



TENTH ITEM ON THE AGENDA

**Reports of the Committee on Legal
Issues and International Labour
Standards**

First report: Legal issues

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1. The Committee on Legal Issues and International Labour Standards (LILS) met on 16 and 17 March 2010. The following members served as Officers:

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| <i>Chairperson:</i> | Mr G. Corres (Government, Argentina) |
| <i>Employer Vice-Chairperson:</i> | Mr J. de Regil |
| <i>Worker Vice-Chairperson:</i> | Ms H. Yacob |

I. Measures relating to the representation of Employers and Workers at the International Labour Conference: Addressing tripartite imbalance within delegations
(First item on the agenda)

2. The Committee had before it a document¹ for debate and guidance containing certain proposals regarding the situation of tripartite imbalance within delegations to the International Labour Conference.
3. The Legal Adviser recalled that the document had been requested by the Credentials Committee of the 98th Session (2009) of the International Labour Conference. He explained that the measures suggested in paragraph 13 of the document could be implemented without amending the Standing Orders of the International Labour Conference (Conference Standing Orders) and those in subparagraphs (a) and (b) could be implemented by the Credentials Committee of the Conference without any intervention by the Governing Body. In contrast, the option referred to in paragraph 14, which would give the Credentials Committee an additional mandate, would require an amendment to the Conference Standing Orders.
4. The Worker members emphasized that the Workers' and Employers' advisers performed a critical task in ensuring that the views of the two groups were adequately and effectively represented in the work of the various Conference committees; hence serious tripartite imbalance in delegations could affect tripartism itself by making it difficult for the social partners to play their constitutional role. Apart from the problem of tripartite representation, the Worker members were also concerned about governments' failure to pay for the travelling and subsistence expenses of non-government advisers under article 13(2) of the ILO Constitution. The fact that advisers who were not accredited could not lodge a complaint under article 26ter(1)(b) of the Conference Standing Orders effectively enabled governments to thwart the lodging of complaints against them. In the Workers' view, it was embarrassing that some Workers' advisers had to come to the Conference at their own expense although, with the exception of governments of small countries, most governments could afford to pay for Workers' advisers. The figures provided in table 1 of the document, which addressed the overall number of accredited advisers, might not give a full picture of the situation, as the issue was not about comparing overall numbers but about whether the number of Workers' advisers was sufficient to ensure that workers were effectively represented in decision-making processes at the Conference. While governments needed some flexibility in composing their delegations, it was important that the list of advisers corresponded to the work of the Conference and its committees. The Worker members requested the Office to continue to check the number of accredited delegates against registered delegates. While expressing

¹ GB.307/LILS/1.

doubts as to whether the proposals contained in paragraphs 13 and 14 of the Office document were sufficient to address the problem, they supported the suggestions, and in particular proceeding with preparatory work for the option contained in paragraph 14.

5. The Employer members considered that a clearer understanding of the issue was required. They wondered whether imbalance existed every time there was an undue divergence in the number of advisers between the three parts of a delegation or whether imbalance required that the Employers or Workers, as the case may be, were dissatisfied about it. It was their view that the notion of “equality of arms” required objective balance and that it was the duty of governments to maintain some oversight of the number of advisers in their delegations, including by inviting the social partners to increase the number of their advisers or by reducing the number of Government advisers. In their view, some awareness-raising measures, such as the provision of clear and accessible instructions on the applicable rules regarding balanced delegations, were necessary since those rules were not well known in all cases. It was further noted that the figures provided might not be reliable, as not all accredited advisers would actually register or attend the Conference for its full duration. In that regard, the figures of registered advisers could provide a more reliable basis. Moreover, there might be cases in which the social partners would not nominate more advisers because of a lack of capacity or a lack of interest in particular Conference agenda items. Further research was therefore needed to identify those cases in which governments did not accredit an appropriate number of Employers’ or Workers’ advisers without good reasons. While the Credentials Committee could deal with cases of serious imbalance involving non-payment of advisers’ travelling and subsistence expenses under article 26ter(1)(b) of the Conference Standing Orders, it could not do so where no advisers were accredited; in that regard, the Employer members considered that an amendment to the Conference Standing Orders extending the complaints procedure to all cases of significant imbalance was required. They supported points (a) and (b) in paragraph 13 of the document as measures that could raise the general awareness of the issue among ILO constituents; with regard to point (c), however, the intervention by the ILC was not considered necessary; the Governing Body could request the Director-General to make the proposed examination. The Employer members requested the Office to prepare a paper for the November 2010 session of the Governing Body providing further clarity on the issue at stake and containing concrete proposals to address the problem.

