Working Group on the Working Methods of the Conference Committee on the Application of Standards (Second meeting)

Informal Tripartite Consultations (11 November 2006)

Office note

Background

The functioning of the Conference Committee on the Application of Standards has been a recurrent theme of discussion over the last 15 years, both within the Committee itself and the Governing Body. It has, however, been established that it is for the supervisory bodies themselves to decide upon their working methods, even though the Governing Body can provide ideas to facilitate such discussions. The general objective of the present discussions is to improve the effectiveness and the transparency of the Committee’s work and thus contribute to the reinforcement of the Committee. It may be recalled that informal consultations also took place in March 2003. The discussions continued at the Committee’s subsequent sessions. At the June 2006 Conference, a tripartite working group was established and subsequently held its first meeting.

Some improvements and simplifications have already been made during the last few years (a reminder of these is provided in the following paragraphs). They involve, most notably, the more in-depth and interactive information session held at the beginning of the Committee, the shortening of the general discussion and the decision to no longer publish the minutes of this discussion, the preparation of the Chairperson’s conclusions, and the giving of greater consideration to technical assistance in the Committee’s work. Following a decision made in June 2005, the Committee now puts greater emphasis on the importance of cases formerly referred to as “automatic” and renamed “cases of serious failure to respect reporting and other standards-related obligations”, and the treatment of such cases has been rationalized. At the Committee’s last session, two other significant advances were noted, namely the publication of a preliminary list of individual cases (before the beginning of the Conference) and improved geographical balance in the selection of these cases. Moreover, an important development with regard to transparency was made in the work of the Committee of Experts at its session in November-December 2005, namely the adoption of criteria for footnotes and for cases of progress.

1 The Conference Committee’s Schedule of Work for June 2006 (C.App/D0, 95th Session, ILC 2006) and the document on the work of the Committee submitted by the Office that same year (C.App/D1, 95th Session, ILC 2006) are attached in the appendices.

2 Document GB.280/LILS/3 (March 2001), paragraph 36.


4 See the Report of the Committee of Experts on the Application of Conventions and Recommendations, ILC 2006, paragraphs 36 and 37 (footnotes) and 42 to 46 (cases of progress), and Appendix II (Annexes I and II).
The items on the agenda of the Working Group’s first meeting, which were based on the proposals made to the Committee during the discussion, were as follows: preliminary list of individual cases; time management of the Committee; drafting and adoption of conclusions of the cases; role of Governments in the Committee; and preliminary considerations for a country-based approach. A consensus was reached to continue publishing a preliminary list on a trial basis and it was made clear that the country-based approach was a matter for the LILS Committee. The Working Group began discussing the time management of the Committee. The matter of selection criteria of cases was also addressed.

The agenda proposed for the present meeting includes outstanding items from the previous agenda, with the exception of the item concerning the country-based approach (which is the subject of other consultations within the framework of the LILS Committee). The present agenda includes also the criteria for the selection of individual cases.

**Time Management of the Conference Committee**

Among the advances made, the duration of the general discussion, including the discussion on the General Survey, has been progressively reduced to one and a half days (in 2003, for instance, it lasted almost three days) and the time given to each speaker during this discussion is better regulated. At the June 2006 consultation, a number of comments were made on other possible improvements: in particular, the need for greater discipline from members of the Committee and the possibility for Governments to take greater advantage of the publication of a preliminary list by registering earlier to come before the Committee.

**Criteria for selection of individual cases**

In addition to considerations relating to the need for balance between different categories of Conventions and geographical balance, the selection criteria for establishing the list have traditionally included the following elements:

- (a) the nature of the comments of the Committee of Experts, in particular the existence of a footnote;
- (b) the seriousness and persistence of shortcomings in the application of the Convention;
- (c) the urgency of a specific situation;
- (d) comments received by employers’ and workers’ organizations;
- (e) the nature of a specific situation (if it raises a hitherto undisussed question, or if the case presents an interesting approach to solving questions of application);
- (f) the discussions and conclusions of the Conference Committee of previous sessions and, in particular, the existence of a special paragraph; and
- (g) the likelihood that discussing the case would have a tangible impact.

