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MINUTES OF THE 253RD SESSION



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SECOND ITEM ON THE AGENDA

Agenda of the 81st (1994) Session of the Conference¹

Mr. Oechslin (Employer, France; Employer Vice-Chairman) felt that the procedure for the selection of the agenda items for the Conference was not entirely rational and this was a subject that needed to be considered when reviewing the methods of work of the Governing Body. As concerns the question of homework, which did not appear among the agenda items now proposed, the Employers accepted the technical reasons given by the Director-General for not proposing it for the 1994 agenda, but this did not imply that they would be favourably inclined towards its inclusion in 1995. Among the questions proposed for the agenda in 1994, there were three which posed no major problems: (1) extension of the Labour Inspection Convention, 1947 (No. 81) to activities in the non-commercial services sector; (2) revision of the list of occupational diseases appended to the Employment Injury Benefits Convention, 1964 (No. 121); and (4) the role of private employment agencies in the functioning of labour markets (general discussion). These questions had already been considered by the Governing Body in November 1991. The Employers' group was particularly interested in pursuing the issue under item No. 2, which was somewhat overdue, and on which a decision needed to be reached. The speaker further expressed satisfaction with the preparatory work undertaken by the Office concerning item 5, "Settlement of labour disputes (general discussion)", which had been proposed by the Employers' group.

Concerning item No. 3, that is the right to strike, the Employers' group thought that it was more appropriate to discuss this question in the wider framework of labour disputes. Neither strikes nor lockouts were desirable methods of solving labour disputes. It was preferable to explore all means that could lead to avoiding a strike, which inevitably had negative consequences. The Employers' group would like to focus on the exchange of experiences with a view to finding mechanisms which would resolve disputes without recourse to strike action, the legitimacy of which was not contested. They suggested that prior to proceeding to the adoption of an instrument, the Conference should have the opportunity to debate the matter in a general discussion. That might help to avoid the formalisation of the opposing views of the various parties.

As to the question of "tripartite consultation at the national level on economic and social policy", which was proposed under point No. 6, the subject was a priori an interesting one. It was, however, a matter which required further reflection in the light of the excellent report on democratisation and the role of the ILO submitted to the Conference by the Director-General. This report indicated that the relationship between democracy and tripartism could take different forms in the different countries, and that the consultation with or between the social partners would sometimes be carried out within the tripartite structures, but could also take different, more subtle forms. As pointed out by the Director-General, employers' and workers' organisations had the possibility of playing an autonomous and specific role in their societies. The proposal of the Workers' group, which was favourably received by the Employers, focused a little too much on institutional mechanisms at the national level, which might or might not be appropriate at certain times. The paper that would be submitted to the Governing Body in November 1992 should

¹ See also third sitting.

therefore be formulated in such a way as to allow for various forms of consultations.

Ms. Carr (Worker, Canada; Worker Vice-Chairperson) remarked that usually the May session of the Governing Body transmitted without discussion to the November session the topics proposed for standard setting and general discussion. However, on this occasion, the poor quality of the Office paper called for a debate. It was quite unacceptable for the Workers' group to deal in 1994 with the revision of two old Conventions and with a most controversial and problematic topic, such as the right to strike. She expressed surprise about the inability of the Office to be more imaginative and pointed to the 1987 report of the Working Party on International Labour Standards, which contained excellent suggestions for new standard-setting items that remained to be covered. While agreeing that it was important to update obsolete standards, she felt that it was inappropriate to do it at the expense of further progress in new areas of standard setting. In view of the importance of standard setting, which represented the strength and the uniqueness of the Organisation, the Workers' group proposed additional items, such as the protection of the basic rights of workers in the face of technological developments; prison labour; data protection for workers; and the prevention of accidents in underground mines. Of these possibilities the Workers' group would favour the questions of data protection for workers and the prevention of accidents in underground mines.

