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

Informal Tripartite Consultations
Saturday, 14 March 2009 (9am to 11.30am)

Agenda

- Implications of the follow-up to the Social Justice Declaration on the working methods of the Conference Committee

- Taking stock of the improvements in the working methods of the Conference Committee

- Other questions

1. Agenda

The Working Group agreed to change the order of the proposed agenda and to discuss firstly the question on taking stock of the improvements on the working methods of the Conference Committee and secondly the implications of the follow-up to the Social Justice Declaration on the working methods of the Conference Committee.

2. Taking stock of the improvements on the working methods of the Conference Committee

The Employers’ group stated that the Working Group’s efforts had led to a number of improvements in the Conference Committee’s functioning, as well as to greater transparency in the process of selecting cases for discussion. The nature of the Conference Committee meant that there would always be political problems but they felt that the relationship between the Workers’ and Employers’ groups was the best it had ever been and was both positive and open. They hoped that the governments also felt that the selection process had been improved.

The Workers’ group agreed with the Employers’ group that significant improvements had been made to the Conference Committee’s working methods. They considered it appropriate to continue to draft the preliminary list of cases two weeks before the Conference Committee’s commencement. In this respect, the informal briefing sessions with governments were very useful in order to explain the criteria under which cases were selected. Early registration of the governments concerned, discussion of the automatic cases during the first week and the authorized slotting of cases also demonstrated progress. They emphasized the importance of improving time management and considered that the number and length of government interventions posed problems in this regard. They agreed with the points contained in paragraphs 1-4 of the Office’s note, and noted that paragraph 5 needed to be discussed in more detail.
The representative of the Government of Egypt stated that the points set out in the note – the production of a preliminary list two weeks before the Conference Committee met and the requirement that governments either register or be slotted – were logical and constituted improvements.

The representative of the Government of Cuba stated that considerable progress in the working methods had clearly been made. He agreed with the first four points set out in the note. In relation to the difficulty in achieving a consensus on the final list mentioned in paragraph 5, he wished to submit a proposal after hearing the opinions of other members of the Working Group.

The representative of the Government of Canada appreciated the problem solving approach of the Working Group and welcomed the introduction of greater transparency into the case selection process, which had been a concern of governments. She asked the Office to indicate whether the new changes had impacted on its workload, such as the registration of countries, and to suggest how these challenges might be addressed.

The Director of NORMES replied that the changes introduced had been positive in terms of time management. Governments had positively responded to the registration process, accounting for its smooth functioning thus far and, with one exception, the Office had not been obliged to exercise the authority granted to it by the Conference Committee in this regard. The changes had also resulted in better management of the caseload, even though this remained a challenge as cases heard in the beginning always tended to take more time than towards the end of the discussion where little time was left. She emphasized that increasing the transparency of the Committee’s work necessarily impacted on the management of time, as it required that officers be given more time to review the conclusions, which in turn delayed the reading of the conclusions before the Committee. She added that finding a more expeditious approach to the production of the final list of cases remained the greatest challenge. However, these issues were far out weighed by the positive impact the new methods had on the Office’s workload. With respect to paragraph 5, two questions needed to be discussed: the possible need for the diversification of cases in the final list; and the question of pressure of some governments in the selection of cases for the final list.

In addition, she recalled the Working Group’s request that more visibility be given to the work of the Conference Committee and stated that it was now the second year in which the Conference Committee’s report was being published separately, for that very purpose. It was for the Working Group to provide further direction on means of continuing to raise the visibility of the Conference Committee’s work.

