Working Group on the Working Methods of the Conference Committee on the Application of Standards
(8th meeting)

Informal Tripartite Consultations
Saturday, 20 March 2010 (2.30 to 5.45 pm)

Brief report

Proposed agenda

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

1. Agenda

1. The proposed agenda was adopted.

2. The Working Group had before it the following papers: a background note, a brief report on the 7th meeting of the Working Group, draft documents D.0 (provisional working schedule) and D.1 (work of the Conference Committee on the Application of Standards) for the 2010 ILC and the list of Conventions selected by the Conference Committee on the Application of Standards in the context of the individual cases since 1999.

3. The Director of NORMES (Ms Doumbia-Henry) announced that the Chief of the Official Relations Branch - RELOFF - (Ms Wright-Byll) and the Deputy Legal Adviser (Ms Diller) had been invited to this meeting to provide information in the context of the first and second point on the agenda, respectively.

2. Improvements in time management

4. The Chief of RELOFF informed the Working Group that the Office will proceed to the installation of an electronic system to improve time management in the Conference Committee on the Application of Standards (the Conference Committee) similar to the one used for the plenary session of the ILC. It would consist of a screen set up behind the podium, visible to all participants and linked with a timer. The timer would be activated by a designated person, and would indicate the remaining time for each speaker. This person would ring a bell at the end of the allocated speaking time which would be audible to all participants. At this point, it would be at the discretion of the Chair whether the speaker would be allowed to continue for a further five minutes or not before using the gavel and requesting the speaker to stop.
5. The Employers’ representative noted that this mechanical system would meet at least one of the issues of time management which his group had raised previously. He asked that the limit on speaking time be strictly enforced by the Chairperson. With reference to the time limits contained in the draft document D.1, he suggested that in the case where there was more than one Employer member or Worker member of the country concerned, the ten minutes allocated to each of them be divided between the different speakers. Concerning the registration of countries for the discussion of individual cases, the proposals contained in the draft document D.1 appeared to be different from what he had understood the last session of the Working Group had agreed upon. His understanding had been that the Office would slot, following an alphabetical order, those countries which did not register themselves before the deadline. In principle, the Conference Committee was to discuss five individual cases per day, but if the case in question was difficult then the discussion of the case might be moved to another day. The speaker considered that a Saturday-sitting was to be an extreme option and he encouraged Governments to submit written documents. This possibility should be emphasized in the letter sent by the Office.

6. The Workers’ representative noted that it might be difficult to work with the new system in the beginning but it was necessary to move forward. He agreed with the Employers’ group suggestion that if multiple Employer or Worker organizations of the same country wished to speak, their speaking time should be divided among them. Regarding the order of discussion of the individual cases, he observed that the Office had come up with a system different from what he thought the last Working Group had agreed on, but considered that this proposal had some merit and was worth discussing. He agreed that a Saturday-sitting was an extreme option but he recalled that the discussions until the early hours of the morning at the previous Conference Committee had also been an extreme situation and as such he supported a Saturday-sitting over late night sessions.

7. The representative of the Government of Canada agreed that the mechanical system was important and necessary. She indicated that the Office’s proposal was not what had been agreed at the last Working Group session. Governments should be given a chance to slot themselves so that they could accommodate attendance by senior officials or Ministers. With respect to the proposed provisional working schedule (draft document D.0), she requested clarification as to whether different time might be allocated to different cases, as she was unable to see how twenty-five cases could fit in the proposed schedule. She suggested consideration be given to making the discussion on the failures in reporting obligations more useful and effective. Regarding a sitting on Saturday, she agreed that working on Saturday would be better than discussing cases well into the night. Concerning the use of written documents, she wondered whether the Conference Committee would be considered to have taken into account the information from the Government concerned if the Government’s written submission was not made available in the three languages. She expressed concern about the capacity of the Office to deal with a large number of such documents. She asked the Office to clarify the situation with regard to these documents, including the deadline for submission, their inclusion in the report of the Conference Committee, whether such submissions were limited in length, and the accessibility of this information to the Conference Committee.

