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

Informal Tripartite Consultations
10 November 2007 (2:30 pm to 6:00 pm)

Agenda

- Preliminary evaluation of the implementation of the Working Group’s recommendations
- Possible criteria for the inclusion of cases on the final list that are not on the preliminary list
- Participation in the work of the Committee: the case of Governments which do not take part in the discussions concerning their country
- Respect for parliamentary rules of decorum
- Other matters

1. Agenda

The proposed agenda was approved. Under “other matters”, it was agreed to discuss the question of a possible early start to the Committee’s preparatory work before the beginning of the Conference, following a proposal of the Employer’s group, and the question of the follow-up by the Committee of Experts in its next report of certain individual cases that were not selected for discussion at the Conference Committee, but were indicated by the Worker’s group.

2. Preliminary evaluation of the implementation of the Working Group’s recommendations

The Employers’ group congratulated the Office for the new publication which compiles the work of the Conference Committee. This was a huge step forward in terms of visibility. They felt that it would be fully understood if it also included the comments of the Committee of Experts for the cases in question. In terms of the preliminary evaluation of the implementation of the Working Group’s recommendations, they noted that overall, the changes of the past year worked well and had contributed to shorten working hours.

The Workers’ group also thanked the Office for the new publication. They indicated that the early publication of the list had given governments more time to prepare. They firmly hoped that the information session would be followed by more governments and pointed out that some negative effects had emerged from the preliminary list as some governments had started lobbying very early and right until the adoption of the final list. They expected more respect from governments in this regard. They indicated that the arrangements for speaking time had given positive
results but that more attention should be given to starting the sessions on time. Regarding the adoption of conclusions, they felt that while it was important to take sufficient time, the Committee should do its best not to wait until the next day to read out the conclusions.

The representative of the Government of Cuba, speaking on behalf of the countries of the Non-Aligned Movement (NAM), reaffirmed the principles of the Declaration on the working methods of the Conference Committee, adopted by NAM Ministers of labour during the 96th International Labour Conference. He welcomed and supported the work of the tripartite Working Group. He also endorsed the agreements reached and expressed the need to continue the work of this group, which is an example of the method of work for a better functioning, transparency and confidence of the Committee. He advocated for the development and implementation of objective and transparent criteria for drawing up the list of individual cases, and for the consideration of an appropriate geographical balance between developed and developing countries, and between fundamental and technical Conventions. Duplication of procedure for the same case should be avoided, in establishing clear rules for the admissibility of complaints, by ensuring that they are well-founded, and with documented evidence to discard the idea of any interest extraneous to the objectives of the Organization with respect to a country. The elaboration of the list of countries should take into account, mainly, the report of the Committee of Experts, based on reports submitted by governments in accordance with article 22 of the ILO Constitution, avoiding the selection of countries for political reasons or interests that jeopardize the credibility of the proceedings. The NAM should continue acting in a coordinated manner within the ILO in order to promote the aspects mentioned above; to ensure that the Workers’ and Employers’ Groups inform Governments on the conditions under which the assessment of the cases is carried out and how criteria are applied to establish the final list of countries – in this respect he urged that the briefing meeting be convened sufficiently ahead on time; to ensure that governments can have more information and participation under conditions of equity with all other groups, so that constructive dialogue would lead to strengthening tripartism in the Committee; and to urge that conclusions made during discussions of individual cases are balanced, reflecting the arguments presented objectively and help facilitate more convenient solutions to the problems confronting governments for the effective implementation of ratified conventions.

A representative of the Government of Nigeria endorsed the early communication of the list. She indicated that the informal briefing session was quite useful. While the possibility to register the first week before Friday 6:00 p.m. was perceived as positive from most governments, there was the problem of clustering cases on certain dates and such clustering should be avoided. On time management, while the guidelines on this issue had been effective, she recalled that during the discussions, there was no place for political interventions and called for better respect of rules of decorum. She also commended the Officers for the time gained which translated in cost reduction.

The representative of the Government of Canada thanked the Office for the new publication. She said that the distribution of the preliminary list had been very positive and should be continued. She suggested the inclusion of a diplomatic formula in the letter sent to governments to discourage lobbying before the Conference. The briefing session was an excellent innovation although there had been confusion this
year between the briefing session on the methods of work and the one on the adoption of the preliminary list. She acknowledged the efforts done by the Workers and Employers groups to manage time better. As for the adoption of conclusions, this was always a challenge but she indicated that the procedure for adopting the conclusions should be the same in all cases.