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5 See, for example, the Schedule of Work of June 2006 in Appendix I.
6 These criteria are referred to in document C.App/D1 (see Appendix 2).
At the Committee's last session, improvements were observed in terms of greater geographical balance in the selection of cases. Efforts have also been made to ensure greater consideration of so-called "technical" Conventions. In order to ensure the greater visibility of these two criteria (geographical balance and balance between the fundamental and the other Conventions), consideration might be given to whether they should also be listed, for instance, after criteria (a) to (g). Moreover, in June 2006, a case of progress was included in the list of cases.

**Drafting and adoption of conclusions**

The Chairperson's conclusions relating to individual cases are currently proposed systematically following a pause during which the Chairperson is able to consult the Reporter and the Vice-Chairpersons of the Committee. The conclusions take into due consideration the points raised in the discussion, and incorporate, in appropriate cases, technical assistance needs. The practice of interruption has, however, one weak point: a certain period of time is always required between the end of the discussion and the reading of the conclusions. In this regard, consideration might be given to some arrangements to reduce this period of time to a minimum. Efforts to ensure clearer drafting have also been requested.

**Role of governments in the Committee**

Governments participate in the examination of all the cases. They are not involved in the preparation of the list of cases. Through the Chairperson and the Reporter, they have a role in the preparation of the conclusions. The closer involvement of the Reporter and the support he gives to the Chairperson throughout the work also form part of the progress made during the last few years.
PROVISIONAL WORKING SCHEDULE
(See Daily Bulletin for actual time schedules)

Wednesday, 31 May
11 a.m. - 11:30 a.m. - Opening Sitting
11:30 a.m. - 1 p.m. - Election of Officers
Group meetings
3 p.m. - 5 p.m. Group meetings
5 p.m. - 6 p.m. Statement by the Representative of the Secretary-General

Thursday, 1 June
9 a.m. - 11 a.m. Group meetings
11 a.m. - 11:30 a.m. Adoption of Methods of Work (D.1)
and of List of Cases (D.4)
11:30 a.m. - 1 p.m. Informal Information Meeting
3 p.m. - 6 p.m. General Discussion
(possible extended sitting)

Friday, 2 June
10 a.m. - 1 p.m. General Survey (Conventions Nos. 81 and 129, Protocol of 1995 to Convention No. 81 and Recommendations Nos. 81, 82 and 133)
3 p.m. - 6 p.m. General Survey (Conventions Nos. 81 and 129, Protocol of 1995 to Convention No. 81 and Recommendations Nos. 81, 82 and 133) (completion)

Saturday, 3 June
10 a.m. - 1 p.m. Special sitting: Myanmar
(Convention No. 29)
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<td>Monday, 5 June</td>
<td>10 a.m. - 1 p.m.</td>
<td>Reply of the Representative of the Secretary-General</td>
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<td>- &quot;Automatic&quot; Cases</td>
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<td>3 p.m. - 6 p.m.</td>
<td>Individual Cases</td>
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<td>Tuesday, 6 June</td>
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<td>Individual Cases (continued)</td>
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<td>Individual Cases (continued)</td>
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<td>Individual Cases (continued)</td>
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<td>10 a.m. - 1 p.m.</td>
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<td>Monday, 12 June</td>
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<td>Examination of Draft Report by Officers</td>
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<td>Wednesday, 14 June</td>
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<td>Adoption of Report by the Committee</td>
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<td>Friday, 16 June</td>
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<td>Adoption of Report in Plenary of the ILC (schedule to be determined)</td>
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Appendix 2

INTERNATIONAL LABOUR CONFERENCE
95th Session, Geneva, June 2006
Committee on the Application of Standards

Work of the Committee

I. Introduction

The object of this note is to indicate briefly the manner in which the work of the Committee is carried out. In this regard, it should be noted that since 2002, ongoing discussions and informal consultations have taken place concerning the working methods of the Committee. In particular, following the setting out of a new strategic orientation by the Governing Body in November 2005, 1 new consultations were held in March 2006 regarding numerous aspects of the standards system, 2 starting with the question of the publication of the list of individual cases discussed by the Committee. This paper reflects the current situation of the Committee’s working methods in the light of these discussions.