8. The representative of the Government of Australia put forward three proposals. First, he wondered whether a system of pre-registration of speakers for the discussion of individual cases could be established, where some criteria might be defined as regards the registration of speakers who were not directly involved in the case concerned, and registration twenty-four hours prior to the sitting concerned might be required, placing some control over the number of speakers. Second, he suggested that a close-off time for the evening sitting be fixed, upon which the discussion of the Conference Committee would stop for the day. In
his experience, there was a tendency for the discussion of a case to finish more quickly when the participants met the following morning than continuing the discussion late into the night. Third, with respect to allocation of time to an individual case, he proposed that limited discretion of the Office be exercised in allocating more time to certain complex cases than others. The speaker also supported the issues raised by the representative of the Government of Canada with regards to written submissions.

9. The representative of the Government of Cuba stressed the complexity of improving time management. Referring to the meeting of November 2009, he again asked for clarifications regarding the criteria used to distinguish between simple and complex cases, noting that the latter require more extensive discussion. He supported the proposals presented in the document, but stated that allowance must be made for the fact that the proposed system was still new, by providing members of the Committee with more detailed information. He supported the proposal for automatically registering governments in French alphabetical order, but did not favour limiting the number of speakers. A Saturday meeting during the second week of the Conference should be retained informally as an option, but should not appear on the plan of work, as this would create an undesirable precedent. He concluded by reiterating that the fundamental problem remained the publication date of the final list, pointing out that the adoption of the final list on Friday of the first week made it very difficult for some delegations to appear before the Committee on the following Monday. Although he recognized that there might be technical obstacles, he pointed to the need to find a way to adopt the final list much earlier, and even before the start of the Conference. Any discussion of improvements in time management that failed to consider the publication date of the final list would fail to deal with the root of the problem.

10. The representative of the Government of Austria welcomed the information note on improvements in time management as an excellent basis for discussion. She was concerned that a 15-minute limit on interventions might not allow sufficient time for the discussions relating to complex and elaborate Conventions, and hoped that there would be some flexibility in the application of the 15-minute rule. For example, the Employer and Worker Vice-Chairs could entertain requests for additional time on specific questions. In cases involving a large number of speakers, it might be possible to set a global time limit and divide it equally among those wishing to speak. She noted that a Saturday-sitting might help to keep other sittings from running late into the evening. While welcoming the submission of written documents, she asked for clarifications concerning the timely translation of these documents, and asked if that was practical, given the additional costs such work would entail for the Office.

11. The Director of NORMES noted agreement on the use of new equipment for better time management. She also observed that the Working Group had agreed that in the event that multiple Employer or Worker members of the country concerned wished to speak, the speaking time of 10 minutes would be divided among them. She indicated that the time limit of 15 minutes for the Government whose case was being discussed had always existed, but had not previously been enforced. Concerning the submission of written documents (D documents), she noted that this had always been available, but had not often been used. She indicated that the written information submitted by Governments was summarized and translated into the three languages and included in the report of the Conference Committee. She proposed to highlight this option in the letter communicated to countries on the preliminary list. A limit on the length of the written information could be introduced to ensure that the Office would have the capacity to cope with the translation. She explained that at the last meeting of the Working Group, the proposal of automatic slotting had been supported because many Governments used to register themselves for the sittings between Wednesday and Friday, resulting in a lack of cases to discuss on the Monday and Tuesday.
The Office was currently authorized to slot in those countries which did not register before the deadline at 6 pm on Friday of the first week, but it only managed to slot in some countries on the first two days, as other countries had various reasons for not being ready. The automatic slotting was proposed against this background. Under the proposed slotting procedure, some problems remained, such as making sure those countries slotted were informed in time so as to avoid countries slotted not appearing.

12. The representative of the Government of Austria stated that all governments should be ready to submit their D documents as soon as the preliminary list of individual cases was published, so as to allow for the translation of all such documents.

13. The representative of the Government of Australia suggested that the deadline for registration be fixed earlier so that countries concerned would be notified in time.

14. The Director of NORMES indicated that the earliest timing of the completion of the preparation of the final list would be Thursday, as the Conference Committee started on Wednesday and there was a need for meetings of Employers’ and Workers’ groups to discuss the final list. In addition, at least twenty-four hours needed to be provided to the Governments before the deadline for registration.

