections of committees, the Conference preferred to establish an ad hoc body in 1959, the Appeals Board for the appointment of Conference committees, rather than implement the appeals procedure within the Selection Committee. This committee functioned for several decades before falling into disuse since the 1990s, though without having been formally abolished.

34. If, for want of any other solutions, the groups decide to use their power to exclude certain delegates from committees for reasons of their lack of representativeness, an examination of an appeal in these circumstances by the Selection Committee or the Appeals Board would appear inappropriate, and it would perhaps be desirable to refer the issue to the Credentials Committee for consideration. Not only would the Credentials Committee be the best technically equipped body, on account of its experience, to examine such issues but also its compact structure, quasi-judicial methods and private nature of its meetings would allow the resources of the Conference to be optimized without affecting the smooth execution of its other tasks. The decisions of the Credentials Committee on this subject might be final or regarded as recommendations to the Conference, as was the case with those taken by the Appeals Board. If necessary, this solution might be accompanied by certain additional guarantees, for example by limiting this power of the groups solely to cases in which the Credentials Committee had concluded in the past that there had been a violation of the provisions of article 3 of the Constitution by the government concerned.
35. *The Committee may wish to consider to what extent any one of these solutions would merit being examined in greater depth and, if so, indicate the Governing Body session at which such examination should take place.*

Geneva, 6 February 2003.

Point for decision: Paragraph 35.

Annex

Extracts from the provisions relating to credentials

Constitution

ARTICLE 3

1. The meetings of the General Conference of representatives of the Members shall be held from time to time as occasion may require, and at least once in every year. It shall be composed of four representatives of each of the Members, of whom two shall be Government delegates and the two others shall be delegates representing respectively the employers and the workpeople of each of the Members.

[...]

5. The Members undertake to nominate non-Government delegates and advisers chosen in agreement with the industrial organizations, if such organizations exist, which are most representative of employers or workpeople, as the case may be, in their respective countries.

[...]

8. The names of the delegates and their advisers will be communicated to the International Labour Office by the government of each of the Members.

9. The credentials of delegates and their advisers shall be subject to scrutiny by the Conference, which may, by two-thirds of the votes cast by the delegates present, refuse to admit any delegate or adviser whom it deems not to have been nominated in accordance with this article.

ARTICLE 4

1. Every delegate shall be entitled to vote individually on all matters which are taken into consideration by the Conference.

2. If one of the Members fails to nominate one of the non-Government delegates whom it is entitled to nominate, the other non-Government delegate shall be allowed to sit and speak at the Conference, but not to vote.

3. If in accordance with article 3 the Conference refuses admission to a delegate of one of the Members, the provisions of the present article shall apply as if that delegate had not been nominated.

Standing Orders of the Conference

ARTICLE 5

Credentials Committee

1. The Conference shall, on the nomination of the Selection Committee, appoint a Credentials Committee consisting of one Government delegate, one Employers' delegate and one Workers' delegate.

2. The Credentials Committee shall examine the credentials of delegates and their advisers, and any objection relating thereto, in accordance with the provisions of Section B of Part II. Within the limits laid down in the said section B, the Committee may also consider any complaints of non-observance of paragraph 2(a) of article 13 of the Constitution.

Section B

Verification of credentials

ARTICLE 26

1. The credentials of delegates and their advisers shall be deposited with the International Labour Office at least 15 days before the date fixed for the opening of the session of the Conference.

2. A brief report upon these credentials, drawn up by the Chairman of the Governing Body, shall, with the credentials, be open to inspection by the delegates on the day before the opening of the session of the Conference and shall be published as an appendix to the record of the first sitting.

3. The Credentials Committee appointed by the Conference in pursuance of article 5 of the Standing Orders of the Conference shall consider any objection concerning the nomination of any delegate or adviser which may have been lodged with the Secretary-General.

4. An objection shall not be receivable in the following cases:

- (a) if the objection is not lodged with the Secretary-General within 72 hours from 10 o'clock a.m. of the date of the publication in the Provisional Record of the name and function of the person to whose nomination objection is taken; provided that, where the name of the person is published for the first time in a revised list of the names and functions of delegates, the above time-limit shall be reduced to 48 hours;
- (b) if the authors of the objection remain anonymous;
- (c) if the author of the objection is serving as adviser to the delegate to whose nomination objection is taken;
- (d) if the objection is based upon facts or allegations which the Conference, by a debate and a decision referring to identical facts or allegations, has already discussed and recognized to be irrelevant or devoid of substance.

