Working Group on the Working Methods of the Conference Committee on the Application of Standards (Ninth Meeting)

Informal Tripartite Consultations
Saturday, 13 November 2010 (2.30 to 5.30 p.m.)

Brief report

Proposed agenda

1. Follow-up to the 99th session (June 2010) of the International Labour Conference – continuing the discussion on the following issues:
   (a) The list of individual cases
   (b) Respect of rules of decorum
   (c) Assessment of the changes introduced in the working methods of the Conference Committee
      – Automatic registration of cases
      – Improvements in time management
      – Interaction between the discussion on the General Survey by the Committee on the Application of Standards and the discussion on the recurrent report by the Committee for the Recurrent Discussion

2. Items which have been postponed at the last meeting of the Working Group (March 2010):
   (a) Possibility for the Committee to discuss a case of a Government which is not accredited or registered to the Conference
   (b) Balance in the individual cases selected by the Committee

Opening of the meeting and adoption of the agenda

3. The Working Group had before it the following papers: a background note, the document C.App/D.1 (work of the Conference Committee on the Application of Standards) adopted at the 2010 International Labour Conference and the list of Conventions selected by the Conference Committee on the Application of Standards in the context of the individual cases since 1999.

4. The Director of the International Labour Standards Department (NORMES), Ms Doumbia-Henry, opened the meeting and, in line with the traditional practice of the Working Group and as there were no other proposals, agreed to chair the meeting. She presented the proposed agenda and the background paper prepared by the Secretariat.

5. The representative of the Government of Bangladesh requested that sufficient time be left for the discussion of the items postponed from the previous meeting.
6. The proposed agenda was adopted.

**Agenda item 1: Follow-up to the 99th Session (June 2010) of the International Labour Conference**

(a) The list of individual cases

7. The **Worker spokesperson, Mr Cortebeeck**, recalled that, at the last Conference, the Workers’ group had wished to examine certain cases, particularly those of Colombia and the United Kingdom, but that agreement had not been reached on their inclusion in the list of individual cases. Clearly the main problem was that only 25 individual cases could be examined from all those that merited discussion by the Conference Committee. However, it left the group dissatisfied when agreement could not be reached on the inclusion of extremely important cases in the list. There was also the issue of cases of progress. It would be beneficial to be able to discuss a few cases of progress, but not if that meant reducing the number of cases of non-compliance. Another method would need to be found of discussing cases of progress so that they could be brought to the attention of constituents.

8. The **Employer spokesperson, Mr Potter**, indicated that the Conference Committee had worked much better at the 99th Session of the Conference with the new working methods, even though innovation had been required in the handling of the discussion of the General Survey. He emphasized the difficulties involved in reaching agreement on the selection of 25 individual cases, in addition to the special case, from the many cases on which the Committee of Experts commented. In view of the numbers involved, it was hardly surprising that there should be disagreement between the groups on the final choice of 25 cases. He agreed that there was some value in examining cases of progress with a view to highlighting how governments could improve the national situation. Even so, in many so-called cases of progress, there were sometimes grounds for wondering whether there was actually any progress in practice. With regard to the selection of the individual cases, there seemed little alternative to the methods followed at present. The criteria governing selection had been agreed upon and were being applied, including with regard to the regional distribution and subject-matter of cases. Although the Employer members would prefer a greater variety of Conventions to be covered, the Worker members understandably tended to be more preoccupied with violations of freedom of association.

