Working Group on the Working Methods of the Conference Committee on the Application of Standards (7th meeting)

Informal Tripartite Consultations
Saturday, 14 November 2009 (2.30 to 5.30 pm)

Brief report

Proposed agenda

- Improvements in time management
- Balance in the individual cases selected by the Committee
- Possibility for the Committee to discuss a case of a Government which is not accredited or registered to the Conference
- Other questions

1. Agenda

1. The Director of NORMES (Ms Doumbia-Henry) clarified that the fourth item on the possibility for the Committee to discuss a case of a Government which is not accredited or registered to the Conference had been included after the circulation of a first draft of the Agenda, following a suggestion of the Employers’ group and in agreement with the Workers’ group. This second draft was also circulated.

2. The proposed agenda was adopted.

2. Improvements in time management

3. The Employers’ group referred to pages 28-29 of Provisional Record No 20 (ILC 2009) which reflected the position and suggestions they made for the purpose of improving time management. Firstly, concerning ways to create more time at the beginning of the Committee’s work, they suggested that the General Discussion be eliminated as other occasions to make general comments existed and discussion on the first part of the CEACR report continued to decrease (resulting in less than half a day last Conference). However the discussion on the General Survey should be retained. Secondly, concerning time management, the main question to be answered was how the Committee should organize its work to discuss 25 cases in 5 days, especially since all governments preferred that their cases be considered at the end of the week. They pointed out that the preliminary list enabled the 35 to 40 governments concerned to prepare in advance. Independent of the complexity of the cases, the maximum limit of 5 cases per day had to be maintained. In the event that five governments had already registered on one day, other governments concerned would have to choose another day. The possibility of having regular sessions on the Saturday should also be looked into. The D.1 document, while providing some information on time limits, was not sufficient. The Chairperson of the Committee had also to remind the
Committee of the time limits at the start of their work. They saw a particular problem in the enforceability of the time limits. It could not be the sole responsibility of the Chairperson to enforce these limits and other means, such as the use of a timer with a tone as done in the plenary, should be explored.

4. The Workers' group stressed that the respect of reporting obligations was of the utmost importance and had to be discussed during the General Discussion. The distribution of cases throughout the Committee's work was also matter of concern. Although the situation this year was optimal, since the list of cases was adopted on the second day, the fact that only two cases had been considered on the first day of the sitting of the Committee had resulted in delays that had accumulated until the Friday. It was therefore necessary to start with five cases on Monday and the Secretariat had to use all slots available and avoid situations where government's try to arrange to be heard on a later day of the week. This was necessary as discussions in the early hours of Saturday morning, as occurred this year, could not be taken seriously and were not effective. A regular sitting on the second Saturday could be considered as a possible solution. They agreed to include in Document D.1 time limits and to use technical means to limit speaking time. It was necessary to become especially strict so speakers kept the time limit. Without such strict enforcement, when one Government was allocated more time, others would claim the same right. They wondered whether allocating 15 minutes to the Government whose case was under discussion, as well as 15 minutes to the Workers' and Employers' Vice-Chairpersons, and 10 minutes for other governments' interventions would be considered sufficient. They also emphasized that it was becoming increasingly difficult to include cases of progress in the list of 25 cases and these should be placed in another list and dealt with separately.

5. The representative of the Government of Egypt declared that it was necessary to define a maximum number of cases that could be discussed each year by the Committee and suggested limiting the list to twenty cases, allowing for the examination of four cases per day – two in the morning followed by two in the afternoon. The cases that could not be discussed should be retained for examination in the following year. Concerning the speaking limit, stricter enforcement was necessary in order to ensure respect of the imposed limits. Governments concerned should be urged to submit written information if they felt that their allocated time was insufficient. This would also allow the Committee to benefit from more complete information.