The Workers’ group stated that pressure exerted by some governments following the publication of the preliminary list continued to be a problem. On the question of case diversification, they underlined that it was important to achieve an appropriate diversity of cases given the number of important Conventions. While emphasizing the crucial importance of the right of freedom of association, they expressed their commitment to continue working on the issue of diversification. They asked the Office to clarify the meaning of the last sentence of paragraph 5 and to explain whether the grouping of instruments for reporting purposes and synergies between recurrent reports and General Surveys could contribute to diversification.
The Director of NORMES explained that the Social Justice Declaration would impact upon all areas of the ILO's work, including the work of the Conference Committee, and that initiating preparations in this regard was therefore appropriate. The Social Justice Declaration's impact would not be immediate. At its present session, the Governing Body will take a decision on the cycle of recurrent reports. In November 2009, it would discuss its possible consequences for the reporting cycle under article 22 of the Constitution. If the cycle and the grouping of Conventions were modified, this would have implications on the content of the CEACR report and on the cases that could be selected by the Conference Committee. Part of the issue of diversification could be resolved by this new grouping in the long term, and effects may begin to be seen as early as 2010.

The Employers' group stated that the ongoing discussion on harmonizing the 1998 Declaration's annual review procedure with the Social Justice Declaration mechanisms would also impact upon the Conference Committee's work. They stated that achieving a diversity of cases, both in subject and by region, was much easier prior to the Conference Committee's commencement. The preliminary list was more objective and less politicized, whereas once the Conference was underway the lobbying of governments rendered the process of case diversification more difficult. They added that while the importance of freedom of association issues could not be discounted, other compelling matters such as the increasing informalization of work due to the current economic crisis – and its attendant consequences for forced labour and child labour – also needed to be addressed. He stressed the ILO was often the only forum in which these cases could be exposed and discussed.

The Director of NORMES mentioned that the resolution related to the Social Justice Declaration called for the streamlining of reporting obligations to avoid increasing the workload of governments, without touching the reporting obligations themselves. The review of the follow-up mechanism under the 1998 Declaration was currently being discussed and would be an agenda item in the 2010 Conference. These discussions would necessarily include questions on how the reports could be streamlined. Such a streamlining would have an impact on the work of the supervisory bodies. She recalled that the General Surveys, which were based on information contained in articles 19 and 22 reports, were now linked to the recurrent reports.

A member of the Workers' group (Mr Ahmed) asked the Office how it intended to address the critical issue of time management, particularly in view of the fact that visits from heads of state and other dignitaries could impact on the work of the Conference Committee. He considered that the Office ought to contact governments on the preliminary list to emphasize that their cases may be discussed, in order to put them on notice and oblige them to follow up in respect of these matters, even if their case was not selected on the final list. He indicated that the Social Justice Declaration could be viewed as a means of implementing international labour standards, and that the capacities of governments and the social partners ought therefore to be strengthened in order to carry this out.

The representative of the Government of South Africa stated that governments had the right to lobby and asked for clarification as to what was meant by pressure from governments and what was, and was not, acceptable. He expressed support for the
diversification of cases as well as the informal briefing sessions which assisted member States in understanding what was to be discussed.

The representative of the Government of Egypt recalled that governments had a heavy workload in replying to requests from the ILO supervisory bodies. It was therefore essential that the follow-up to the Social Justice Declaration did not increase their reporting burden.

The representative of the Government of Cuba, with respect to paragraph 5, asked whether it was possible for the social partners to commit to a final list before the Conference Committee begins, as this would alleviate the problem of uncertainty for Governments and the choice of which delegates to send to the Conference. He expressed support for case diversification and recalled that in 2007, the Ministers of the Non-Aligned Movement had issued a statement that included the need for striking a better balance among fundamental and technical cases. He agreed with the Employers’ group that other important issues existed, particularly in this period of economic crisis, and that addressing them would enrich the work of the Conference Committee.

The Director of NORMES clarified that the Committee on the Application of Standards was the only one which did not interrupt its work when the International Labour Conference received visits from personalities. This longstanding rule could be brought to the Committee’s attention when visits take place.