6. The representative of the Government of the Bolivarian Republic of Venezuela, speaking on behalf of the Group of Latin American and Caribbean States (GRULAC), found it regrettable that imbalances significant enough to affect the active participation of tripartite constituents had occurred. His group noted that the Credentials Committee did not have a mandate to examine and issue observations on allegations of imbalance between the number of advisers designated for each group, but only on allegations of imbalance in the payment of expenses of delegates and advisers. ILO bodies and authorities had to operate within their explicit terms of reference in order to fully safeguard tripartism and the legal framework of the Organization in accordance with the principle of legal certainty. Noting that the document acknowledged the existence of legitimate and good faith reasons for imbalances, the issue of presumed imbalance should be further analysed, focusing on the number of technical advisers effectively registered to the Conference in order to determine whether imbalances were only apparent or actually significant. Pending the availability of more detailed data, the LILS Committee should not debate or provide guidance to the Office regarding the measures proposed in paragraphs 13 and 14 of the document which, in his group’s view, went beyond the mandate of the Credentials Committee. Instead, there could be further publicity of the need to respect the balance between the number of technical advisers of the different groups, including in the programme for each Conference session, as well as in the form for credentials of delegations and the explanatory note on submission of credentials.

7. The representative of the Government of Austria, speaking on behalf of the industrialized market economy countries (IMEC), agreed that in cases where Conference delegations did not respect the principle of tripartism there should be an adequate response. Since the main concern was that all three parties should have a comparable ability to actively participate in the work of the Conference, it was essential to ensure that there was a reasonable balance in covering the technical committees. However, there were many reasons why figures indicating a numerical imbalance did not necessarily reflect the whole picture. For example, she pointed out, the plenary week of the Conference was different in that attending ministers were often accompanied by other delegates who had to be listed as advisers in order to attend, sometimes only for the one day when their minister was present. Some flexibility was therefore required, especially in a possible formula indicating a significant imbalance such as the one described in paragraph 11 of the document, so that innocent imbalance would not be considered a significant imbalance in terms of influence. IMEC therefore favoured the options proposed in paragraph 13(a) and (b) of the document, which involved consultation between the Credentials Committee and the governments concerned before the Committee concluded that their delegations were seriously imbalanced.
8. The representative of the Government of Portugal, while associating herself with the statement made by Austria on behalf of IMEC, stressed that a balanced participation of all groups in the technical committees of the Conference had to be ensured at the time of composing national delegations. In order to avoid apparent imbalance in their delegations, member States could be invited to distinguish persons who attend the first two weeks of the Conference to participate in the work of the technical committee from persons who attend only the third week. Her Government, within its own delegation, distinguished between advisers, on the one hand, and persons accompanying the Minister, on the other hand. She expressed a clear preference for the option in paragraph 13(b) of the document.
9. The representative of the Government of Italy supported the statement made on behalf of IMEC and stressed that the Italian Government recognized that the principles of tripartism required a balanced representation of governments, employers and workers in the delegations that participated in the work of the Conference. In the past, the Italian Government had always respected that requirement and had also fulfilled its obligation to cover the travelling and subsistence expenses of delegates and advisers in accordance with the ILO Constitution. Its payment of only a limited number of advisers of the social partners for the 2009 Conference had been an isolated event caused by budgetary constraints. The Government had nevertheless done all it could in that situation to constitute a balanced tripartite delegation. Regarding the complaint mentioned in footnote 3 of the document, which alleged a serious and manifest imbalance between the number of Workers and Government advisers whose expenses had been covered by the Italian Government, the speaker wished to put on record that the perceived imbalance had only been apparent and was due to an alternation among Government advisers who did not participate simultaneously in the work of the Conference. Taking into account the criteria mentioned in paragraph 11 of the document, the imbalance had not been serious given that the number of Workers' advisers was therefore not less than a quarter of the number of Government advisers. For the coming sessions of the Conference, his Government would do everything to ensure a balanced representation within its tripartite delegation and to pay for travelling and subsistence expenses of the delegates and advisers of the social partners. As to possible measures for improving the situation, he favoured (a) and (b) of paragraph 13 of the document.
10. The representative of the Government of Nigeria, speaking on behalf of the Africa group, wished to have more information on the definition of imbalance and in which cases it occurred. He expressed doubts as to the relevance of the formula used in the document and the figures presented. The Africa group saw the necessity for the Credentials Committee to