II. Terms of reference of the Committee

Under its terms of reference as defined in article 7 of the Standing Orders of the Conference, the Committee is called upon to consider:

(a) the measures taken by Members to give effect to the provisions of Conventions to which they are parties and the information furnished by Members concerning the results of inspections;

(b) the information and reports concerning Conventions and Recommendations communicated by Members in accordance with article 19 of the Constitution;

(c) the measures taken by Members in accordance with article 35 of the Constitution.

1 See documents GB.294/LILS/4 and GB.294/9.

III. Working documents

A. Report of the Committee of Experts

The basic working document of the Committee is the report of the Committee of Experts on the Application of Conventions and Recommendations (Report III (Parts 1A and B)), printed in two volumes.

Volume A of this report contains, in Part One, the General Report of the Committee of Experts (pages 5-28), and in Part Two, the observations of the Committee concerning the application of ratified Conventions and the submission of Conventions and Recommendations to the competent authorities in member States (pages 29-478). At the beginning of the report there is a list of Conventions by subject (pages v-x), an index by Convention (pages xi-xviii), and an index by country (pages xix-xxvi).

It will be recalled that, as regards ratified Conventions, the work of the Committee of Experts is based on reports sent by the governments. 3

Certain observations carry footnotes asking the government concerned to report in detail, or earlier than the year in which a report on the Convention in question would normally be due, and/or to supply full particulars to the Conference. 4 The Conference may also, in accordance with its usual practice, wish to receive information from governments on other observations that the Committee of Experts has made.

In addition to the observations contained in its report, the Committee of Experts has, as in previous years, made direct requests which are communicated to governments by the Office on the Committee’s behalf. 5 A list of these direct requests will be found at the end of Volume A (see Appendix VII, pages 519-532).

Volume B of the report contains the General Survey by the Committee of Experts, which this year is on labour inspection.

B. Summaries of reports

At its 267th (November 1996) Session, the Governing Body approved new measures for rationalization and simplification of reporting. In this connection, it adopted changes along the following lines:

(i) information concerning reports supplied by governments on ratified Conventions (articles 22 and 35 of the Constitution), which now appears in simplified form in two tables annexed to the report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A) (Appendices I and II, pages 481-497);

(ii) information concerning reports supplied by governments as concerns General Surveys under article 19 of the Constitution (this year on Conventions Nos. 81 and 129, the Protocol of 1995, and Recommendations Nos. 81, 82 and 133 on labour inspection)

3 See para. 17 of the Committee of Experts’ General Report.

4 See para. 35 of the Committee of Experts’ General Report.

5 See para. 34 of the Committee of Experts’ General Report.
appears in simplified form in a table annexed to the report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1B) (Annex III, pages 148-152);

(iii) summary of information supplied by governments on the submission to the competent authorities of Conventions and Recommendations adopted by the Conference (article 19 of the Constitution), which now appears as Appendices IV, V and VI to the report of the Committee of Experts on the Application of Conventions and Recommendations, Report III (Part 1A) (pages 505-518).

Requests for consultation or copies of reports may be addressed to the secretariat of the Committee on the Application of Standards.

C. Other information

In addition, as and when relevant information is received by the secretariat, documents are prepared and distributed containing the substance of:

(i) written replies of governments to the observations made by the Committee of Experts;

(ii) supplementary information which reached the International Labour Office after the meeting of the Committee of Experts.