The Employers’ group felt that the views expressed by the representative of the Governments of Cuba were important. They wondered whether it would be possible to waive the Standing Orders of the International Labour Conference (ILC) to enable a list of cases to be adopted prior to the Conference’s opening. They also emphasized that the purpose of communicating the long list of cases in advance of the Conference, was to give governments enough time to prepare for an eventual discussion of the case at the ILC. As for lobbying by governments, they felt that this was more a problem faced by the Workers’ group rather than the Employers’ group and it would be better to hear their opinion on this matter.

The Workers’ group indicated that various types of pressure could be exerted by governments. Firstly, there was lobbying, which involved inter alia making contact with the social partners to explain the details of a particular case. This did not raise an issue. However, there were examples of real pressure which could have consequences on the work of the Committee. There was also one case of personal pressure. Another difficulty is when one group refuses the possibility of discussing a case. Such a situation led to very difficult negotiations with limited room for manoeuvre. The Workers’ group wished, just like governments, to have the list as early as possible so that governments could prepare appropriately for the discussion. However, it was very difficult to have the list before the Conference as discussions in the presence of all Worker members of the Committee took place only during the Conference. Even though care was taken to ensure that the long list was prepared with the participation of members from all over the world, the fact remained that during the Conference, the Workers’ group was confronted with accounts of the realities prevailing in various parts of the world and with the need of their members to have their voices heard. The adoption of the long list aimed at mitigating the difficulties faced by governments and
to allow them sufficient time to prepare for an eventual discussion. Indeed, the adoption of this measure had had a demonstrable impact on the quality of the discussions before the Committee.

The Director of NORMES clarified that on the basis of the current programme for the Conference, group meetings began on the day before the Conference (Tuesday). Moreover, in order to allow the members of the Conference Committee to break down into group meetings early enough, the first day of the Conference Committee (Wednesday) was dedicated in the afternoon to group meetings. Thus, theoretically, the Office should be able to submit the list to the Conference Committee before the end of the morning session on the second day (Thursday). However, this had proven difficult to achieve in practice.

The representative of the Government of Cuba understood the difficulties faced by the social partners in deciding on the final list. Nevertheless the constituents needed to take account of the overriding interest of the Conference Committee and the ILO as a whole in terms of reinforcing democratic structures and transparency.

The representative of the Government of Bangladesh supported the statements of the representative of the Government of Cuba. He emphasized the need for a balance between fundamental and technical Conventions and expressed the hope that work would continue in this direction. He also expressed readiness to consider proposals in terms of coordination with the Social Justice Declaration. On the issue of pressure exerted, it would be unfair to put the onus on all governments for the acts of only some of them. The constituents had the means at their disposal to draw attention to such practices and to have their grievances heard, for example by naming and shaming. In any event, governments should reserve their right to lobby. Finally, he emphasized that it was extremely important to remove any ambiguity concerning the final list of cases. Developing countries faced many difficulties due to this uncertainty as they did not have the means to send large delegations to Geneva for the Conference. The pressure even prevented the missions from carrying out their activities properly during the Conference. For these reasons it would be useful to have the final list before the opening of the ILC.

The Employers’ group agreed with the views expressed by the representatives of the Governments of Cuba and Bangladesh. It was clear that there was a consensus among the groups as to the issue of diversification. The biggest challenge was the finalisation of the list at an early point during the ILC. The time available for discussion in the groups before the ILC allowed for very limited possibility to organize the work of the Conference Committee. The discussions taking place on the opening day of the Conference Committee were focused on briefing the new members and were directed without having formally elected the spokespersons for the groups. Furthermore, since all cases on the long list were important, difficulties naturally existed, even within the groups, in trying to arrive at an early agreement as to the final list. This difficulty was in fact even more acutely felt by the workers who were directly affected by most cases. Thus, the challenges on the workers’ side appeared to be even bigger. The Employers’ group was ready to make every effort towards achievement of the final list in a short period of time, but the difficulties had to be acknowledged.
The Workers’ group thanked the governments for their interesting comments. In the case of the Workers’ group, the difficulties in the adoption of the final list resided primarily in the fact that the Conference was a unique opportunity for Workers’ delegates from across the world to communicate their problems and views to their group and the Conference Committee. The Workers’ group had made great efforts to ensure that the time allotted for interventions within the Conference Committee was managed appropriately, but they needed in return, to allow their members to take the floor and express themselves adequately in the group meetings. This was essential for the smooth running of the Conference Committee.