9. The **representative of the Government of Canada** noted the significant improvements in the working methods of the 2010 session of the Conference Committee. It was the view of IMEC that it was for the Employers’ and Workers’ groups to negotiate the list of individual cases and to find a way of coming to agreement, however challenging that might be. Alternative means could also be used to agree on the list of cases. For instance, each group might choose one case that it wished to see on the list, which would automatically be included, with the rest being subject to negotiation. Or each group could alternate in choosing a case. She reiterated that IMEC did not wish to interfere in the determination of the list of individual cases and merely encouraged the Employers’ and Workers’ groups to find a methodology for finalizing the list as soon as possible. She considered that one or two cases of progress should be discussed and suggested that half a day might be set aside for that purpose. Rather than dealing with specific cases in detail, such a session might discuss progress in more general terms.
10. The representative of the Government of Egypt called for the list of individual cases to be made available well in advance to give time to the governments concerned to prepare. The Conference should not become a burden for governments and account should be taken of all the legislative and other measures adopted to achieve progress. He recalled that it took time to go through the necessary procedures, including consultation, to change or adopt laws and bring about the changes requested by the Conference Committee. It was also important to ensure that the choice of individual cases was just and fair, and to avoid the current practice whereby the great majority of the cases discussed concerned developing countries, with particular reference to African countries. He agreed that the Conference Committee should discuss cases of progress.

11. The representative of the Government of Cuba, speaking on behalf of the group of Latin American and Caribbean countries (GRULAC), also stressed the importance of the preliminary list of individual cases being made available at least two weeks before the beginning of the work of the Committee on the Application of Standards to give the governments concerned adequate time to prepare for the possible discussion of their cases by the Committee. The selection of individual cases for discussion should be based on the possibility of helping to resolve problems of compliance with Conventions, and political considerations should be avoided in relation to certain governments of developing countries. The inclusion of a case on the list should not constitute a penalty against a country for having exercised the right to self-determination and the adoption of political systems which were in the interests of the peoples concerned, even though they might not please the governments of powerful nations. The work of the Committee on the Application of Standards was still controversial and there was still a lack of transparency and an absence of clear criteria for the selection of individual cases. Cases sometimes appeared to be selected largely on the basis of preconceived political ideas, adopting a punitive approach. Moreover, it was vital to ensure that countries were not included on the preliminary list as part of a bargaining strategy. Every case selected should be justified by the gravity of the problems indicated by the Committee of Experts.

12. The representative of the Government of Austria, speaking on behalf of the Western European countries, shared the view of the IMEC countries that it was not for governments to take part in the determination of the list of individual cases. She hoped that the Employers’ and Workers’ groups would find a means of reaching agreement. The alternative measures indicated by the representative of the Government of Canada appeared to be worth considering. It would be valuable for the Conference Committee to discuss cases of progress, although no more than 25 cases could be included on the list. There did not appear to be much room to improve the criteria for the selection of individual cases. However, care should be taken to select different cases in so far as possible each year, as there had been a high number of cases in recent years of freedom of association and the other fundamental Conventions. Efforts were also made to include governance Conventions.

13. The representative of the Government of Guatemala acknowledged the improvements in the working methods of the Conference Committee, although further progress still needed to be made. It was positive to introduce speaking time limits. Such measures needed to be adopted with tripartite agreement and cover the whole of the Committee’s agenda. The length of speeches was not related to their quality. The limitation of speaking time was conducive to a more effective discussion and the
shortening of the work of the Conference Committee, which could have beneficial budgetary implications. As regards the list of individual cases, he considered that means of communication and technology should help negotiations at a distance and contribute to resolving the problem of the delay. He noted the dissatisfaction of the Worker and Employer members mentioned in paragraphs 4 and 5 of the Office paper and stressed the importance of examining gradually more countries with a broader diversity of issues.

14. The Employer spokesperson recalled that a few years ago the Working Group had decided on the need for the preliminary list of cases to be issued prior to the Conference. All the cases on the preliminary list met the criteria for discussion by the Conference Committee and, if there were sufficient time, the groups would like to discuss all of them. One of the challenges involved in finalizing the list of individual cases was that, even though there could be informal consultations prior to the beginning of the Conference, the Employers’ and Workers’ groups could not meet officially until the first day of the Conference, which was the first occasion on which they could hear the points of view of all their members. Although the Employer members were in principle sympathetic to the idea of discussing different cases each year, there were a number of serious cases that needed to be examined every year, including those in which important technical assistance had been provided or high-level missions had taken place. The Employer members also in principle supported diversity in the subjects and countries to be discussed, although it should be recalled that there were also serious cases that were not even included on the preliminary list of cases.