6. The representative of the Government of Cuba requested clarifications concerning the proposals presented. Firstly, he wished to know how to make the distinction between a complex case from a simple case, which would imply a different speaking time for the cases under examination. Secondly, he emphasized that the reason why cases were not distributed in a balanced manner during the course of the week remained a substantive issue related to the date on which the definitive list was issued. Each Government that was on the list needed time and used the time available to defend its case appropriately. He added that the international situation was also important and it was difficult for a developing country to arrive with a large delegation for the Committee, including experts, even when it was included on the preliminary list. He insisted on the need for discipline in the work of the Committee and the need to adopt a methodology. He referred to the Universal Periodic Review (UPR) mechanism used by the United Nations to examine human rights practices. This mechanism included a methodology and a specific time for each case without any difference being made between one case and another. He supported the proposal made by the representative of the Government of Egypt to reduce the number of cases to be examined. That would lighten the work of the Committee. Finally, he called on the Office to consider the introduction of a methodology which would allow a specific number of cases to be examined every day.
7. **The representative of the Government of Bangladesh** supported the statement made by the representative of the Government of Cuba and emphasized that it was necessary to come up with solutions using result-based indicators as promoted by the ILO. He agreed with the suggestion made by the representative of the Government of Egypt to reduce the number of cases to be treated from 25 to 20. He was also in favour of looking for solutions in the model of time management used by the UPR system. While the UPR foresaw a slotting for cases, it initially allocated 10 minutes to the Government whose case was under consideration. Other Governments were allocated time depending on the number of interventions to be given. It was the responsibility of the Chairperson to enforce the limits. Regarding the slotting of the cases to be examined evenly over the five days, he suggested that the Committee follow the alphabetical order based on the name of the country. This could rationalize the system and countries on the preliminary list could prepare their case accordingly.

8. **The representative of the Government of Canada** noted that time management tended to be reduced to enforcing strict time limits to be respected by the speakers. This responsibility could not be placed on the Chairperson alone. She agreed that an independent timing system was necessary. In addition, it was important to start meetings on time. Hence, if the spokespersons of the Workers' and Employers' groups were not available, the nomination of deputies to stand in to ensure a timely start to the meeting had to be considered. Regarding the General Discussion, she saw no consensus to eliminate it altogether. She suggested that some issues merited discussions and these could be determined by the Officers in advance. While generally supporting the slotting of cases and the introduction of a fair system based on alphabetical order, special circumstances of Governments had to be taken into account, such as arrivals of Ministers invited to present the case for the government. Limiting the list of speakers was difficult to achieve, but a time limit of 5 minutes for each government would certainly help. A solution could also be to encourage governments to submit written submissions. However, care would have to be taken to ensure that the Office was not overburdened with translations, and further reflection was required as to how these submissions would be reflected in the Committee's report. She was of the opinion that often members of the Workers' group made many interventions and this needed to be addressed. In addition, a set amount of time should be allocated to group statements.

9. **The representative of the Government of Austria** recalled that in the past it had always been possible to deal with the discussion on the General Survey, automatic cases and the General Discussion in the first part of the Conference Committee's work. The Office had to determine which cases were to be considered in the second week. She agreed with the proposals made by the representatives of the Governments of Canada and Bangladesh and added that the alphabetical system should be rotating, thus start with “A” in 2010 and “B” in 2011 etc. To facilitate this approach, governments should receive the preliminary case list 4 to 5 weeks before the ILC so they could prepare. She requested information from the Office whether the existing time limits had already been fixed in written form. Finally, she added that limiting the list of speakers would contradict the Conference Committee's principle to ensure the right of freedom of speech for all. A solution could be found in the representative of the Government of Bangladesh's suggestion to allocate a total time for each case and to reduce the time for individual interventions to ensure that each speaker had a chance to speak. For the overall allocation of time per case, it was necessary to take into account the political importance of the case and its level of complexity. Furthermore, Saturday should be scheduled as a possible working day. She proposed that the allocated time frame per case be based on the presumption that a government was given 15 minutes each for the introductory statement and the concluding remarks, speakers from the groups were given an additional 30 minutes and Worker and Employer representatives each got 20 minutes. She also wished to clarify whether the 5 minute time limits would also apply to group statements, e.g. by IMEC, GRULAC, EU.
10. The Director of NORMES explained that the time limits for the interventions were known to the Committee and announced at the beginning of each sitting. They were, however, not included in the section on time management in the D1 document.