be able to address situations of imbalanced delegations quickly by reporting to the Conference under the normal reporting procedure. It therefore concurred with the proposal in paragraph 13(b) of the document under which concerned governments could be invited by the Credentials Committee to give reasons for the imbalance in their delegations.

11. The representative of the Government of Egypt highlighted the fact that tripartite representation was a unique feature of the ILO and that it was therefore of the utmost importance to ensure that delegations were balanced. She considered that option (b) of paragraph 13 of the document was the most suitable way forward.
12. The Legal Adviser noted the convergence of views in the Committee on the need to carry out further analysis relating to significant tripartite imbalance in delegations. Responding to the question asked by the Employer members, he recalled that the Credentials Committee had addressed the issue of imbalanced delegations in general terms in the absence of expressions of dissatisfaction since there was no specific mandate for submissions on that ground to reach the Committee. He noted that both the Employers and Workers supported the measure outlined in paragraph 14 of the document which would lead to the establishment of a new ground for submissions to the Credentials Committee. He also took note of the GRULAC suggestion to take measures to better inform governments and sensitize them to the issue of imbalance. He recalled that the obligation for governments to send balanced tripartite delegations to the Conference was already mentioned in the Conference guide and the Explanatory note on the submission of credentials, which were sent to Members along with the letter of convocation to the Conference. In that light, he expected that a new document presented in November 2010 would address the concerns expressed in the LILS Committee.

II. Other legal issues (Second item on the agenda)

Constitution of the International Labour Organization: Preparation of proposals to introduce inclusive language for the purpose of promoting gender equality

13. The Committee had before it a document² containing an update on the preparation of proposals to introduce inclusive language in the Constitution of the Organization for the purpose of promoting gender equality.
14. The Employer members, focusing on the need to review specific proposals, stressed the complexity of the drafting techniques found in the appendix to the document. They suggested consulting recognized linguistic authorities, such as the *Real Academia Española* for the Spanish language. They requested that the Office hold informal tripartite consultations before submitting proposals to the Committee at its November session.
15. The Worker members supported the introduction of gender-inclusive language in the ILO Constitution and endorsed the process outlined in the document. Such an exercise to ensure the visibility of women was timely and in line with the Action Plan on Gender Equality³ and the recognition in the ILO Declaration on Social Justice for a Fair Globalization (2008) that gender equality and non-discrimination are cross-cutting issues. In view of the

² GB.307/LILS/2/1.

³ See GB.300/5 and GB.304/14/2.

challenges posed by the Spanish and French texts, the Worker members noted that they would provide their comments when specific proposals were made available.