The representative of the Government of the Islamic Republic of Iran stated that the improvements on the working methods of the Committee had in general been very positive. He nevertheless asked for more clarity regarding the criteria for selecting cases and insisted that these criteria should not change over time and not be affected by external factors. He also added that despite the confusion caused by the rescheduling, the briefing session had been very positive.

The Employers' group agreed that lobbying on the preliminary list was inappropriate and supported the idea of including a diplomatic formula in the letter sent to Governments to avoid such lobbying. They recalled that the conclusions did not have all the same level of complexity and that it was not always possible to adopt the conclusions on the same day. As for the criteria used for the selection of cases, they stressed that the Workers and themselves had been using reliable criteria over the years.

The Workers' group also stressed that the criteria used for selecting cases had been objective and clear for many years and the first and most important criterion remained the comments of the CEACR. They made a clear distinction between taking into consideration political factors in selecting a case (which could not be avoided) and politicising a case, which never happened. They also recalled that while equal geographical distribution was not possible, the aim was for a fair geographical distribution.

The Director of NORMES provided statistics on hours worked by the Committee this year. They showed a sharp decrease in terms of number of hours worked, which was the sign of better time management. She explained why the briefing session had to be rescheduled this year (due to late adoption of the list) and indicated that all the positive measures taken on working methods would continue next year. She also indicated that the Office would try to craft in a very diplomatic way the letter sent to governments in order to prevent undue interference or lobbying and the letter would mention that this was a request of this Working Group.

The representative of the Government of Canada recalled that the Office had encouraged governments to submit more information in writing and she wanted to know what had been the impact in this regard.

The Employers' group also raised the issue of the D document which had been printed as a verbatim in the report in previous years. In this regard, the Workers' group expressed the view that it would be impossible to add the D document to the new publication and recalled that the Committee's report was only a summary of what had been discussed.

The Director of NORMES indicated that several governments had provided more information in writing and that had been very positive but explained that while both
written and oral information were reflected in the discussion, all this information could not be included in the conclusions adopted by the Committee. She gave the examples of the cases of China and Spain from last June where the Committee had taken note of the detailed written information provided by these governments. She suggested that a new “rubrique” could be added in the report to list the countries that had provided detailed written information. She concluded by indicating that the Office would take on board all the comments and suggestions put forward under this point.

3. Possible criteria for the inclusion of cases on the final list that are not on the preliminary list.

The Director of NORMES recalled that the preliminary list of cases was sent two weeks in advance but it was for the Conference Committee to adopt the final list of cases. In the past couple of years, only one or two countries that had not been on the preliminary list had been added to the final list.

The Workers’ group were of the view that the same criteria should be used as those for establishing the preliminary list; they could not see any advantage in establishing separate criteria. In any event, the letter accompanying the preliminary list of cases sent to governments clearly stated that this preliminary list was in no way to be considered as definitive. Only the Conference Committee could decide on a final list of cases and hence it was not possible to have other elements or criteria.

The Employers’ group agreed that the same criteria should be used for selecting new cases that were not on the preliminary list. They underlined that in the two years where recourse had been had to this process, only two new cases had been added to those on the preliminary list. It may well be that some sudden event transpired in a given country that justified the discussion of a particular case in that country.

The representative of the Government of the Islamic Republic of Iran indicated that the case of Iran (Convention No. 95) had been added very unexpectedly. However, this case did not come across as one where the criteria of the “gravity of the situation” called for a discussion at the Conference Committee. For example, no one was killed on the issue of wage arrears in Iran. He wanted to be sure that Iran was not on the list of cases for political reasons. In this regard, he wished to point out that his colleagues believed that the Workers’ group wanted Iran to be on the list for “other” reasons related to freedom of association since most of the debate before the Conference Committee covered freedom of association issues.

The Workers’ group pointed out that the list of individual cases for discussion before the Conference Committee was more “balanced” than in previous years, which is what Governments had wanted in the first place. Moreover, the Committee of Experts had not indicated in its report that the case of Iran was not a serious one. In addition, the Workers’ group considered Convention No. 95 to be a very important Convention, albeit a technical one, and the contention that no unionist had been killed over the issue of wage arrears was not relevant here. Finally, another criteria that was followed in selecting individual cases for discussion before the Conference Committee was that if there were not a sufficient number of countries from Asia on the list of cases, then the Workers’ group would be obliged to “drop” a freedom of association case from Africa, for example, and choose a case concerning a technical
Convention from Asia, in order to ensure a fair geographical distribution, as well as a balance between fundamental and technical Conventions.