As to the topic for the general discussion, namely tripartite consultation at the national level on economic and social policy, the Workers' group agreed with the choice and suggested that at a later stage the topic be put on the agenda again as a standard-setting topic, leading to the adoption of a broad, promotional instrument. The speaker concluded by reiterating her disagreement with the choice of the subject of the right to strike. This issue would be very divisive, which was not desirable. She could not understand why the Director-General was proposing a topic on the suggestion of one country only.

Mr. Hakkou (Government, Morocco) pointed out that the standard-setting activities of the Organisation were designed to provide guidance to member States in the implementation of social progress, protection against occupational hazards and the improvement and stabilisation of labour relations. They had to relate to the problems of today, which presupposed that the ILO pay attention to technological progress and the needs expressed by the member States. In his view, all the topics proposed responded to the needs of member States. Given the fact that the Programme and Budget for 1992-93 provided for three technical items only, and that one of the three would be the second discussion of an item already selected for 1993, only two topics had to be chosen.

Of the six topics proposed, the speaker gave priority to the revision of the list of occupational diseases, because it touched upon the protection of the workers' health and because the Conference usually dealt with a question relating to the prevention of occupational hazards. He considered that the item should be examined by a separate committee in accordance with the single discussion procedure, because it was simply a matter of approving the findings made by the experts concerning the links that existed between certain products and the diseases contracted by those who were exposed to those products.

The speaker gave second priority to the question of the right to strike. Since no instrument existed on the subject, there was a legal gap which had to be filled. Though the right to strike was granted to workers in a large number of countries, only a few countries had fixed the modalities of its implementation. It was essential to define the notion of the right to strike,

since there was no such thing as an absolute right to strike. It was therefore important to define its limits, which concerned in particular the essential services. Furthermore, it was important to discuss the question in conjunction with that of the lockout and within the framework of the settlement of labour disputes. An initial general discussion could later be followed up by completing the existing standards on labour disputes by additional clauses on strike and lockout.

The third priority should be assigned to the role of private employment agencies in the functioning of labour markets. This question touched upon the key concern of the ILO, namely employment. Its discussion could lead to conclusions which would permit, at a later stage, the revision of Convention No. 96, which seemed to be already outdated.

The fourth priority was the question of tripartite consultation at the national level on economic and social policy. The promotion of such tripartite consultation would facilitate both decision-making concerning social and economic questions and the process of structural adjustment. The extension of the Labour Inspection Convention, 1947 (No. 81) to activities in the non-commercial services sector was the next on the list of priorities. Since the non-commercial services called for a body of specialised labour inspectors, the question should receive the same treatment as the agricultural sector, that is a new and independent instrument. The speaker concluded by requesting the Office to prepare detailed reports on all six topics.

Ms. Hartwell (Government, United Kingdom) did not share the view expressed by the Workers' group that new subjects had to be added to the list of items on which law and practice reports were to be submitted to the Governing Body at its November 1992 Session, but she agreed with them that one should not just accept the proposed list. It made no sense to discuss the matter at the present session if all six items would come again before the Governing Body at its November session. She therefore suggested that the Governing Body remove some of the items and concentrate on those it most favoured. She agreed with both the Workers' and Employers' groups that a Conference discussion on the question of the right to strike would be both impracticable and highly divisive. That item should be deleted from the list together with that of the revision of the list of occupational diseases appended to the Employment Injury Benefits Convention, 1964 (No. 121). Law and practice reports should therefore be prepared on the remaining four topics, of which only one item should be added to the agenda of the 1994 Conference, since it would already have one item for second discussion that would lead to a new instrument. The new item chosen should be among the topics listed for general discussion, because none of the subjects chosen for standard setting had much appeal. Furthermore, it was evident that the pace of standard setting had to be slowed down, because there was already a large body of standards, many of which remained unratified in most countries. Adding new standards would help neither governments nor the social partners because an ignored standard was a discredited standard.