16. The representative of the Government of the Bolivarian Republic of Venezuela, speaking on behalf of GRULAC, underscored the importance given to gender equality in the policies of the governments of the region. They affirmed the drafting techniques proposed in the document and endorsed their use to propose amendments to the Constitution in order to promote non-sexist language without altering the meaning of the text, and were confident of the capacity of the Office to produce sound proposals for consideration in November.
17. The representative of the Government of Brazil believed the techniques outlined in the document constituted a solid base from which to promote a gender perspective and introduce gender-inclusive language in the Constitution. This exercise was all the more important in the current context of the 15th anniversary of the Beijing Action Plan, which called for integrating a gender perspective in public policies, programmes and legislative texts. She looked forward to the Governing Body deciding in November on the next steps to consolidate gender equality in the normative texts of the Organization.
18. The representative of the Government of Nigeria, speaking on behalf of the Africa group, observed that the legal basis for making gender a cross-cutting issue was affirmed in the ILO Constitution and Declaration of Philadelphia and the Social Justice Declaration. While expressing his group's support for the methods outlined in the document, he emphasized the need to avoid a clumsy result and suggested that a footnote approach could be adopted as an interim action. He referred to the interpretative clauses used in the French and Spanish texts of the Standing Orders of the Conference and the Governing Body that directed that masculine terms should be read to refer equally to both sexes. The longer-term goal would be a steady assertion of gender-sensitive terms in all official texts of the ILO.
19. The representatives of the Governments of Canada and Austria asked the Legal Adviser whether the introduction of gender-neutral language in the Constitution could be accomplished through a simplified process that would not entail an amendment to the Constitution. They referred to the practices of certain countries that had used such methods in revising legal texts to remove language that was not gender neutral.
20. The representative of the Government of the Bolivarian Republic of Venezuela, reiterating the importance of gender equality, endorsed the need to incorporate a gender dimension into the Constitution of the Organization. Her government had integrated a gender dimension into national legal texts, including its Constitution. She congratulated the Office for the progress made in developing the drafting techniques outlined in the appendix, which enabled the reader to visualize, without any ambiguity, both women and men in the discharge of their responsibilities and functions.
21. The representative of the Government of Zambia observed that the exercise on gender-inclusive language was long overdue, and since it promised to benefit the image of the Organization, it constituted a step in the right direction.
22. The representative of the Government of the Islamic Republic of Iran, while fully supporting the process of ensuring gender-neutral language, joined Canada and Austria in asking the Office whether a simplified mechanism could be employed to advance gender-neutral language in the Constitution that would avoid an instrument of amendment. The Employer members expressed their interest in a simplified mechanism as well.

23. The Legal Adviser confirmed the suggestion to hold informal tripartite consultations before the finalization of proposals for the November session which would include attention to issues in the various languages. In response to the questions about the possibility of an approach which could avoid an actual amendment process, the document to be presented to the Committee would contain both an amendment proposal and a lighter editorial approach short of a proposed amendment. While a footnote setting out an interpretative clause would require an amendment to the Constitution, in contrast an editorial note approach would not entail an amendment. The editor's note could refer to relevant resolutions of the Conference on gender equality. For example, in relation to article 3, paragraph 2, which provides for each delegation to have at least one woman adviser when questions specially affecting women are considered by the Conference, a note could refer to a Conference resolution calling on delegations to be composed in accordance with the principle of gender equality. Such notes could be approved by the Governing Body at the same time as it considered the proposals to the Conference on suggested amendments to the Constitution.

Standing Orders of the Conference: Practical arrangements for the discussion at the 99th Session (June 2010) of the International Labour Conference of the Global Report prepared under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work

24. The Committee had before it a document for decision ⁴ concerning practical arrangements for the discussion at the 99th Session (June 2010) of the International Labour Conference of the Global Report prepared under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work (1998 Declaration).
25. The Worker members supported the proposal to have a thematic panel followed by an interactive discussion of the Global Report at the 99th Session of the Conference if it supported the primary objective of ensuring an effective and fruitful discussion. They requested the Office to communicate any points for discussion as early as possible and proposed to focus the discussion on how to make best use of technical cooperation to realize the goals of the 1998 Declaration, such as assisting countries to bring their laws into conformity with international labour standards and facilitating ratification and implementation. The Worker members sought clarification on paragraph 4 of the document, which mentioned that the interactive debate could start in the morning and continue in the afternoon, while the appendix referred to a single sitting of half a day. In their view, a full day session would be needed for a truly interactive discussion and care should be taken to ensure that, notwithstanding the proposed arrangements, the discussion of the Global Report would not lose its tripartite focus and that a proper balance of the tripartite constituents would be achieved among the speakers so as not to dilute the character of the debate. With those suggestions, the Worker members supported the point for decision.
26. The Employer members, recalling their active support of the 1998 Declaration, considered that the Office should actively support the promotion of the 1998 Declaration with the appropriate human and financial resources, in line with the Organization's commitment in 2008 under the Social Justice Declaration to strengthen its capacity to assist its members. The Employer members supported the proposed arrangements and the proposals made by the Worker members. They requested to be involved in particular in the nomination of the