IV. Composition of the Committee, right to participate in its work and voting procedure

These questions are regulated by the Standing Orders concerning committees of the Conference, which may be found in section H of Part II of the Standing Orders of the International Labour Conference.

Each year, the Committee elects its Chairperson and Vice-Chairpersons. The election of the Reporter takes place immediately after the election of the Chairperson and the Vice-Chairpersons.

V. Schedule of work

A. General discussion

1. General questions. Each year the Committee holds a general discussion which is primarily based on the General Report of the Committee of Experts, Report III (Part 1A) (pages 5-28).

2. General Survey. In accordance with its usual practice, the Committee will also wish to discuss the General Survey of the Committee of Experts, Report III (Part 1B), which this year concerns labour inspection.

B. Discussion of observations

In Part Two of its report, the Committee of Experts makes observations on the manner in which various governments are fulfilling their obligations. The Conference Committee then discusses some of these observations with the governments concerned.
Individual cases

A draft list of observations (individual cases) regarding which Government delegates will be invited to supply information to the Committee is established by the Committee's Officers. The draft list of individual cases is then submitted to the Committee for approval. In the establishment of this list, a need for balance among different categories of Conventions as well as geographical balance is considered. In addition to the abovementioned considerations on balance, criteria for selection have traditionally included the following elements:

- the nature of the comments of the Committee of Experts, in particular the existence of a footnote (see Annex I);
- the quality and scope of responses provided by the government or the absence of a response on its part;
- the seriousness and persistence of shortcomings in the application of the Convention;
- the urgency of a specific situation;
- comments received by employers' and workers' organizations;
- the nature of a specific situation (if it raises a hitherto undiscussed question, or if the case presents an interesting approach to solving questions of application);
- the discussions and conclusions of the Conference Committee of previous sessions and, in particular, the existence of a special paragraph;
- the likelihood that discussing the case would have a tangible impact.

Adoption of conclusions

The conclusions regarding individual cases are prepared and proposed by the Chairperson of the Committee, who should have sufficient time for reflection to draft the conclusions and to hold consultations with the Reporter and the Vice-Chairpersons before proposing the conclusions to the Committee. These conclusions take due account of the elements raised in the discussion.

Cases of serious failure by member States to respect their reporting and other standards-related obligations

Governments are also invited to supply information on cases of serious failure to respect reporting or other standards-related obligations for stated periods. These cases are considered in a single sitting. Governments may remove themselves from this list by submitting the required information before the sitting concerned.

Supply of information

The governments concerned can reply in writing or orally.

6 Formerly "automatic" cases (see Provisional Record No. 22, International Labour Conference, 93rd Session, June 2005.)
1. **Written replies.** The written replies of governments are reproduced in the documents which are distributed to the Committee (see above, under III, C). When a sufficient period – at least 24 hours – has elapsed after the distribution of each document, members of the Committee wishing to comment on the information contained in the document may so inform the Chairperson and the representative of the government concerned will then have the possibility of supplying the relevant information (see Oral replies below).

2. **Oral replies.** According to the procedure customarily followed, governments invited to submit information to the Conference Committee are invited to indicate when they will appear. Representatives of governments which are not members of the Committee are kept informed of the agenda of the Committee and of the date on which they may be heard:

   (a) through the *Daily Bulletin*;

   (b) by means of letters sent to them individually by the Chairperson of the Committee.

**C. Minutes of the sittings**

No minutes are published for the general discussion and the discussion of the General Survey. Minutes of sittings at which governments are invited to respond to the comments of the Committee of Experts will be produced by the secretariat in English, French and Spanish. It is the Committee's practice to accept corrections to the minutes of previous sittings prior to their approval by the Committee, which should take place 36 hours at the most after the minutes become available. In order to avoid delays in the preparation of the report of the Committee, no corrections may be accepted once the minutes have been approved.