11. The representative of the Government of Bangladesh stressed that it was important that the Chair conveyed the time limits to participants beforehand and that specific rules for time allocation existed and were enforced by a traffic light system. Regarding the concerns expressed by the representative of the Government of Canada, he explained that the UPR had set up a word limit for written submissions by the governments, NGOs or other entities. In regard to the number of speakers, he explained that in the UPR if there were too many speakers for a country, those speakers who had registered late were asked to submit their statement in writing to be posted on the website. A government reviewed by the UPR received three occasions to speak: 30 minutes for an introductory statement, time to provide replies to questions during the debate and time to conclude at the end. Concerning the order of cases, he supported a rotating alphabetical approach, but also suggested that a system based on lottery or seating arrangements, as practiced in the UN system, was also feasible.

12. The Workers’ group supported an alphabetical approach to the slotting of cases. However, it was important that the secretariat was able to accommodate specific requests of governments. It was in everyone’s interest to have a good balance of cases, taking into consideration both the diversity of Conventions and regional balance. Limiting the selection to 25 cases was already a challenge and reducing the number to 20 would create further difficulties. Currently, the Employers’ and Workers’ Vice-Chairpersons, as well as the Government whose case was being discussed, were given time to speak at the end of the discussion of each case. For the Employers’ and Workers’ Vice-Chairpersons this was only a short statement (5 minutes) about the elements they wanted to see reflected in the conclusions.

13. The Employers’ group invited the Office to present a draft for a text on time management to be included in the D1 document at the next meeting of the Working Group in March 2010. They confirmed that the time limits were known to the Committee and reemphasized that these had to be put in writing. In their view, time limits for concluding remarks also had to be imposed. While 15 minutes was too long, 10 minutes was appropriate and the draft text should reflect this. He agreed to avoid making the Chairperson a referee and supported the introduction of an independent timing system. There was a consensus that dealing with 25 cases was feasible and that it was necessary to distribute them more evenly over 5 days. Concerning the General Discussion, they were uncertain whether it was possible for the Employer and Worker Vice-Chairpersons to come up with a list of agreed subjects before the meeting. They agreed with the representative of the Government of Bangladesh that the time remaining, after the interventions of the Government concerned and groups, should be divided evenly between the other speakers. They agreed with the Workers’ group that some aspects of the General Discussion should be kept but some other elements could be dealt with at a later stage. In regard to the remark made by the representative of the Government of Canada, they emphasized that delays in starting the Committee’s meetings on time had never been caused by the Workers’ or Employers’ groups, but rather by other issues in the Committee. They highlighted that the Workers’ group, especially in the last 5 years, had become very responsible in limiting the number of speakers despite the fact that in many countries various federations wanted the opportunity to speak and support fellow unions in other countries.

14. The Director of NORMES concluded that it was necessary to improve the working methods of the Committee in order to enhance its impact and the question of time limits had to be addressed. The ILO was open to look for solutions to improve time management in the
new UN procedures, as the UN had so often done using ILO systems as models. The Office would produce a document before the next meeting of the Working Group in March 2010, which would include more concrete suggestions to modify document D.1. It could be envisaged to have more specific guidance on time limits, e.g. 15 minutes for the spokespersons of the Workers’ and the Employers’ groups, as well as the government whose case was being discussed, and also for the groups. This could result in less time for individual interventions by members of the Employers’ or Workers’ groups. A maximum speaking time of 10 minutes could be sufficient for the government groups. As regards the General Discussion, it was agreed that its duration had to be kept to a minimum and a final proposal would be presented in March. She explained that the lighting system for time management used in the plenary of the Conference could also be used for the Conference Committee, together with any other time management system. She noted that there seemed to be a consensus on the viability of examining 25 cases and recalled that the Conference Committee used to have a session on the Saturday of the second week. It was necessary to distribute the slotting of five cases evenly over the five days. Using a system based on the French alphabetical order, as is the ILO’s general practice, was a good idea. This would help to ensure that sufficient cases were considered on Monday and Tuesday as the distribution of cases from Wednesday to Friday had not been problematic so far. It was also crucial that the Office receive the preliminary list as soon as possible. Following the meeting of the Working Group in March, a modified version of document D.1 would be sent to governments to inform them of the proposed time limits and encourage them to come prepared if their country was mentioned on the preliminary list. She referred to the fact that the CEACR Report was published at the end of February.