15. The Worker spokesperson agreed on the need for balance between countries and types of Convention. In principle it would be beneficial to examine cases involving all types of Convention. However, the necessary starting point was the report of the Committee of Experts, which sometimes emphasized certain Conventions rather than others. Account also needed to be taken of the views and difficulties experienced by Worker members from specific countries, which were often related to the application of Conventions Nos 87 and 98. All of these considerations made it difficult to achieve a balance in practice. The fact that the cases of particular countries were examined by the Conference Committee every year was due to their gravity. The final list was the subject of negotiation between the Workers’ and Employers’ groups, during which great attention was paid to the comments made by Government members.

16. The Director of NORMES, with reference to the balance of the cases discussed, recalled that the subject of the comments in the report of the Committee of Experts depended to a large extent on the reporting cycle. The fact that reports were currently requested every two years for the fundamental and governance Conventions, and only every five years for the technical Conventions, meant that there were fewer comments on the latter and many more on the fundamental and governance Conventions. For example, reports had been requested last year on the occupational safety and health Conventions, and this year on the maritime Conventions. She observed that the preliminary list of individual cases was always sent out by the Secretariat at least two weeks before the beginning of the Conference. But the final list could not be agreed upon until the groups had met during the Conference.
(b) Respect of rules of decorum

17. The Worker spokesperson recalled that the rules of decorum had been observed without problems from Monday to Friday during the second week of the Conference Committee. The maturity of the Worker members had been demonstrated by the fact that Worker members from the same country, but with ideological differences, had taken the initiative of sharing their allotted speaking time. However, problems had arisen in the observance of the rules of decorum on the last Saturday. The incident had been discussed within the Workers’ group, which was of the view that the greater hostility had also been influenced by the tone adopted by certain Employer members.

18. The Employer spokesperson agreed that, in overall terms, there had been an improvement in observance of the rules of decorum, although there had been a breakdown in that respect in one case at the end of the work of the Conference Committee. The role of the Chairperson was of great importance in that regard. At the beginning of the Committee’s work he had been very firm in recalling the rules of decorum clearly so that everyone understood them. The incident may also have arisen due to reasons that were not apparent during the formal tripartite discussions, as there were suggestions that threats had been made and that the discussions were being filmed within the room. Although there was no need to change the present rules of decorum, the Chairperson would need to continue to be very firm in applying them and to be aware of the types of problems that could occur.

19. The representative of the Government of Cuba, speaking on behalf of GRULAC, expressed the view that parliamentary rules of decorum, to which certain of the Conference Committee’s working documents referred, should not constitute an obstacle to freedom of opinion and the right of all States to participate and give their views in discussions. Denying a State the right to speak was the most serious violation of rules of decorum. The Chairperson and the Vice-Chairpersons needed to guide the Committee and recall the importance of the quality and decorum of its discussions. With reference to paragraph 9 of the Office paper, he stressed that the representatives of the Governments of various Latin American countries had been present in the room on 12 June and did not remember hearing complaints concerning the alleged incident.

20. The representative of the Government of Bangladesh believed that the incident in question was probably a one-off occurrence and did not warrant changes in the rules of decorum. He asked whether the Chairperson of the Conference Committee had the authority to expunge from the record interventions that failed to abide by parliamentary procedures.