The minutes are a summary of the discussions and are not intended to be a verbatim record. Speakers are therefore requested to restrict corrections to the elimination of errors in the report of their own statements, and not to ask to insert long additional passages. It would be helpful to the secretariat in ensuring the accuracy of the minutes if, wherever possible, delegates would hand in a written copy of their statements to the secretariat.

**D. Special problems and cases**

For cases in which governments appear to encounter serious difficulties in discharging their obligations, the Committee decided at the 66th Session of the Conference (1980) to proceed in the following manner:

1. **Failure to supply reports and information.** The various forms of failure to supply information will be expressed in narrative form in separate paragraphs at the end of the appropriate sections of the report, and indications will be included concerning any explanations of difficulties provided by the governments concerned. The following criteria were retained by the Committee for deciding which cases were to be included:

   - None of the reports on ratified Conventions have been supplied during the past two years.
   - First reports on ratified Conventions have not been supplied for at least two years.
   - None of the reports on unratified Conventions and Recommendations requested under article 19, paragraphs 5, 6 and 7, of the Constitution have been supplied during the past five years.
No indication is available that steps have been taken to submit the Conventions and Recommendations adopted during the last seven sessions of the Conference to the competent authorities, in accordance with article 19 of the Constitution.

No information has been received as regards all or most of the observations and direct requests of the Committee of Experts to which a reply was requested for the period under consideration.

The government has failed during the past three years to indicate the representative organizations of employers and workers to which, in accordance with article 23(2) of the Constitution, copies of reports and information supplied to the Office under articles 19 and 22 have been communicated.

The government has failed, despite repeated invitations by the Conference Committee, to take part in the discussion concerning its country.

2. Application of ratified Conventions. The report will contain a section entitled "Application of ratified Conventions", in which the Committee draws the attention of the Conference to:

- cases of progress (see Annex II), where governments have introduced changes in their law and practice in order to eliminate divergences previously discussed by the Committee;
- discussions it had regarding certain cases, which are mentioned in special paragraphs of the report;
- continued failure over several years to eliminate serious deficiencies in the application of ratified Conventions which it had previously discussed.

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7 This year the sessions involved would be the 85th-91st Sessions (1997-2003).

8 At the 73rd Session of the Conference (1987), the Committee decided that for the implementation of this criterion, the following measures would be applied:

- in accordance with the usual practice, after having established the list of cases regarding which Government delegates might be invited to supply information to the Committee, the Committee shall invite in writing the governments of the countries concerned, and the Daily Bulletin regularly shall mention these countries;
- three days before the end of the discussion of individual cases, the Chairman of the Committee shall request the Clerk of the Conference to announce everyday the names of the countries whose representatives have not yet responded to the Committee's invitation, urging them to do so as soon as possible;
- on the last day of the discussion of individual cases, the Committee shall deal with the cases in which the governments have not responded to the invitation. The objective is not to discuss the substance of these cases, but to bring out in the report the importance of the questions raised, and the steps to be taken to resume the dialogue. The report shall mention for each country the cases concerned.
Annex I

Criteria for footnotes

This year, in the context of examining its working methods, and in response to the requests coming from members of the Committee for clarification concerning the use of footnotes, the Committee of Experts adopted the following criteria (paragraphs 36 and 37):

The Committee wishes to describe its approach to the identification of cases for which it inserts special notes by highlighting the basic criteria below. In so doing, the Committee makes three general comments. First, these criteria are indicative. In exercising its discretion in the application of these criteria, the Committee may also have regard to the specific circumstances of the country and the length of the reporting cycle. Second, these criteria are applicable to cases in which an earlier report is requested, often referred to as a “single footnote”, as well as to cases in which the government is requested to provide detailed information to the Conference, often referred to as “double footnote”. The difference between these two categories is one of degree. The third comment is that a serious case otherwise justifying a special note to provide full particulars to the Conference (double footnote) might only be given a special note to provide an early report (single footnote) in cases where there has been a recent discussion of that case in the Conference Committee on the Application of Standards.