The Employers’ group concurred with the Workers’ group. Moreover, and contrary to what had been stated, the case of Iran under Convention No. 95 had been on the preliminary list of cases. With regard to Convention No. 95 itself, the Employers’ group were of the view that it was a very important Convention since people generally only performed work if they were paid for it. In addition, the issue of wage arrears had been a longstanding problem in Iran and one of the reasons for selecting this case was to spur the Government of Iran on to pay workers’ their wages.

A representative of the Government of Nigeria raised the issue of whether an appropriate recommendation could be made concerning the use of the criteria of the “exigency” or “gravity” of the case or the importance of the Convention when a new case was added to the preliminary list.

The Director of NORMES pointed out that the Document D.1, which was published every year for the Conference Committee, contained criteria for the selection of the list of cases. This year, that document had been sent with the preliminary list of cases to all member States. Another very important factor to be taken into account was that it was for the Conference Committee to take the final decision on the list of cases.

The Workers’ group stressed that efforts to provide a preliminary list should be seen as a genuine attempt by the Workers’ and Employers’ groups to advance the work and enhance the transparency of the Conference Committee. If a new case were to be added to the preliminary list, this was because there was a negative evolution in a given country just prior to, or during the ILC, and the case had to be chosen at the last minute. However, this course of action would always be the exception and was to be avoided to the maximum.

The representative of the Government of Cuba emphasized that this working group has produced very good results. However, the inclusion of any other country in the final list will always provoke justified fears. He added that it was therefore important to provide timely information on the reasons that led to the inclusion of the new case in the final list. It is crucial that there is clarity and transparency in procedures. He also stressed the need to maintain the preliminary list and continue to hold the briefing session.

A representative of the Government of Nigeria stated that it had been very illuminating for him to listen to the Employers’ and Workers’ groups; it gave his delegation a better idea of how to explain to the African Group the transparent manner in which the individual cases were selected for discussion.

The representative of the Government of the Islamic Republic of Iran shared the views of the previous speaker. He had also learned that certain criteria were followed in the last minute selection of cases that had not been included in the preliminary list. These criteria included trying to strike a fair geographical balance of countries from all regions as well as a balance between fundamental and technical Conventions. This
could be reported back to his group provided that this was done on an exceptional basis.

4. Participation in the work of the Committee: the case of Governments which do not take part in the discussions concerning their country

The Employers' group recalled that the footnote referring to the non-discussion of a case if a government is not present had been adopted during the Cold War and the situation was completely different today. There was no justification for not discussing a case on its merit if the government concerned was absent and the Committee should follow in this regard the practice of the Committee on Freedom of Association. The current practice should thus be changed, with the only exception of governments which were not present or registered at the Conference.

This proposal was endorsed by the Workers' group as well as by the representatives of the Governments of Canada, Nigeria, the Islamic Republic of Iran and Cuba.

The Director of NORMES indicated that the Office would look at the footnote on this issue and would make a proposal in order to amend the footnote to reflect the change of practice requested by the Working Group.

5. Respect for parliamentary rules of decorum

The Employers' group pointed out that during the last ILC, the Conference Committee had experienced problems of decorum, which had prolonged the discussion of certain cases. The Tripartite Working group should discuss openly how to deal with this issue. The Chair of the Conference Committee had the option of suspending the meeting, or asking those who breached these rules to leave the meeting. It needed to be made known to everyone in the Conference Committee that consequences could be expected if fundamental rules were not followed.

The Workers' group were of the view that the issue of decorum was not a major problem encountered by the Conference Committee in general. However, from time to time, the Workers' group did have members who did not always agree with the majority decision. The Workers' group would do what they could to avoid problems in this regard in the future. Moreover, the Chair of the Committee could play an important role concerning the issue of decorum before the beginning of the discussion of the individual cases.

The Director of NORMES stated that the Office could recall the parliamentary rules of procedure in the D.I document next year.