The United Kingdom Government had often requested that the work should concentrate on the revision of existing standards rather than the creation of new ones. It would therefore be ready to accept the proposal to extend the Labour Inspection Convention, 1947 (No. 81) to activities in the non-commercial services sector. However, neither of the two proposals for revision were convincing. She therefore encouraged the Office to pay more critical attention to the priorities outlined by the Governing Body.

As concerns the suggestions for the agenda of the 1995 Session of the Conference, the United Kingdom wished to put the question of equal opportunities for women on the list for a general discussion. However, the

items listed under standard setting were not acceptable. Neither the question of homework nor that of equal opportunities in matters of social security had attracted sufficient support in the past to merit returning to them so soon.

Mr. Rodriguez (Government, Argentina) supported the idea of having only one technical item for each Conference. He found item (2), the revision of the list of occupational diseases, an interesting one, which could be looked at in the light of recent medical and technical progress as well as other factors such as the commercial links between countries and migration. He agreed with the proposal of the representative of the Government of Morocco that a law and practice report be prepared on the right to strike in conjunction with the settlement of labour disputes. He found also item (4) important and felt that a general discussion on the topic could lead to a revision of earlier concepts. He noted that item (6) relating to tripartite consultation at the national level was connected with the report of the Director-General. Finally, he agreed with the Workers' group that more work needed to be done on the question of the protection of workers in the face of technological change.

Mr. Al Suwaidi (Government, United Arab Emirates) thanked the Office for the excellent paper. He proposed that only two items be selected, one for standard setting and one for general discussion. He gave the highest priority to item (1), the extension of the Labour Inspection Convention, 1947 (No. 81) to activities in the non-commercial services sector, and to item (5), settlement of labour disputes. As regards the general discussion for 1995 he suggested that it deal with women's work because the role of women was very important in development.

Mr. Zhang Wei (Government, China) considered that all six items proposed for the agenda were very important but suggested that only two be selected. Like the preceding speaker, he gave priority to items (1) and (5). He felt that the health and safety of workers in the non-commercial services sector were neglected in many countries and that the protective measures taken in favour of these workers were often insufficient. While it was difficult to define with precision the non-commercial services sector, it was evident that a large number of persons worked in it. In China alone the employees working in governmental services numbered more than 5 million. In other countries employees in that sector represented 10-50 per cent of the total labour force. All that spoke in favour of including the item on the agenda of the Conference.

As to the settlement of labour disputes the question had gained importance in China since the economy had become a multifaceted one and the labour system had been overhauled. The privatisation of enterprises and the development of more independent management systems had given rise to labour disputes, which had led the Government to draw up provisional rules on their settlement. However, China had still insufficient experience in the settlement of labour disputes and its labour legislation had to be strengthened. An exchange of experiences with other countries would therefore be useful and would contribute to ensuring the stability and prosperity of Chinese society. The speaker hoped that a consensus could be reached on the selection of the topics.

Mr. Zvenigorodsky (Government, Russian Federation) disagreed with the criticisms voiced about the Office paper, which provided useful information. He continued to believe that it was important to have three technical items on the agenda, which meant choosing two of the six items proposed. The two sets of subjects proposed related to occupational safety and health on the one hand and the settlement of labour disputes on the other. The latter was of more interest to Russia, which so far had only limited experience in the settlement

of labour disputes. The prevention of accidents in underground mines was also an important subject for Russia. Mining also involved questions of infrastructure and the closing of mines created social problems not only for miners but also for other workers in the regions concerned. As to the subjects proposed in the Office paper, his Government's order of priority went to items (3) and (6), the right to strike and tripartite consultation, followed by items (2) and (5), that is the revision of the list of occupational diseases appended to Convention No. 121 and the settlement of labour disputes, and finally to items (4) and (1), the role of private employment agencies and the extension of Convention No. 81 to activities in the non-commercial services sector.