21. The representative of the Government of Nigeria, speaking on behalf of the Africa group, emphasized that rules of decorum were necessary and needed to be used effectively. Their application could be strengthened through prompt monitoring of compliance after each meeting. Any lack of respect should not be taken lightly. Referring to paragraph 10 of the background document, he indicated that, while drastic measures might be necessary to ensure behaviour conforming to parliamentary norms, such measures should not have the effect of deterring members from expressing their views.
The representative of the Government of Brazil, recalling his role as Chairperson of the Committee on the Application of Standards at the last session of the Conference, considered that the rules of decorum had been very largely respected during the Committee’s work, with few exceptions. He added that once the conclusions on an individual case had been adopted, the discussions were not reopened, but the Employer and Worker members and the Government representative of the country concerned were given an opportunity to respond to the discussion. If on the occasion in the question the floor had been given to another Government member, a precedent would have been created. He also noted that the time management of the work of the Committee at its last session had been successful. However, the loss of half a day for the Governing Body elections would give rise to difficulties in 2011.

The representative of the Government of Canada welcomed the clear improvement in clarifying the rules of decorum through their announcement by the Chairperson. The Committee needed to support the Chairperson in the consistent application of the rules of decorum, even if the Chairperson considered it necessary to suspend the meeting in very serious cases, although such a step would make it difficult to complete the Committee’s work. There should be no changes to the present rules of decorum.

The representative of the Government of Cuba indicated that his country accepted the rules of decorum and recognized their importance. However, it was not acceptable to deny the floor to a government representative on the grounds of customary procedure. The intention had only been to express an opinion on the document, not to reopen the debate. The floor should not be denied to a country which wished to speak.

The representative of the Government of Uzbekistan called for the Working Group to meet during weekdays, rather than at the weekend. With regard to the rules of decorum, he agreed with the representatives of the Governments of Cuba and Brazil and emphasized the need for transparency. He added that he did not completely understand the criteria and procedures used for the determination of the list of individual cases. An examination of the procedures used by other bodies, such as the United Nations Human Rights Council, might offer useful guidance in that respect.

The Worker spokesperson concluded that it was not necessary to modify the current rules of decorum, as they had proven their worth. In response to the comments made by the representative of the Government of Cuba, he cautioned that great prudence was needed on the question of reopening the debate following the adoption of the conclusions. The adoption of the conclusions marked the end of the discussion and the rules should be followed in that respect.

The Employer spokesperson recalled that the working methods of the Conference Committee had now been in place for several years and were quite well understood. It was clear that there was always something more to be said in a debate, but all those involved needed to be disciplined. Everyone had an opportunity to speak during the discussion of individual cases. When the conclusions had been adopted, special rules applied, and the Employer and Worker Vice-Chairpersons and the Government representative of the country concerned were the only ones allowed to speak. With a view to maintaining the necessary levels of efficiency in its work, it was important for these rules to be observed by all the members of the Committee. It should be recalled that if members of the Committee still wished to express their views, there remained the possibility of speaking in Plenary when the report of the Committee on the Application
of Standards was adopted. It should also be recalled that the rules of decorum covered the conditions required for parliamentary debate, but did not address what happened in the gallery, which could on occasion give rise to problems.

28. The Director of NORMES indicated that, although brief, paragraphs 9 and 10 of the background paper accurately reflected what had happened and was confined to the language used by many members of the Committee. She clarified that the paragraph on the role of the Chairperson contained in document C.App/D.1 was based very closely on the relevant provisions of the Standing Orders of the Conference (Article 61). She added that the speaking times applied appeared to have been managed judiciously and had achieved a good balance in overall terms. Members of the Committee who wished to express their views following the adoption of the conclusions on a specific case could still do so in Plenary. She concluded from the discussion that there was no need for any amendment of the present rules of decorum.

(c) Assessment of the recent changes introduced in the working methods of the Conference Committee

(i) Automatic registration of individual cases

29. The Employer spokesperson said that the procedure of the automatic registration of individual cases, which had been applied for the first time at the last session of the Conference, had worked well. It had been an important factor in avoiding the usual logjam of cases at the end of the second week of the Committee’s work and in ensuring reasonable hours of work. The Employers’ group could be flexible on the question of the letter from which registration should start in future, provided that a system was found that ensured predictability. He expressed the view that the number of double footnotes identified by the Committee of Experts in its last report (seven) should constitute an upper limit, as the discretion of the Conference Committee to determine the list of individual cases would otherwise be too limited.