The criteria to which the Committee will have regard are the existence of one or more of the following matters:

– the seriousness of the problem; in this respect, the Committee emphasizes that an important consideration is the necessity to view the problem in the context of a particular Convention and to take into account matters involving fundamental rights, workers' health, safety and well-being as well as any adverse impact, including at the international level, on workers and other categories of protected persons;

– the persistence of the problem;

– the urgency of the situation; the evaluation of such urgency is necessarily case-specific, according to standard human rights criteria, such as life threatening situations or problems where irreversible harm is foreseeable; and

– the quality and scope of the government's response in its reports or the absence of response to the issues raised by the Committee, including cases of clear and repeated refusal on the part of a State to comply with its obligations.

At its 76th Session, the Committee decided that the identification of cases in respect of which a special note (double footnote) is to be attributed will be a two stage process: the expert initially responsible for a particular group of Conventions may recommend to the Committee the insertion of special notes; in light of all the recommendations made, the Committee will take a final, collegial decision on all the special notes to be inserted, once it has reviewed the application of all the Conventions.
Annex II

Criteria for identifying cases of progress

In recent years, numerous members of the Conference Committee have expressed the desire to place a greater emphasis on cases of progress (cases of satisfaction or interest). In its last session, the Committee of Experts defined its criteria for identifying these cases in the following manner (paragraphs 42, 43 and 46):

... The Committee has developed a general approach concerning the identification of cases of progress. In describing the approach below, the Committee wishes to emphasize that an expression of progress can refer to many kinds of measures. In the final instance, the Committee will exercise its discretion in noting progress having regard in particular to the nature of the Convention as well as to the specific circumstances of the country.

Since first identifying cases of satisfaction in its report in 1964,9 the Committee has continued to follow the same general criteria. The Committee expresses satisfaction in cases in which, following comments it has made on a specific issue, governments have taken measures through either the adoption of an amendment to the legislation or a significant change in the national policy or practice thus achieving fuller compliance with their obligations under the respective Conventions. The reason for identifying cases of satisfaction is twofold: to place on record the Committee’s appreciation of the positive action taken by governments in response to its comments, and to provide an example to other governments and social partners which have to address similar issues. In expressing its satisfaction, the Committee indicates to governments and the social partners that it considers the specific matter resolved. In so doing, the Committee must emphasize that an expression of satisfaction is limited to the particular issue at hand and the nature of the measure taken by the government concerned. Therefore, in the same comment, the Committee may express satisfaction on a particular issue, while raising other important issues which in its view have not been satisfactorily addressed. Further, if the satisfaction relates to the adoption of legislation, the Committee may also consider appropriate follow-up on its practical application.

[...]

Within cases of progress, the distinction between cases of satisfaction and cases of interest was formalized in 1979.10 In general, cases of interest cover measures that are sufficiently advanced to justify the expectation that further progress would be achieved in the future and regarding which the Committee would want to continue its dialogue with the government and the social partners. This may include: draft legislation before parliament, or other proposed legislative changes not yet forwarded or available to the Committee; consultations within the government and with the social partners; new policies; the development and implementation of activities within the framework of a technical cooperation project or following technical assistance or advice from the Office. Judicial decisions, according to the level of the court, the subject matter and the force of such decisions in a particular legal system would normally be considered as cases of interest unless there was a compelling reason to note a particular judicial decision as a case of satisfaction. The Committee may also note as cases of interest progress made by a State, province or territory in a federal system. The Committee’s practice has developed to a certain extent, so that cases in which it expresses interest may now also encompass a variety of new or innovative measures which have not necessarily been requested by the Committee. The paramount consideration is that the measures contribute to the overall achievement of the objectives of a particular Convention.

9 See para. 16 of the report of the Committee of Experts submitted to the 48th Session (1964) of the International Labour Conference.

10 See para. 122 of the report of the Committee of Experts submitted to the 65th Session (1979) of the International Labour Conference.