Mr. Fritz (Government, Germany) thought that the topics chosen had to be well justified, which unfortunately was not the case of each subject in the Office paper. He referred in this context in particular to item (3) concerning the right to strike, and suggested that in the future more attention be given to the fields which needed to be equipped with international labour standards. At the same time there was a need for a more critical revision of existing labour standards especially in view of the denunciation by a number of countries of some Conventions. Consequently he did not quite understand why paragraphs 7 to 12 of the Office paper rejected the idea of revising the Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27). The Government of Germany saw in that Convention an obstacle to modern container shipping procedures, as it dated back to 1929 and had become obsolete as a result of technological developments. The refusal of the ILO to update that Convention would force member States to denounce it. That, however, would discredit the authority of the ILO and would damage the value of its standards. He therefore urged that the revision of existing standards be undertaken with a view to adapting them to modern conditions. If this was not done, there would be increasingly fewer Conventions ratified by member States.

Mr. Dejong (Government, Australia) found all items chosen for the general discussion to be interesting, and supported the preparation of law and practice reports on items (5) and (6). In relation to item (6) he would prefer tripartite dialogue to be focused in the broad sense, as outlined in paragraph 75 of the Office paper. He was less enthusiastic about item (4), concerning the role of private employment agencies unless it would be examined from the point of view of revising Convention No. 96. However this had not been proposed by the Office despite the fact that paragraphs 49 and 50 of the Office paper pointed to the shortcomings of Part II of Convention No. 96. He remarked also that the question of alcohol and drug abuse that had earlier been proposed for general discussion was an important topic and it should not be forgotten.

The subjects proposed for standard setting were very disappointing. He would neither oppose nor give priority to the preparation of law and practice reports on them. He pointed out that the Employment Injury Benefits Convention, 1964 (No. 121) was almost 30 years old but had been ratified by 18 States only, of which only four had accepted the revision in 1980 of the list of occupational diseases. In his opinion, many ILO Conventions had to be revised, not only the two which were proposed under items (1) and (2). He suggested that simplified ways be found for updating several Conventions relating to the topics discussed by a particular Conference without fundamentally revising the issues involved and without recourse to a single-discussion, let alone a double-discussion, procedure.

The speaker pointed to the preliminary decisions taken with regard to the 1994-95 budget and felt that it would be appropriate to have only two technical items on the agenda for 1994. Lack of resources restricted the

effective participation of member States in the standard-setting processes, especially when there were too many technical items, and this did not contribute to the universal application of labour standards. As to the proposals for 1995, he supported the item on equality for women and was ready to give serious consideration to the subjects proposed by the Workers' group for future sessions of the Conference.

Ms. Cabrera (Government, Venezuela) suggested that items (3) on the right to strike and (5) on the settlement of labour disputes be discussed as one technical item. It was labour disputes which gave rise to strikes whether they were considered legal or illegal. In most cases, strikes were caused by conflicts of interest or economic disputes and hence the right to strike tended to become a political right. The discussion of the two items was therefore of great political and social importance. She supported the proposal of the Minister of Labour and Social Security of Colombia in view of the fact that the relevant ILO instruments, in particular Conventions No. 87 and No. 98, made no mention of the right to strike. However, a trade union that had the right to negotiate without having the right to strike did not really enjoy freedom of association. An international instrument on the right to strike was therefore essential. In addition to this question she gave her support to items (2) on occupational diseases and (6) on tripartite consultation.

Mr. Cavaglieri (Government, Italy) was disappointed that the question of alcohol and drug abuse, which had received wide support during previous discussions, had not been retained by the Office. This was the more regrettable because the ILO had an important contribution to make to this dramatic and timely question as it affected the world of work. He found items (4), (5) and (6) interesting but too vast to be discussed at one single session of the Conference. For that reason he was more in favour of discussing item (4) concerning the role of private employment agencies.