15. The Employers’ representative indicated that there were generally about thirty-five cases on the preliminary list, of which twenty-five would be selected. This meant that there was a fairly good possibility of being selected if countries were on the preliminary list. Nobody should be caught by surprise and he therefore did not consider the deadline of Friday as the issue because Governments on the preliminary list should already start their preparation at the time that the preliminary list was made available.

16. The Workers’ representative agreed with the Employers’ group and noted that if Governments were left to register themselves the reality was that there would not be enough cases slotted on the Monday and Tuesday. He indicated that countries that had been double footnoted would likely appear on the final list. He stressed the need for a good system which would allow quality discussion on all cases. Concerning the issue of speaking time, he noted that his group exercised discipline over speaking time, and asked Governments to do the same, so as to avoid situations where, for example, a Government had spoken for two hours. In this regard, written information would play an important role, allowing the members of the Conference Committee to take into account the situation of the country concerned more effectively than from speeches delivered.

17. The representative of the Government of Canada noted the difficulty in that Governments on the preliminary list could not be sure that they would be included on the final list. She suggested that if there existed cases which would certainly be included in the final list and the Governments concerned were aware of this, those cases could be slotted at the early part of the second week.

18. The Director of NORMES noted that while a double footnote played a very persuasive role in the decision on whether to include a case on the final list, it was not decisive and from a legal point of view, a preemptive decision by the Office on the final list could be challenged.

19. The representative of the Government of Bangladesh noted that the Working Group was revisiting a discussion it had already had. The speaker agreed with the Office’s proposals in its paper concerning time management and considered that this paper perfectly reflected the outcome of the previous discussion. He noted that the issue at hand was whether Governments should be given the option to slot themselves first. As far as he had been
aware, the decision at the previous Working Group meeting had been to use an alphabetical rotating system. However, he saw merit in giving Governments some time to slot themselves. He supported the statements by the representatives of the Governments of Canada and Cuba with respect to time limits, and agreed that it was worth a try to see if it resulted in improved time management. On the issue of a Saturday-sitting, his only concern was that there was a tendency to push discussions back if a Saturday-sitting was possible. He suggested removing reference to a Saturday-sitting in the provisional working schedule and that a Saturday-sitting should only be held when it was strictly necessary.

20. The Director of NORMES clarified that a Saturday-sitting used to be a normal working day for many years, but that the Conference Committee had decided to apply stricter control of working time. She noted that there was general agreement to avoid such a sitting if possible; however, it would remain an option to avoid the extreme hours experienced the previous year. She recalled that the time limits were announced every year by the Chairperson at the beginning of the meeting, but had previously not been strictly enforced. The proposal was to indicate these limits in writing and inform Governments in advance.

21. The representative of the Government of Cuba stressed the problem of the knowledge of the members of the Committee. For example, all the participants in this working group, especially those representing governments, had not had the opportunity to attend the consultations since the beginning. It would therefore be useful to recall the procedural rules. He suggested that when governments were informed of the preliminary list, they should also be given information on available procedures, such as the possibility of presenting written replies. In the event the proposed automatic slotting system was adopted, he wondered what would happen in the case of a country that was not prepared to appear before the Committee. He recalled that all countries do not enjoy the same conditions for sending delegations, and urged that account be taken of national conditions. Lastly, he reiterated his question about the criteria that were used to distinguish complex cases and simple cases.

22. The Director of NORMES noted that the criteria distinguishing a case as complex was not discussed in the Office documents. The documents did however refer to situations involving many speakers. Her view was that in this situation it might be possible to shorten the length of time allocated to each speaker.

23. The representative of the Government of Bangladesh stated that in principle all cases should receive equal treatment. If there was a long list of speakers, the speakers could submit their statements in writing, following the methodology implemented at the Universal Periodic Review of the United Nations Human Rights Council. With respect to the slotting of countries with double footnotes, he wished to reserve decision on this.

24. The Director of NORMES clarified that this was the last session of the Working Group before the ILC and conclusions needed to be agreed upon at this meeting.

25. The representative of the Government of Austria pointed out that an alphabetical system could work only if all member States were treated on an equal footing by avoiding any arbitrary changes in that order.