The Director of NORMES explained that this year, the preliminary list of cases to be heard in the Conference Committee would be available at the latest on 19 May. She stressed that, last year, many of the countries that were on the preliminary list signed up voluntarily to be slotted into the Conference Committee agenda before the final list was known. Despite the fact that some of these countries were not selected in the final list, this was a positive move both for the work organisation of the Committee and also for the governments.

The representative of the Government of Cuba, while aware of the technical difficulties that this caused, reiterated the need to have the final list as soon as was possible. He raised the question about possible amendments to the technical procedures of the Conference in order to give more time to Workers’ and Employers’ groups to discuss and finalise the list.

The Director of NORMES replied that this question had also been raised last year. The Conference Committee was a standing committee and as such, to her knowledge, it was legally possible for its members to meet earlier. However, the financial burden that this would place on governments had to be taken into account as they were the ones that would have to finance the earlier arrival of the tripartite delegations to the Conference. Other practical constraints also had to be taken into consideration as a number of items, such as the discussion of the Myanmar case and the discussion on the General Survey, also had to be discussed by the Committee. In the two days prior to the opening of the Committee’s discussion on cases, the agenda was already very full with group meetings that needed to be held as well as the briefing of government groups by the Office. The Employers’ and Workers’ groups would nevertheless continue to work in good faith to ensure the speedy adoption of the final list as they were also under pressure both inside and outside of the groups to do this as soon as possible. The democratic nature of the selection process had to be considered as many of the delegates came to the Conference to voice their concerns for specific cases and the ILC was the only forum in which they could do this. The groups had to balance the need to hear each of the cases from the preliminary list with the need to have a final list at the earliest possible date.

With respect to pressure, she emphasized that the line needed to be drawn between pernicious pressure and simple lobbying which was not considered negative in itself. As an example of unacceptable pressure, no country should be allowed to veto a name on the final list. The definition of what was considered to be unacceptable pressure was set out in the letter, sent along with the preliminary list to constituents, stating “that the provision of the preliminary list should not give rise to any form of pressure or other prejudicial act against unions coming from the countries listed, nor should
these countries unduly interfere in the work of the Conference Committee in this regard'. Such a mention was requested by the Working Group. With respect to diversification, there seemed to be two sides to this: the need to achieve a balance between fundamental and technical Conventions as well as the need to achieve a fair balance between countries.

The Employers' group also pointed out the need to also achieve a balance between fundamental Conventions themselves.

The Workers' group confirmed that different levels of balance needed to be addressed.

2. Implications of the follow-up to the Social Justice Declaration on the working methods of the Conference Committee

The Director of NORMES explained that the background note on this subject submitted to the Working Group was provided to give a preliminary view of what implications the follow-up to the Social Justice Declaration could have on the work of the Committee. The document provided a brief summary on issues that would need to be addressed in future years in order to more effectively adapt to these changes.

The Employers' group commented that before any further discussion in the Working Group, the Governing Body needed to make decisions with respect to the recurrent reports and the General Surveys. However, any changes should not affect the supervisory system.

The Workers' group considered that the paper provided was very interesting and agreed that it was up to the Governing Body to decide on the future directions in this area. The Workers' group needed to discuss it.

The representative of the Government of Canada stated that the follow-up to the Social Justice Declaration should not impact on the supervisory mechanisms. The General Survey was to be used as an information source for the drafting of the recurrent report. She wondered if it was necessary for the conclusions of the discussion on the General Survey in the Conference Committee to be submitted to a technical committee, which was not a supervisory body, at the Conference. This question would need to be addressed by the Steering Group on the follow-up to the Declaration and the Governing Body.