Concerning the subjects for standard setting, the Government of Italy preferred the revision of existing standards to the development of new ones, and it therefore supported item (2) relating to the revision of the list of occupational diseases. He was not in favour of item (1) because the definition of non-commercial services might involve difficult discussions, nor of item (3) relating to the right to strike because of the complexity of the subject. He agreed with the Employer Vice-Chairman that the settlement of labour disputes included an element of prevention and was not necessarily tied to the question of strike, which, in any case, was too complex to be pursued at the present session of the Governing Body. As to the proposals for 1995 he agreed to dealing with the question of equality for women.

Mr. Ramond (Government, France) supported the statements of the representatives of the Governments of Germany and Australia who had called for a simplified procedure for updating obsolete labour standards. Under the present system it would prove impossible to complete the task. As concerns the proposed subjects, all were of interest except that relating to the right to strike which was too divisive and was presented rather summarily in the paper. He suggested that only one of the six items be retained, which could be the extension of the Labour Inspection Convention, 1947 (No. 81) to activities in the non-commercial services sector. Should an item be selected for general discussion, he favoured item (4) concerning the role of private employment agencies.

Ms. Houstoun (Government, United States) recalled that the Americas group considered that only one item should be added to the agenda of the Conference in 1994. She regretted that some of the interesting ideas raised concerning the revision of Conventions could not be pursued at this stage due to the

lateness of the hour. As to the relative priority to be given to the revision of old standards versus the elaboration of new ones, the only criterion was whether the standard in question improved working conditions or not. The reputation of the ILO rested on the degree to which it improved working conditions either through standards or through technical cooperation, both of which were only tools and had to be judged in terms of their utility. It was this aspect which should also determine the choice of the agenda item.

Mr. Takahashi (Government, Japan) expressed the reservations of the Government of Japan concerning some of the items proposed for the Conference agenda for 1994. In his opinion, the agenda should respond to the following criteria: (a) the issue should be of interest to as many countries as possible; (b) it should contribute to solving the problems faced by member States; and (c) the number of items should be limited in order to permit the participation of small delegations in the technical committees. Although the ILO had adopted 172 Conventions the average number of ratifications per country was only 37. Consequently, more emphasis should be put on the revision of old standards. Should a new Convention be considered, its contents would have to be discussed thoroughly before it was adopted. Since the agenda of the Conference in 1994 already included the second discussion of the instruments on part-time work, the subject to be added should be one for the general discussion. His Government's priority was item (4), followed by item (6). He disagreed with placing items (3) and (1) on the agenda; as the question of the right to strike and that concerning the list of occupational diseases both had particular characteristics which differed from country to country. They should hence be regulated within the legal framework of each member State and not by ILO Conventions.

Mr. Hashim (Government, Nigeria) considered all the proposed items to be important. Since the choice had to be restricted to two, he opted first of all for item (1), the extension of the Labour Inspection Convention, 1947 (No. 81) to activities in the non-commercial services sector. Convention No. 81 was a basic ILO instrument which covered various sectors with the exception of the non-commercial services sector, and it was time to change that situation. His Government was grateful to the ILO for its evaluation of the labour inspection activities of Nigeria. However, the final report had not yet been received, although more than a year had elapsed since the experts had conducted their survey. His second priority went to item (4) on the role of private employment agencies in the functioning of labour markets. It was essential to understand the role of such agencies on the basis of accurate statistics on their performance. The ILO should therefore consider either revising Convention No. 96 or adopting a new Convention on the operation of private employment agencies.

With regard to the revision of the list of occupational diseases appended to Convention No. 121, he believed that there should be no problem in updating this list from time to time in accordance with the established procedure. Concerning item (3) on the right to strike he felt that the subject was a delicate one and he was not convinced of the need for entrenching that right in a Convention. Whether such a Convention existed or not, strikes would continue to occur. The issue of the settlement of labour disputes would make an interesting general discussion item but should not be allowed to take precedence over the question of private employment agencies either. Finally, the issue of tripartite consultations was gaining importance. However, it was preferable to observe developments in this field before embarking upon a serious discussion.