15. The Director of NORMES noted that the General Survey on Employment was going to be discussed by the Conference Committee next year. At the same time it was expected that the technical Committee of next year’s Conference discussing the recurrent report on employment would adopt a plan of action setting out the priorities in this area, which would subsequently be submitted to the Governing Body for implementation. This technical Committee had to be able to consider the normative issues arising out of the General Survey for inclusion in the plan of action. Therefore it was important to establish a method to ensure that the discussions on the General Survey by the Conference Committee be brought to the attention of the technical Committee in sufficient time to be taken into consideration for the plan of action. Appropriate procedural rules would be needed in this respect.

16. The Workers’ group stressed that it was important that the Committee adopt conclusions on the General Survey as otherwise, the Committee would run the risk of weakening the importance of the discussion, and the linkage with the recurrent report might be lost.

17. The Employers’ group supported the alignment of the General Survey and the recurrent discussions and, to ensure this was done effectively, suggested that the General Survey be discussed at the beginning of the Committee discussions. The situation of this year where the conclusions on the OSH General Survey were only available at the end of the discussion had to be avoided. They also raised the possibility of selecting the same Employer spokesperson for both the General Survey and the recurrent discussion to increase the synergies between the discussions, but were aware that this could create logistical problems.

18. The representative of the Government of Austria felt that finding a consensus for the conclusions on General Surveys could be a challenge as they would cover complex matters
such as future standard-setting, needs for revision and technical assistance. She questioned what the main task of the conclusions was and considered that it would be difficult for the Committee to identify the need to update certain international labour standards. She agreed that it was important to have a mechanism to enable conclusions to be brought to the attention of the technical Committee and suggested that this could take place on the Monday of the second week of the Conference.

19. The representative of the Government of Canada suggested that the General Survey be discussed on the first day. She recalled that previous attempts to link up with other Committees had failed – either there was no input or the input was not satisfactory. Before deciding on arrangements for collaboration between the two committees, the Committee needed to know precisely how the recurrent discussion on employment was going to be organized.

20. The Director of NORMES replied that as this was a new process it was still to be seen how the recurrent discussions would develop. The Governing Body had decided that employment would be the theme for the first recurrent report, and that the General Survey would be aligned to the subject of the recurrent report. While the General Survey would provide a global picture on law and practice relating to ILO employment instruments, the recurrent report, prepared by the Office, would deal with Office activities relating to the strategic objective in question. She added that the technical Committee would propose a plan of action that, if adopted, would provide guidance to the Governing Body until the next time the strategic objective was discussed. This plan of action had to adopt an integrated approach and hence also include the standards-related components. For the first time the Conference Committee was given the opportunity to draw conclusions from the discussion of the General Survey, which would serve as a basis for future Office action. Since the CEACR report, which included the General Survey, would already be available in February, there was ample time for constituents to prepare and see where common ground could be found. Hence, it was important to further reflect upon the necessary institutional and procedural arrangements to bring these conclusions to the attention of the technical Committee discussing the recurrent report.

21. The representative of the Government of Bangladesh agreed that effective institutional and procedural arrangements needed to be adopted, and supported the suggestions that the General Survey be discussed on the first day. He suggested that half a day could then be allocated for the drafting of conclusions. Regarding the linkage to the technical Committee, he queried whether concentrating on conclusions would narrow the focus of the discussion on the General Survey, loosing the broader picture and added that this approach could lead to a duplication of discussions in the committees regarding standards-related issues.

22. The Employers’ group recalled that the Conference Committee focused on legal discussions, whereas the technical Committee would discuss the topic from a broader perspective. They added that the conclusions of the General Survey should follow the same formula as the conclusions for the individual cases, reflecting areas of consensus and disagreement.

23. The Director of NORMES concluded that the queries raised confirmed the need for procedures to be put in place. The Office would make proposals next March to deal with the issues raised. She indicated that, in the new article 19 questionnaire for the General Survey on employment, all member States were asked to give their views about standards gaps, technical assistance, and new standards. Hence, the General Survey response would depend on member States’ responses (i.e., whether there were responses and what those responses indicated). When the members of the Conference Committee receive the General Survey,
they will have sufficient time to reflect on possible conclusions before coming to the Conference. NORMES could draw the attention of the Office to the need to put in place arrangements for next year’s Conference to allow for the possible interaction between the Conference Committee and the technical Committee on employment. A consensus existed to this effect and the Legal Office (JUR) would be consulted accordingly.