30. The Worker spokesperson also welcomed the new procedure and suggested that registration should start next year with a letter further down the French alphabet than the letter “B”, which would result in greater variety in the countries called upon at the beginning of the week and ensure that the same cases were not always examined at the end of the week.

31. The representative of the Government of Cuba, speaking on behalf of GRULAC, the representative of the Government of Nigeria, speaking on behalf of the Africa group, and the representatives of the Governments of Austria and Bangladesh also welcomed the improvements introduced during the last session of the Conference Committee. With regard to the letter of the alphabet to be used to start the list when registering the individual cases, they agreed that the most important consideration was predictability. Reference was also made to various other methods of selecting the order in which cases were discussed, including the drawing of lots. It was emphasized that a clear rule should be established which could be applied in future to ensure predictability.

32. The Director of NORMES, in response to the questions raised, indicated that the French alphabetical order was the one used throughout the ILO. She recalled that the first group of individual cases to be registered consisted of the cases designated with a
so-called double footnote by the Committee of Experts, which was one of the criteria used for the selection of individual cases. The countries concerned knew that their case would be discussed by the Conference Committee in early March each year, when the report of the Committee of Experts was published. They therefore benefited from a long period of advanced notice to prepare for the discussion and it was only logical that their cases should be examined first by the Conference Committee. She also recalled that the possibility of deciding the letter from which to start by drawing lots had previously been rejected by the Working Group. She concluded that there was consensus in welcoming the automatic registration of cases as an improvement in the working methods of the Conference Committee. The decision on the system for selecting the letter with which registration would start could be left to the next meeting of the Working Group in March 2011.

(ii) Improvements in time management

33. Both the Employer and the Worker spokespersons welcomed the improvements in time management introduced during the last session of the Conference Committee and considered that they should be pursued. However, it was recalled that the loss of half a day during the second week of the Conference in 2011 for Governing Body elections could give rise to difficulties in the organization of the Committee’s work.

34. The representative of the Government of Cuba, speaking on behalf of GRULAC, considered the introduction of limits on speaking time to be a positive measure that had been well respected by the members of the Committee. However, limits on speaking time should not prejudice the right to speak of Government representatives called upon to provide explanations, nor should it limit the right to respond to accusations made by other speakers. He called for measures to be taken to ensure that sufficient seats were reserved in the Governing Body Room for the representatives of the countries whose cases were being examined.

35. The representative of the Government of Guatemala, with a view to improving the organization of time, and taking into account the presence of high-level delegates, called for a precise indication to be provided, once an individual case had been examined by the Committee, of the time and date on which the conclusions on the case would be presented.

36. The representative of the Government of Uzbekistan, with reference to the practice followed in other international fora, called on the Office to provide full information to the governments concerned on the individual cases to be examined by the Conference Committee, including copies of the communications relating to the case.

37. The Director of NORMES indicated that the Secretariat would do its best to find the best possible seating arrangements for the Government delegations whose cases were to be examined, within the possibilities available in the Governing Body Room. It would be useful, for that purpose, to know in advance the number of members of the delegation who would be participating. She also recalled that arrangements have been made in Room II to follow the debate. With regard to the indication of the date and time of the presentation of the conclusions on a case, an estimate was already provided once the examination of the case had been completed. Clearly, in view of the time constraints involved, it was more difficult to provide precise indications for the last few cases. With regard to the documentation prepared by the Secretariat for the examination of
individual cases, she recalled that the most recent comments of the Committee of Experts on each individual case selected were republished with both the preliminary and final lists of individual cases. Any written replies made available sufficiently in advance by the government concerned were also published as D documents. However, in view of the very long history of certain cases, as well as the Office’s enormous workload in terms of dispatching documentation, she regretted that it would not be possible to provide full background documentation for each case discussed. It should also be recalled that the observations of the Committee of Experts were first published in March each year and that full information was available online on the NORMES databases, including the country profiles on ILOLEX. It might be helpful if reference was made to the relevant databases in the letters sent to Governments, as well as during the information session organized for constituents prior to the beginning of the Conference. She also recalled that the Office provided technical assistance and capacity building for countries which wished to improve their understanding of the functioning of the supervisory system. The Office would clearly respond to specific requests for assistance on a case-by-case basis. Finally, she referred to the rule established by the Governing Body that, during the Conference, delegations could have access to all the files, even those concerning other countries.