The representative of the Government of Bangladesh requested the Office to clarify what was meant by "ad hoc" arrangements in paragraph 10 of the document.

The Director of NORMES, in response to the questions posed, stressed that the Social Justice Declaration was expected to strengthen and not replace the supervisory mechanisms. However, its implementation would indirectly impact on both the supervisory system and General Surveys. While it would not change the functioning of these mechanisms, it would affect the subject of the General Surveys and could have implications on the reporting cycle. In addition, international labour standards were a cross cutting theme in each of the strategic objectives and were to be integrated into all ILO reports. This included the reports for the recurrent discussions.
It would not be possible to ignore the information in the General Survey when drafting the recurrent report. Information concerning the discussion on the General Survey at the Conference Committee would also need to be extracted from the Conference Committee report. The mandate of the Conference Committee was to discuss the General Survey. The technical committee would discuss the relevant standards as well as other aspects of each of the strategic objectives. The question posed in the document was more one of mechanics and possible changes to the programme of work of the Conference Committee, i.e. should the discussion on the General Survey be held early enough to enable the Committee report on this subject to be submitted to the technical committee?

The representative of the Government of Nigeria stated that the draft questionnaire on employment under article 19 of the Constitution was a step forward as it simplified and reinforced rather than complicated the system. He appreciated the element of review that had been included in the questionnaire, in particular the questions concerning intention to ratify, which would allow the Office to have a broader overview of the subject matter in each country. This was a refinement on previous questionnaires and the new formula would reduce the reporting burden of member States.

The representative of the Government of Kenya stressed that the Social Justice Declaration complemented rather than duplicated the supervisory system.

The representative of the Government of Germany raised some issues that his government had with the draft article 19 questionnaire on social security. It contained a grey zone between questions concerning international labour standards and more politically oriented questions which went beyond pure legal matters.

The Director of NORMES reminded the Working Group that it was premature to go into such detail at the moment and that many of these issues were to be discussed in the LILS Committee.

The representative of the Government of Nigeria pointed out the experimental nature of the questionnaire and felt that there was no conflict of interests. A General Survey had to include both information on legal implications and other questions such as those on best practices. However, discussion of this matter should be left up to the LILS Committee.

The Workers’ group asked whether the result of the discussion of the General Survey in the Conference Committee would move towards the adoption of conclusions. This would also have to be discussed in the future.

The Director of NORMES reiterated that while these questions needed to be raised now to give the Working Group time to reflect on them, they would be discussed in more detail at a later date. She recalled that the General Survey on occupational safety and health, to be presented at the 2009 Conference, was drafted according to the traditional method and was not linked to a recurrent report. Any implications the Social Justice Declaration would have for the working methods of the Conference Committee would only begin in 2010. Hence discussion of implications of the Social
Justice Declaration on the working of the Committee would need to take place at the next meeting of the Working Group.

3. Modalities for future meetings

The Employers' group considered that in view of the global economic crisis and the few issues to be discussed, this meeting could have been replaced by a video conference.

The Director of NORMES replied that concerning the question raised by the Employers' group on the possibility of conference calls or video conferences, the Working Group meeting had to be held in the framework of the Governing Body to ensure governments' participation. The financial advantage of conference calls needed to be weighed up against the advantages of holding discussions in person.

The Employers' group recalled that a precedent for using video conferences had been set in the Committee on Freedom of Association. While appreciating the invitation to come to Geneva, they wondered whether in some cases it would not be more appropriate and cost efficient to use this method of communication.

The Workers' group agreed in principle with the idea of conference calls or video conferences, a method that the group already used in certain negotiations. Nevertheless, it was good to see how the discussions in the Working Group had evolved and positive outcomes achieved, and this was in part due to the face to face interaction between participants. To continue in this positive vein, face to face meetings were necessary. As for cost reduction, the meetings had already been reduced from two a year to one per year.