4. Balance in individual cases selected by the Committee

24. The Workers’ group noted that the issue relating to double footnotes would be discussed *inter alia* when the Vice-Chairpersons of the Conference Committee meet with the CEACR. The question as to how cases of progress should be included in the list of cases was still pending.

25. Upon the proposal of the Employers’ group, it was agreed to defer this matter to March, since further discussions between the Workers’ and Employers’ groups were necessary on this point.

5. Possibility of the Committee to discuss a case of a Government which is not accredited or registered to the Conference

26. The Employers’ group recalled that at last year’s Conference they wanted to place a country on the final list, because it was a serious case. However, at the last moment it was decided to remove the case as the country was not accredited to the Conference and instead the Workers’ group placed a different country on the list. If at next year’s Conference a similar situation would arise, the Employers’ group would insist that the case be included in the final list. A case of a country not accredited to the Conference was essentially the same as a case in which a Government accredited to the Conference decided not to appear before the Committee. It should be noted that the Government in question was accredited on the third day of the Conference, after the adoption of the list.

27. The Workers’ group agreed that such situations threatened the ability of the Conference Committee to work effectively. They suggested that upon receipt of the provisional list, countries had to be reminded what the implications and expectations were, in order to improve cooperation.

28. The representative of the Government of Cuba indicated that it was not general practice, but a special case, and that the many reasons for the absence of a Government needed to be examined. He emphasized that being accredited but not being present in the Committee on the Application of Standards was different from not participating in the Conference at all. He expressed the opinion that his Government would not agree to the Committee discussing the case of a Government which was not accredited to the Conference or not registered.

29. The Director of NORMES recalled that, in this context, it was the mandate of the Conference Committee, according to the ILO Constitution, to monitor the application of standards. For this purpose, the Committee had the report of the CEACR from which it selected 25 cases. Nothing legally prevented the Committee from examining a case if the country in question was not accredited to the Conference.

30. The representative of the Government of Canada understood that this Working Group had already decided that cases where member States legitimately did not attend the Conference could not be examined. However cases could be examined where countries accredited decided not to appear before the Committee. She suggested that if the former case appeared again in the future, it had to be investigated whether the country intended to come
to the Conference or not.

31. **The Workers’ group** noted that while this could have been an exceptional case, measures had to be taken to avoid this from becoming general practice in the future. The absence of a member State in such a situation went against the spirit of dialogue of the Conference Committee. They suggested that a government that showed up late should be put back on the list.

32. **The Director of NORMES** confirmed, following a query from the representative of the Government of Bangladesh, that inquiries on whether or not a government would attend the Conference were made right up until the last moment. She also recalled that document D.1, on page 7, footnote 12 read: “In the case of governments not present at the Conference, the Committee will not discuss the substance of the case, but will bring out in the report the importance of the questions raised.”

33. **The representative of the Government of Canada** asked whether, under the current arrangements, such a case was to be removed from the list.

34. **The Employers’ group** noted that the opportunity was lost to highlight the situation at the time. In this case, two principles had to be applied. First, the Conference Committee could decide to discuss any of the observations in the CEACR report, and second, when member States ratify ILO Conventions they also committed themselves to the obligation to report to the ILO on their implementation. He proposed that if a selected country was not accredited to the Conference, full reflection should still be given to the case and the concerns of the Workers’ and Employers’ group as well as governments included in the report. This was not a question of due process. During the Cold War there were many cases in which member States decided not to appear before the Committee but it was decided to discuss them anyway. They considered that this process had to be changed now because there was no difference between cases of countries not accredited and cases of countries who decided not to appear before the Committee. In reply to the question of the representative of the Government of Canada, they clarified that under the current arrangements such a case could be placed on the list, but not discussed. While noting that the information document did not contain any information on this point, they proposed to return to this issue in March.

35. **The Director of NORMES** agreed that the Office would prepare a note on this issue for the next meeting of the Working Group in March, without including the particulars of the case which occurred last Conference.