(iii) Interaction between the discussion on the General Survey by the Committee on the Application of Standards and the discussion on the recurrent report by the Committee for the Recurrent Discussion

38. The Executive Director of the Standards and Fundamental Principles and Rights at Work Sector, Mr Guy Ryder, informed the Working Group that, at the last session of the Governing Body, the Steering Group on the Follow-up to the Declaration on Social Justice for a Fair Globalization discussed the question of the coordination of the theme of the General Survey with the one of the recurrent discussion. The Steering Group was of the view that the discussion of the General Survey by the Committee on the Application of Standards should take place one year before the recurrent discussion. The modalities for the realignment of the respective discussions were still to be determined by the Governing Body.

39. The Director of NORMES added that, in accordance with the decisions already made, the General Surveys that will be discussed in June 2011 would cover social security and in 2012 fundamental principles and rights at work. The General Surveys on those subjects were either completed or already under preparation. The next General Survey for which a subject should be determined was the one to be discussed in 2013.

40. The Employer spokesperson welcomed the constructive outcome of the discussion in the Steering Group. He recalled that one of the central purposes of the Social Justice Declaration was to improve the ILO’s capacity to help its constituents meet their needs. However, he questioned the real value of the upcoming General Survey on fundamental principles and rights at work. As it covered the eight fundamental Conventions, it would be difficult to carry out a meaningful analysis of the application of each Convention in a single General Survey. Under the old style General Surveys, governments were given a clear understanding of the requirements for compliance with individual Conventions. The new type of General Surveys was not so helpful in that respect. He called on the Office to conduct a gap analysis of the fundamental Conventions with a view to identifying those for which the respective General Surveys were most out of date. He
noted in that respect that one area in which there were up to date General Surveys was social dialogue, which was very well understood by constituents and might therefore be skipped for the purpose of realignment with the recurrent discussion. Finally, he also questioned the value added of the oral report delivered by the Chairperson and Vice-Chairpersons of the Conference Committee to the Recurrent Committee, which in his view disrupted the work of the Conference Committee and had little influence on the outcome of the recurrent discussion. When the General Surveys were examined one year in advance of the recurrent discussions, the full record of the discussion of the General Survey would be available and would be duly taken into account in the reports prepared for the recurrent discussion.

41. The Worker spokesperson welcomed the decision by the Steering Group that there should be a one year gap between the subjects covered by General Surveys and those of the recurrent discussions. With a view to the implementation of the decision, he proposed that the General Survey to be skipped should be the one on the employment instruments, which had been covered by two recent General Surveys. However, he believed that it was important for the Officers of the Committee on the Application of Standards to report to the Committee for the Recurrent Discussion. When, as at present, the reports had to be delivered in the middle of the discussion, their timing made them less effective. When there was a one year gap between the respective discussions, the Officers of the Committee on the Application of Standards could deliver their reports at the start of the work of the Committee on the Recurrent Discussion, which should make a big difference.

42. The representative of the Government of Austria welcomed the consensus on the one year gap between the discussions on General Surveys and recurrent discussions. For the purposes of realignment, the subject with the best coverage by General Surveys could be dropped one year.