26. The representative of the Government of Canada supported a trial of the alphabetical system but stressed that the social partners needed to be aware that such a system might influence the level of participation by some Governments. For example, the Ministers who wished to participate in the Conference Committee might not be available at the slotted time.
27. The Employers' representative agreed with an automatic slotting by alphabetical order and suggested that more information be communicated to countries on the preliminary list including, for example, the working schedule, the speaking time limits, and the automatic registration of countries appearing on the final list. He also suggested that the letter communicated by the Office could inform countries that had a double footnote that the possibility that they would be included on the final list was substantially higher, and that those countries should prepare for being slotted on the Monday and Tuesday. This placed new accountability on the side of the Committee of Experts in respect of double footnotes. He considered that if a country was before the Committee concerning multiple Conventions, each sitting would deal with only one Convention. On the issue of complex cases, he clarified that we knew historically that the discussion of some cases took longer than others. Speaking time for these cases should be controlled based on the number of speakers, which would ensure each speaker time to make statements.

28. The Workers' representative agreed with the suggestions made by the Employers' group.

29. The Director of NORMES summed up the discussion on time management as follows:

- first there was unanimous support for the time management equipment;

- second, the limits on speaking time (15 minutes for the spokespersons of the Workers’ and the Employers’ groups and the Government whose case being discussed; ten minutes for the Employer and Worker members, respectively, from the country concerned to be divided between the different speakers of each group; ten minutes for government groups; five minutes for other members; and ten minutes for concluding remarks by the Workers’ and the Employers’ groups and the Government whose case was being discussed) would be indicated in the document D.1 in addition to being announced by the Chairperson. Both documents D.0 and D.1 would be sent to Governments along with the preliminary list, and the Office would highlight important changes in these documents;

- third, with respect to the slotting of countries for the discussion of individual cases, she made the following proposals: there would be an automatic registration of countries using the French alphabetical order, this year beginning with the letter “A”; countries would be divided in two groups - countries which were double-footnoted by the Committee of Experts would constitute the first group and would be registered first, by alphabetical order; they would be followed by the other countries (the second group) also registered by alphabetical order. She clarified that the document sent to the Governments would indicate that double-footnoted countries had a higher possibility of inclusion in the final list and that they should be prepared to speak before the Conference Committee in the earlier part of the week; and

- fourth, there was agreement to remove reference to a Saturday-sitting in the second week from the working schedule, but that reference to the possibility of a Saturday-sitting, at the discretion of the Officers, would be included in document D.1.

30. The representative of the Government of Canada proposed the following changes to document D.1: point 2 on page 7 should read “are summarized and reproduced”; the words “prepared and” should be removed from the first sentence of the paragraph on Adoption of conclusions on page 7; in the same paragraph, the words “and information provided by the Government in writing” should be added at the end of the second sentence; and the introduction, which had become quite lengthy over the years, should be summarized or included in an Annex.
31. The Working Group agreed with the proposals put forward by the Office and accepted the changes to the text indicated by the representative of the Government of Canada.

32. The Director of NORMES recalled that this discussion had begun in November 2009, and that it had been decided that the Office would seek advice from the Office of the Legal Adviser on how to ensure that the Committee on the Strategic Objective of Employment took into account the contribution of the Conference Committee following its discussion on the General Survey on employment instruments. This was necessary in view of the fact that the discussions would take place the same year in the two Committees contrary to the original intention, which was to have the discussions on the General Survey one year prior to the discussion on the Recurrent Item. The paper in front of them was essentially a look at the arrangements that could be put in place to bring to the attention of the Committee on the Strategic Objective of Employment any possible conclusions/outcomes by the Conference Committee on the General Survey and how best this could be done.

33. The Workers’ representative recalled that his group had asked, at the last meeting, that such a link be made between the two discussions. The question was how to do this so that it did not cause any legal problems in view of the difficulties experienced during last year’s discussions in transmitting the Conference Committee conclusions to the Committee of the Whole on Crisis Responses.