The representative of the Government of Cuba noted that indiscipline does not happen in all cases except for those controversial ones. The chairmanship can make an appeal for respect of the procedure adding that what happened at the last Conference was exceptional. It is up to the members of the Committee to prevent such situations from happening again.
A representative of the Government of Nigeria and the representative of the Islamic Republic of Iran considered that members of the Committee could be briefed on this question.

The representative of the Government of Canada emphasized that there was a lot of consensus in the Committee and that lack of decorum was not acceptable. The Conference Committee should be a forum for reasoned discussion in a respectful manner. Moreover, the lack of decorum could have an impact on time management and the work of the Committee could be delayed as a result. Finally, she pointed out that the Director of NORMES now had the mandate of the Workers’ group to indicate to the Chair of the Committee that he/she should be more proactive in intervening in the future.

The Employers’ group concluded that there was consensus in the Tripartite Working Group that there would be additional language on decorum in the D1 document and that this question would be included in the briefing session. The Chair of the Conference Committee should be informed of this consensus.

6. Other matters

a. Meeting before the beginning of the Conference

The Employers’ group wished to raise the issue of giving consideration to amend the Standing Orders of the Conference to enable the Conference Committee on the Application of Standards to start its preparatory work before the Conference. This could allow finalizing the list of cases in a timelier manner and would allow Employers and Workers to meet before the Conference started.

The Workers’ group was not against this proposal but wondered whether it would be possible from a practical point of view.

The representatives of the Governments of Nigeria, Canada and the Islamic Republic of Iran raised questions about the financial implications of this proposal as well as the implications for the overall planning of the Conference.

The representative of the Government of Egypt noted that usually Employers’ and Workers’ groups are invited to meet the day before the ILC begins. To invite the groups to meet a few days before could be a good idea but maybe not practicable (problem of registration for example).

The representative of the Government of Cuba agreed that the idea to start the meeting one day in advance before the official opening of the Conference was positive but it would be difficult in practice.

The Director of NORMES suggested that this issue be taken up again at the next informal consultations of the Working Group in March 2008.
b. Discussion of cases mentioned in paragraph 18 of Conference Committee's General Report (96th Session, 2007): Cases the Workers group wished to see included in the next report of the CEACR

The Workers' group raised the issue of the possibility to be able to select certain cases the following year where they had indicated that they would have wished to select these cases for discussion, but could not in view of the limited number of cases that could be included on the list. In their view, the only way this could be done was to re-introduce the text of the case concerned in the report of the Committee of Experts the following year even in the absence of a Government report on the case.

The Employers' group indicated that since this might require a review of the working methods of the Committee of Experts, a background paper was needed on this issue in March 2008 before the next ILC. An opportunity was needed to fully understand and discuss this issue before a final decision was made.

The Director of NORMES indicated that this issue had been the subject of extensive discussions between herself and the Workers' group. After such discussions, the Office had carried out an extensive review and indicated the conditions under which certain cases were included out of cycle in the Committee of Experts report. They were based on the following: (i) an earlier report had been requested from the Government by the Committee of experts for the year in question; (ii) an earlier report had been requested from the Government by the Conference Committee for the year in question; (iii) a comment had been submitted by employers' or workers' organizations pursuant to Article 23 of the Constitution; and (iv) in the form of a repetition when no report has been received - or the report was received but contains no reply to the comments of the Committee of Experts - and no reply has been given at the Conference. In the absence of one of these four conditions, there could be a problem of due process if a case was automatically repeated in the report of the Committee of Experts the following year. The Director pointed out that the Committee of Experts had established clear criteria on why reports should be examined by it. If the Tripartite Working Group so wished, she could draw this issue, and more specifically, paragraph 18 of the 2007 Conference Committee's General Report to the attention of the Subcommittee on the Working Methods of the Committee of Experts. She could draw the attention of the Subcommittee to the fact that the Workers' group wished for countries mentioned in paragraph 18 to be included as "repetitions" in the report of the Committee of Experts. In the final analysis, this was a decision for the Committee of Experts or the Conference Committee to make. There was agreement to continue discussions on this matter at the next meeting of the Group.

c. Next meeting

The Director of NORMES indicated that there would be a fifth meeting of the Tripartite Working Group on 15 March 2008, 2.30 p.m. The agenda would include: a discussion on the issue of holding possible preparatory meetings before the Conference, as well as the issue of repeating certain cases in the report of the Committee of Experts mentioned in 6 b) above. A draft of documents D0 and D1 would also be prepared for that meeting.