43. The representative of the Government of Nigeria, speaking on behalf of the Africa group, welcomed the conclusions of the Steering Group, although they could not be implemented before 2013 at the earliest. The usefulness of reporting the outcome of the discussion on the General Survey to the Committee for the Recurrent Discussion had not been clearly discernible in June 2010. The preparation and discussion of a General Survey one year earlier would mean that the results of its discussion by the Committee on the Application of Standards could be integrated more effectively into the consideration of the same subject in the recurrent discussion.

44. The representative of the Government of Canada also welcomed the conclusions of the Steering Group, which should allow the findings of General Surveys and their discussion by the Committee on the Application of Standards to be taken into account more effectively in the recurrent discussion. The Office could look into ways of implementing this change. However, she emphasized the importance of maintaining the integrity of General Surveys. In order to ensure that they remained useful, care should be taken not to overload them or spread them too thinly over too many Conventions.

45. The Director of NORMES recalled that the choice of instruments to be covered by General Surveys was made by the Governing Body, not the Committee of Experts. Following the realignment, the discussion on the General Survey and the recurrent discussion would not cover the same subject the same year, and the findings of the General Survey and its discussion would be taken into account in the recurrent report,
which would be discussed by the Committee on the Recurrent Discussion. In the meantime, the members of the Committee on the Application of Standards would have to decide if they wished to continue transmitting the outcome of their discussions to the Committee for the Recurrent Discussion.

**Agenda item 2: Items which were postponed at the last meeting of the Working Group (March 2010)**

(a) **Possibility for the Committee to discuss a case of a Government which is not accredited or registered to the Conference**

46. **The Employer spokesperson** recalled that not all member States attended the International Labour Conference every year, and that between 20 and 30 Governments did not come to the Conference in any specific year. However, all member States had ratified one or more ILO Conventions and it was very serious that it might not be possible to discuss a significant issue relating to the application of a ratified Convention due to the absence of the Government concerned. It should be recalled that governments were fully notified of problems with regard to the application of Conventions through the comments of the Committee of Experts, normally over a number of years. Moreover, all the cases that were discussed were contained in the preliminary list of individual cases, as further cases were not added when selecting the final list. The governments concerned were therefore well aware of the possibility of their case being discussed. The practice of a government avoiding the discussion of a case by not attending the Conference or not being accredited completely undermined the work of the Conference Committee.

47. **The Worker spokesperson** agreed that it was too easy for a government to evade the discussion of its case by not registering or being accredited to the Conference. It should be possible to discuss all cases, whether or not the Government was accredited or registered.

48. **The representative of the Government of Cuba**, speaking on behalf of GRULAC, was opposed to the examination by the Committee of a case of a government that was not accredited to the Conference. The rules of due process needed to be observed in relation to the right to be able to express positions and viewpoints and to provide information. Full use should be made of the available channels to call on the government concerned, in accordance with the principle of social dialogue advocated by the ILO. It was essential to respect tripartism and the right of governments to participate in all discussions. He therefore opposed the adoption of any measure of this type now or in the future.

49. **The representative of the Government of Nigeria**, speaking on behalf of the Africa group, said that it was important for the supervisory machinery to be seen to be working effectively. He acknowledged that it might have happened on occasion that certain governments had avoided being accredited at the Conference so as to prevent their cases being examined by the Conference Committee. It might be necessary in that respect to seek the opinion of the Legal Adviser on the solutions available under the Constitution. The question remained open as to what mandate the Conference Committee might have to set rules on the action to be followed, which might for example include sending reminders in cases where a government might have decided to find ways of not participating in its work. If no action were taken, some countries might
reduce the efforts they were willing to make, thereby further reducing the effectiveness of ILO standards and the supervisory machinery. ILO members had a primary obligation to discharge their obligations under ratified Conventions, and where there was evidence of avoidance, use should be made of the provisions of the Constitution.