34. The Employers’ representative suggested a long-term solution to this issue, which was to schedule the General Survey discussion one year prior to the recurrent discussion. With reference to the issue at hand, the speaker noted that it would be challenging to reach conclusions within the time scheduled and it was possible that the Friday deadline established in the provisional working schedule would not be met. It was necessary to face this reality, and hence the reason for suggesting a future way of working through this.

35. The Director of NORMES, responding to the long-term solution proposed by the Employers’ group, indicated that while this possibility had been anticipated, in the end it had not been implemented. It would be for the Governing Body to make a decision on this before the topic of the General Survey was decided and Governments would need to look at this in November when the Steering Committee met. Subject to the decision by the Governing Body the following week, and based on decisions already made, at least until 2012, there would be a discussion of the recurrent item and the General Survey in the same year.

36. The representative of the Government of Austria stated that holding the discussion of the General Survey one year prior to the recurrent item should be considered from the point of view of the feasibility and the impact on the Office’s human resources. As we were this year in an experimental phase, it would be interesting to test this new mechanism for the General Survey and the recurrent question and to draw conclusions from it. She suggested moving forward to Wednesday the adoption of Document D.1 and the discussion of the General Survey.

37. The Employers’ representative understood the suggestion by the representative of the Government of Austria but did not consider the proposal as practical given that the Wednesday was the first time that the Employer and Worker spokespersons met with their respective groups to discuss the long list of cases and he did not see how it would be feasible
to fit other topics into this.

38. The Workers’ representative indicated that the time allocated on Wednesday was required to introduce newcomers to the procedures governing the Conference Committee, and the functioning of the Workers’ group, and subsequently, members were invited to raise any matters. If they were not given this opportunity then the matters would be taken up in the Conference Committee leading to lengthy discussions.

39. The representative of the Government of Portugal considered that the procedures for the concomitant discussion of the General Survey and of the recurrent item lacked clarity, and asked how better coordination might be achieved between the Conference Committee on the Application of Standards and the Conference Committee on the Strategic Objective of Employment.

40. The Director of NORMES clarified that the objectives of each Committee were clear as was the content of their respective reports. The General Survey remained as it was by nature: a report on the law and practice by member States in relation to the normative instruments linked to the strategic objective, and the recurrent item report was a report of the Office on the strategic objective, guided by the 2008 Social Justice Declaration, and focused on what the ILO was doing to assist member States in this area. The issue at hand was how to ensure that the conclusions of the recurrent discussion, possibly in the form of a plan of action, took into account standards-related activities, as one of the means of action of the ILO.

41. The Deputy Legal Adviser (Ms Diller) elaborated on the proposal contained in paragraph 10 of the background document on a possible procedure to bring the conclusions on the General Survey to the attention of the Committee on the Strategic Objective of Employment. It was important to note that the Committee on the Strategic Objective of Employment would be preparing a report with conclusions, including a programme of action to ensure that the Organization could best assist member States. The role of standards was weaved into the 2008 Declaration and therefore it was important that the output of the General Survey discussions inform the discussions of the Committee on the Strategic Objective of Employment.

42. The representative of the Government of Austria asked whether the conclusions of the Committee on the Application of Standards relating to the General Survey would be presented to the Committee on the Strategic Objective of Employment and whether they would constitute part of its agenda.

43. The representative of the Government of Bangladesh asked for clarification with regard to the use of “In addition” in paragraph 10 of the background document.

44. The Deputy Legal Adviser clarified that the two different actions presented in paragraph 10 were not alternatives. The first action was the official transmission by the Selection Committee, following a certain procedure, to ensure that the output of the Conference Committee discussion on the General Survey was taken into account in the recurrent discussion. The second action would take place after the official transmission, at the discretion of the Committee on the Strategic Objective of Employment, who would look at the manner in which it would take up this transmission.

45. The Employers’ representative questioned whether the output of the Conference Committee discussion on the General Survey needed to be in the form of conclusions, as there may be instances where the Employer and Worker groups did not agree on whether a
Convention was up to date and therefore reaching a conclusion could be difficult. In this situation, the speaker asked whether a summary of the debate, reflecting tripartite positions, could be transmitted to the Committee on the Strategic Objective of Employment.