⁴ GB.307/LILS/2/2.

facilitator and the preparation of the points for discussion. In addition, sufficient time should be provided to name the participants, and appropriate resources should be made available for the panel. In their view, all participants in the Global Report discussion should be aware of the new modalities and speeches should not be allowed as they would undermine the dynamic of the new proposal.

27. The representative of the Government of Nigeria, speaking on behalf of the Africa group, agreed that the discussion required an interactive format and supported the point for decision.
28. The representative of the Government of Canada supported the point for decision and affirmed the proposal to circulate the thematic points for discussion well beforehand.
29. The representative of the Government of Egypt supported the proposed arrangements and the proposals of the Worker members concerning effective tripartite representation.
30. The Legal Adviser clarified that the arrangements in the appendix already specified that the discussion of the Global Report could be extended from half a day to a full day.
31. The Office took note of the proposals made during the discussion, including length of the discussion, consultations with the constituents and early circulation of the points for discussion.
32. ***The Committee recommends to the Governing Body that it invite the Conference, at its 99th Session, to adopt the provisional ad hoc arrangements set out in the appendix concerning the discussion of the Global Report under the follow-up to the 1998 ILO Declaration on Fundamental Principles and Rights at Work, and any necessary procedural decisions to give them effect.***

Geneva, 22 March 2010.

Point for decision: Paragraph 32.

Appendix

Ad hoc arrangements for the discussion of the Global Report under the follow-up to the 1998 Declaration at the 99th Session of the International Labour Conference

Principle of the discussion

Having regard to the various options referred to in the annex to the Declaration, the Governing Body recommends that the Global Report submitted to the Conference by the Director-General be dealt with by the Conference, separately from the Director-General's reports under article 12 of the Standing Orders of the Conference.

Timing of the discussion

A single sitting (half a day) should be convened for the thematic discussion of the Global Report, with the possibility, if necessary, of extending the sitting. In order to take account of the programme of work of the Conference and of the fact that a number of ministers who usually are present during the second week of the Conference may wish to take the floor, the discussion of the Global Report should be held during the second week of the Conference. The date will be determined by the Selection Committee.

Procedure for the discussion

The separate discussion of the Global Report should focus on a thematic panel animated by a facilitator which could be followed by interactive discussions. Points for discussion would be prepared in advance of the Conference. The reading of prepared speeches should be avoided. The course of action recommended above implies in particular that the statements made during the discussion of the Global Report should not fall under the limitation concerning the number of statements by each speaker in plenary provided for in article 12, paragraph 3, and article 14, paragraph 3, of the Standing Orders, and that the discussion should not be governed by the provisions of article 14, paragraph 6, concerning the time limit for speeches. Furthermore, exchanges of views on the suggested points for thematic discussion would not be subject to the restrictions laid down in article 14, paragraph 2, concerning the order in which speakers are called. These provisions should accordingly be proposed for suspension under the procedure provided for in article 76 of the Standing Orders to the extent necessary for the discussion of the Global Report.

Organization of the discussion

Given that the thematic discussion is not intended to lead to the adoption of conclusions or decisions by the Conference, on the one hand, and in consideration of the abovementioned suspensions of the Standing Orders, on the other, the Selection Committee may decide that this discussion should be conducted as a plenary committee that can convene at the same time as the plenary and be chaired by one of the Officers of the Conference. Should the need arise, the Chairperson might be assisted by one or more facilitators.

Report to the plenary

The Chairperson of the plenary committee would present a short oral report to the plenary of the Conference and the thematic discussion would be reproduced in the *Provisional Record*.