50. **The representative of the Government of Canada** emphasized that this was a very sensitive issue. The key purpose of the Conference Committee was to engage in dialogue on the cases that it examined, and care should be taken to ensure that the Committee did not become more like a tribunal in its functioning. The discussion of a case in the absence of the Government concerned should only be possible under very limited circumstances. If governments started using this as a means of avoiding the examination of their case, the practice would need to be addressed. However, it did not necessarily constitute a problem at present. Figures should be provided on the number of times such cases had occurred. If further incidents occurred, the Working Group could return to the issue.

51. **The Employer spokesperson** recalled that it was already possible for the Conference Committee to discuss cases when a government was registered, but chose not to appear before the Committee. There was little difference in practice with the case of a government that was not accredited or registered to the Conference. Due process was followed throughout the procedure of dialogue between the government concerned and the Committee of Experts. Any government included on the preliminary list, but which was not accredited or registered to the Conference, should be under an obligation to respond to the issues raised. Examination of a case without the participation of the government was possible in the context of a Commission of Inquiry, and the same should apply for the Conference Committee. Or at the very least, the government concerned should be asked to explain its failure to participate in the work of the Conference Committee. It would be useful to draw up a list of the number of times on which this situation had arisen, for example over the past five years.

52. **The Worker spokesperson** said that the object of the whole procedure was to discuss cases with governments. In special cases, it might be necessary to accept that they were prevented from attending the Conference for reasons of force majeure. However, it was clear that there were certain cases in which governments registered late to avoid the discussion of their case. This was a consequence of the practice of issuing a preliminary list of individual cases. Changes would need to be made to prevent this from occurring.

53. **The representative of the Government of Austria** said that all governments supported the dissemination of a preliminary list of cases. She was not certain that there was an actual problem in practice of governments failing to be accredited or to register on purpose, and the cases that had occurred might simply have been due to travel problems. However, if a country was on the preliminary list and was only accredited after the list of cases was published, it was clear that the government should provide explanations.

54. **The representative of the Government of Bangladesh** did not think that a precedent had been set or that there were grounds for alarm about governments using the absence of accreditation or registration as a means of avoiding the discussion of their cases. There was therefore no need to modify document D.1. Most governments would be unwilling to adopt such a practice.
55. The representative of the Government of Cuba agreed that, although there might have been one or two isolated cases, there was no reason to change the rules. What was more important was to avoid double standards in the establishment of the list of individual cases so as not to force governments to take avoidance measures.

56. The Director of NORMES reflected the consensus reached on this point. No country should use inclusion on the preliminary list of individual cases as a reason for failing to ensure that they were accredited to the Conference. If a country on the preliminary list registered after the final list had been approved, it should be asked to provide explanations. The issue should therefore be kept under review and an assessment made of the number of times such cases occurred over the next few Conferences. She recalled that the Credentials Committee was empowered to ask countries to provide explanations to the Governing Body when particular issues arose. Cases of countries on the preliminary list which were not accredited or registered to the Conference could be notified to the Governing Body in the same way.

(b) Balance in the individual cases selected by the Committee

57. The representative of the Government of Bangladesh requested that the present issue be placed early on the agenda of the next meeting of the Working Group so that it could be given serious consideration unaffected by time pressure. He requested the Office to prepare an analytical paper on the balance of the Conventions selected and the geographical distribution of the cases discussed by the Conference Committee as a basis for further discussion.

58. The representative of the Government of Cuba, speaking on behalf of GRULAC, indicated that there should be a balance between fundamental and technical Conventions on the list of individual cases. The ILO should also undertake a study of the many serious violations of ILO Conventions by developed countries, even though very few of them were called upon to appear before the Committee. Greater attention should also be paid to Convention No. 111 in view of the increasing incidence of xenophobia, racism and discrimination, which constituted real manifestations of social and labour discrimination.

59. The Director of NORMES explained that the Office could only provide statistics and factual data as a basis for the discussion on this question by the Working Group.

Closure of the meeting

60. The Director of NORMES noted the agreement that the next meeting of the Working Group would take place in March 2011.