Mr. Ali (Government, Bangladesh) suggested that only one item be retained for standard setting and one for general discussion. Developing countries, especially the least developed ones, had problems which were sometimes not

reflected in the formulation of standards. These countries had repeatedly stressed the need to build a certain flexibility into the standards in the course of the deliberations. However, the number of committees working simultaneously during the Conference and the limited size of the delegations coming from these countries, participation in the formulation of standards was not always possible. Consequently they did not feel concerned with the adoption of new standards. The ILO should therefore slow down the adoption of Conventions during the coming years. As pointed out by the representative of the Government of Japan, the application of standards was even more important than their adoption. In the developing countries, the application of Conventions depended on the influx of technical cooperation. The Governing Body should therefore select not more than one standard-setting item and one general discussion item.

An item such as the extension of the Labour Inspection Convention, 1947 (No. 81) to activities in the non-commercial services sector made no sense to a country like Bangladesh, which had 40 labour inspectors to inspect 40,000 mainly industrial installations. At present, they take about 12 years to complete a cycle. With the inclusion of the non-commercial services sector their task would be impossible to complete. A subject such as the revision of the list of occupational diseases would prove easier. The introduction of new technologies resulted in new occupational diseases which were of concern to both developed and developing countries alike. He therefore suggested that this item be retained for the adoption of an instrument and that the issue of the role of private employment agencies in the functioning of labour markets be chosen as the item for the general discussion. The subjects concerning the settlement of labour disputes and tripartite consultation at the national level should be deferred to a later session of the Conference. Since the settlement of labour disputes and the right to strike were related issues, the latter should not be placed on the agenda of the Conference in 1994 either.

Mr. Vargas Campos (Government, Mexico) agreed with Mr. Blondel's earlier statement that tripartism was meaningful only if it led to results. The same was true of standards. His Government attached importance to all six items proposed for the agenda, of which items (1), (2) and (4) had received wide support from governments, item (5) had been proposed by the Employers and item (6) by the Workers. It would also be interested in receiving a law and practice report on item (3) concerning the right to strike, and would not object to dealing with that item in conjunction with item (5) relating to the settlement of labour disputes.

Ms. Carr (Worker, Canada, Worker Vice-Chairperson) expected the Office to include in the Office paper to be presented at the November 1992 Session the proposals made by the Workers' group including the subjects of data protection for workers and the prevention of accidents in underground mines.

The sitting closed at 6.30 p.m.

language. This overlooked the fact that people in Viet Nam, Laos and Cambodia spoke at least as much French as English, if not more. Noting that some of these countries were to be invited to these seminars, he requested that the working languages of these symposia be reconsidered with a view to giving French the place it rightfully deserved.

The Governing Body took note of the paper.

SECOND ITEM ON THE AGENDA

Agenda of the 81st (1994) Session of the Conference (concl.)¹

The Chairman recalled that, while the Governing Body had only undertaken a preliminary discussion of the Conference agenda for 1994 and would take its final decision at the 254th (November 1992) Session, it was important to agree on the subjects on which the Office would be requested to prepare law and practice reports for its next session. In the light of the statements made, he proposed the following decision:

The Governing Body requests that law and practice reports or more detailed proposals be prepared for its 254th (November 1992) Session on the following subjects: (1) extension of the Labour Inspection Convention, 1947 (No. 81) to activities in the non-commercial sector; (2) revision of the list of occupational diseases appended to the Employment Injury Benefits Convention, 1964 (No. 121); (3) prevention of accidents in underground mines; (4) the role of private employment agencies in the functioning of the labour markets (general discussion); (5) the settlement of labour disputes (general discussion), it being understood that the question of the right to strike would be covered by this item; (6) tripartite consultation at the national level on economic and social policy (general discussion); (7) the protection of workers' basic rights in the face of technological development (general discussion), it being understood that the Office would be unable to produce a law and practice report on this subject for its 254th Session.

The Governing Body approved the above proposal.

The sitting closed at 4.05 p.m.

¹ See also first sitting.