46. The Director of NORMES indicated that there was no form or format that bound the General Survey discussions. If the Conference Committee was unable to reach a consensus on standards-related action, then the Committee on the Strategic Objective of Employment would receive the output of this divergence of views.

47. The Workers’ representative stressed the need for added value to the discussions and that to achieve this there needed to be more than just a summary of the discussion, in particular on issues where consensus was achieved. This was a matter that needed to be dealt with at the time.

48. The representative of the Government of Canada indicated that her only caveat was that Governments needed to be involved in the adoption of conclusions.

49. The representative of the Government of Austria supported the representative of the Government of Canada and stressed that any output had to be communicated to the Committee on the Strategic Objective of Employment so that the discussion on the General Survey could add value to the recurrent discussion.

50. The representative of the Government of Bangladesh asked for clarification on the process presented by JUR, and whether the use of the word “Officers” in paragraph 10 of the Background document referred to all three parties involved in the process.

51. The representative of the Government of Portugal stressed that governments should participate in the discussions on the conclusions. Points 10 and 12 of the information note suggest two alternative options. Also, he wondered how much value the conclusions of the General Survey would add to the recurrent item.

52. The Director of NORMES agreed that it would have been simpler if the General Survey had preceded the recurrent item discussion. By instigating modalities for this new aligned process, the Office was trying to ensure that all components of the ILO’s means of actions were included in the recurrent discussions, and in any resulting plan of action.

53. The Deputy Legal Adviser explained that it would be for the Conference Committee to decide the form and timing of the output that it would adopt, on a tripartite basis, in relation to its discussion on the General Survey. The Selection Committee would be presented, probably at its first sitting, with the decision to have the adopted output of the Conference Committee officially transmitted to the Committee on the Strategic Objective of Employment as an input to its work. The Conference Committee’s output could include the adopted summary record of the discussion and, if any, conclusions of that discussion. Clarity in the output of the Conference Committee would assist the Committee on the Strategic Objective of Employment in the discharge of its mandate to review Members’ needs and priorities in the means of action used by the Organization to assist its Members in achieving the strategic objectives, including through international labour standards. The question of the manner in which, and when, the Committee on the Strategic Objective of Employment would take up the adopted output of the Committee would be a matter for the Committee on the Strategic Objective of Employment which could decide to invite the Officers of the Conference Committee to orally present their Committee’s output.

54. The Workers’ representative stressed that there was a need for the Conference Committee
to adopt some kind of output, which should inform the recurrent discussion.

55. The Employers’ representative agreed with the Workers’ group in that the output could not be predetermined, and that whatever was to go to the Selection Committee should be stated generally. In response to the representative of the Government of Portugal, he noted that the added value of the output was that the recurrent discussion would be informed of standards-related action.

56. The Director of NORMES noted the need to work a little differently and to be innovative. All sides needed to prepare for a discussion on the General Survey. If there was to be an output other than a summary of the discussions, then there should be a mechanism to allow for this.

57. The Employers’ representative noted that there was already a well established process in the Conference Committee whereby the Officers adopted conclusions, with the Chair representing Governments.

58. The representative of the Government of Canada stressed that the role of the Chairperson was supposed to be neutral and that Governments did not have a representative among the Officers of the Committee.

59. The Workers’ representative responded that it was up to the Chairperson and the Vice-chairpersons to make a proposal of an output to put before the Conference Committee for adoption.

60. The representative of the Government of Austria noted that any conclusions/output on the General Survey would need agreement by Governments, not just the Chairperson, and the speaker was unsure whether such a task could be accomplished in one day.

61. The Director of NORMES suggested that the Officers propose an output on the Friday and Governments could come back with their views on the following Monday. The speaker noted that a decision on how to ensure coherence and a normative aspect into the recurrent discussion had to be made. The constituents and the Office were in novel territory and would have to make the necessary adjustments and innovate to ensure that there was a real possibility of follow-up on standards-related action resulting from the Conference Committee discussion of the General Survey prepared by the Committee of Experts. It was an opportunity to provide value added by the apex of the supervisory system - the Committee on the Application of Standards - that had to be seized.

62. The meeting was called to an end. Agenda items 3 and 4 were postponed until the next meeting.