5. The procedure for the determination of whether an objection is receivable shall be as follows:

- (a) the Credentials Committee shall consider in respect of each objection whether on any of the grounds set forth in paragraph 4 the objection is irreceivable;
- (b) if the Committee reaches a unanimous conclusion concerning the receivability of the objection, its decision shall be final;
- (c) if the Credentials Committee does not reach a unanimous conclusion concerning the receivability of the objection, it shall refer the matter to the Conference which shall, on being furnished with a record of the Committee, its discussions and with a report setting forth the opinion of the majority and minority of its members, decide without further discussion whether the objection is receivable.

6. In every case in which the objection is not declared irreceivable, the Credentials Committee shall consider whether the objection is well-founded and shall as a matter of urgency submit a report thereon to the Conference.

7. If the Credentials Committee or any member thereof submits a report advising that the Conference should refuse to admit any delegate or adviser, the President shall submit this proposal to the Conference for decision, and the Conference, if it deems that the delegate or adviser has not been nominated in conformity with the requirements of the Constitution, may, in accordance with paragraph 9 of article 3 thereof, refuse by two-thirds of the votes cast by the delegates present to admit the delegate or adviser. Delegates who are in favour of refusing to admit the delegate or adviser shall vote "Yes"; delegates who are opposed to refusing to admit the delegate or adviser shall vote "No".

8. Pending final decision of the question of his admission, any delegate or adviser to whose nomination objection has been taken shall have the same rights as other delegates and advisers.

9. The Credentials Committee may consider complaints that a Member has failed to comply with paragraph 2(a) of article 13 of the Constitution where:

- (a) the Member is alleged to have failed to pay the travelling and subsistence expenses of one or more of the delegates that it has nominated in accordance with article 3, paragraph 1, of the Constitution;
- (b) the complaint alleges a serious and manifest imbalance as between the number of Employer or Worker advisers whose expenses have been covered in the delegation concerned and the number of advisers appointed for the Government delegates.

10. A complaint referred to in paragraph 9 shall not be receivable in the following cases:

- (a) if the complaint is not lodged with the Secretary-General of the Conference before 10 a.m. on the seventh day following the opening of the Conference and the Committee considers that there is insufficient time to deal with it properly;
- (b) if the complaint is not lodged by an accredited delegate or adviser alleging non-payment of travel and subsistence expenses in the circumstances set out under (a) or (b) of paragraph 9 or by an organization or person acting on his or her behalf.

11. The Credentials Committee shall, in its report, present to the Conference any conclusions that it has unanimously reached on each complaint considered by it.

Rules for Regional Meetings

ARTICLE 9

Credentials

1. The credentials of delegates and their advisers at Regional Meetings shall be deposited with the International Labour Office at least fifteen (15) days before the date fixed for the opening of the Meeting.

2. The Credentials Committee shall consist of one Government delegate, one Employers' delegate and one Workers' delegate.

3. The Credentials Committee shall examine the credentials of delegates and their advisers and any objection alleging that an Employers' or Workers' delegate or adviser has not been nominated in accordance with the provisions of paragraph 4 of article 1 of these Rules. The Committee may also consider any complaint alleging that a Member has failed to carry out its responsibility in accordance with article 1, paragraph 1, to pay travel and subsistence expenses of the tripartite delegation.

4. An objection shall not be receivable in the following cases:

- (a) if the objection is not lodged with the secretariat of the Meeting by 11 a.m. on the first day of the Meeting, unless the Committee considers that there were valid reasons why the time limit could not be respected;
- (b) if the authors of the objection remain anonymous;
- (c) if the objection is based upon facts or allegations identical to those which the International Labour Conference or an earlier Regional Meeting has already discussed and recognized to be irrelevant or devoid of substance.

5. The Credentials Committee shall promptly submit its report on each objection to the Meeting, which may request the Office to bring the report(s) to the attention of the Governing Body.