



16 June 2006
G-2006/35 (21.95)

2006 INTERNATIONAL LABOUR CONFERENCE

Given the diversity of the Conference and the relevance of the points for discussion, Conference debates, even on general matters of shared interest, are always complex. This year was not an exception.

The session was predicted to be complex, mainly because of the issues of Myanmar and Employment Relationship (see below). The Employment Relationship debate suffered from a Report prepared by the Office, which included in the discussion items that, in the 2003 general discussion on contract labour, were agreed should not be part of any future debate. This Office failure coupled with the fact that many Governments present in the Committee were not engaged in efforts to reach a consensus weighed against the chances of a successful outcome. In going forward, consideration needs to be given as to how such Conference debates are framed. Governments in particular appear unable to engage, merely restating positions determined in capitals prior to the Conference opening. Efforts to brief Governments both at national level and at the level of Geneva missions did not produce the results expected from that effort.

The failure in the Employment Relationship discussion should not overshadow the successful outcomes of the other two technical debates. The work in the second year discussion on a Promotional Framework Convention on Occupational Safety and Health was positive (see text below). Despite worker group efforts to promote a more prescriptive rights-based Convention, the employers were able to retain a text which should be an international reference as a framework Convention and capable of broad and rapid ratification. In this debate, Governments maintained their position from 2005, thereby helping maintain the desired outcome. When their approach in this Committee is compared to that in the Employment Relationship, one can only wonder.

The other major discussion was on the ILO's role in Technical Cooperation (see text below). Given continuing resource constraints and the UN reform agenda, the discussion was timely in allowing the Employers' Group to clearly express its expectations of what the ILO technical cooperation activities should deliver for employers' organizations and how private companies would be better integrated in the future work of the ILO. The text reflected the need for employers' activities to be reinforced for the purposes of strengthening the capacity of employers' organizations so as to enhance their ability at national level to engage in the ILO's new Decent Work Country Programmes. Similarly, the key role of productive employment and entrepreneurship as the ILO's best contribution to poverty reduction and social development was stressed.

The problems encountered in the Conference in the Employment Relationship Committee this year need to be addressed. It is not in the ILO's interest to persist in producing outcomes which do not have tripartite support. Bipartite outcomes weaken tripartism and the unique role of the ILO in reflecting the consensus views of employers, workers and governments. The hope is that ILC reform may go some way to address these problems so that 2007 moves away from the failures of 2005 and 2006.

THE DIRECTOR-GENERAL'S REPORT - "CHANGING PATTERNS IN THE WORLD OF WORK"

The Report recognizes that the world of work is changing and will continue to change. Employers and their organizations live that change every day. The challenge is to transform that change into opportunity, not just for enterprises but also for workers. Too often, change is negatively portrayed, that it somehow is to be feared or somehow halted. This is not the approach required today. The ILO needs to look for new responses and ideas. Tomorrow's world will not be best served by yesterday's answers.

The new patterns of the world of work provide the ILO with an opportunity to restate its relevance. As a specialized UN agency, it is important that it maintains its uniqueness if it is to avoid becoming just merely another development agency. The world of work is a key focus for a globalizing world.

It would seem at times that the ILO is losing its relevance to some of its constituents and donors. This is particularly serious, as it comes at a time when employers recognize the ILO's untapped potential for the business community. For employers, the ILO legitimacy lies in its capacity to incorporate business priorities within its action programmes.

The changing patterns in the world of work push the ILO to become an enterprise development organization, which champions policies that promote enterprise development, economic growth and job creation. In particular, the ILO needs programmes which address the elimination of regulatory barriers to business start-up, micro finance, informal economy, labour inspection and administration, productivity and competitiveness. Rights at work can only exist there where productive employment exists and where policies and approaches which make a person's decision to start a business a sensible one.

That is where the ILO can add value, helping constituents in assessing national conditions and proposing country-specific frameworks. In this regard, the IOE welcomes the Decent Work Country Programme approach which, if properly implemented, can be a real contribution by the ILO to the true needs of its constituents. Technical cooperation (TC) is the means of ILO action. However, resources available for TC have been decreasing. More must be done to reverse this trend. As employers we expect to see technical cooperation for the benefit of employers also and not just delivered through ACTEMP. Employer priorities must be priorities for all of the ILO.

Focusing on its true purpose, the ILO's interface with other international organizations becomes clearer. Rather than trying to be something it is not, the ILO would instead contribute to the broader development agenda if focused on real approaches grounded in national realities. This would certainly help address the Millennium Development Goals and poverty reduction efforts through the creation of enterprises.

THE GLOBAL REPORT

The Global Report is part of the Follow-up of the ILO Declaration on Fundamental Principles and Rights at Work, also known as the “Declaration”. Every year, the Global Report reviews one of the four principles of the Declaration in detail. This year’s Report entitled “The end of child labour: Within reach” was the second Global Report on child labour.

The Global Report is intended to serve as a basis for: (a) an assessment of the effectiveness of the assistance provided by the ILO; and (b) highlighting future priorities for technical cooperation. The one-day discussion of the Global Report is intended to provide the constituents with an opportunity to guide the ILO in determining the plan of action for the next four years.

In the debate, the Employers’ Group highlighted its satisfaction with the worldwide decline of child labour, especially in the region of South America and the Caribbean. There was general agreement between the governments, employers and workers that all stakeholders have to continue striving towards the elimination of child labour and that the efforts do so even have to be strengthened.

The Employers’ Group, however, expressed its serious concerns about the fact that the positive lessons learned in regions that had experienced a decline were not reflected in the Report as good practices and helpful examples to other regions and countries.

The employers also articulated their proposals for the action plan for the next four years. Because of the regional differences in the number of economically active children, the employers emphasized the need to pay special attention to Africa, whereas the sectoral attention has to be focused on agriculture and mining. To eliminate child labour it was agreed that more thought was needed on issues of education, HIV/AIDS, poverty reduction as well as youth employment.

It is hoped that the interventions made during the discussion will be taken into account by the ILO in setting the priorities for the next four years at the Governing Body Technical Cooperation meeting in November 2006, where the action plan for the next four years will be addressed.

CREDENTIALS COMMITTEE

As in previous years, the Credentials Committee dealt with a number of objections from the Employers’ and Workers’ Groups as to the composition of delegations and the method of appointment of delegates and advisers to the Conference as well as complaints as to non-payment of travel and subsistence expenses.

The ILO Constitution requires all Members to be represented at the ILC by a minimum of two government delegates and two delegates representing employers and workers. It further requires the worker and employer delegates to be chosen in agreement with the most representative organizations of employers and workers.

Once more, the Credentials Committee had before it an objection from the employers of Venezuela (FEDECAMARAS) concerning the nomination of the employers’ delegation.

As was the case last year, three of the eight advisers that were nominated by the Government to participate in the employers' delegation were from organizations that could not be considered as being representative under the provisions of the ILO Constitution. The Credentials Committee again confirmed that FEDECAMARAS was by far the most representative employers' organization and that the Government, in giving these other organizations equal weight, acted in a discriminatory way against FEDECAMARAS. The Committee expressed the hope that in future the Government would act in conformity with its Constitutional obligation when appointing the delegation.

With regard to the Democratic Republic of Congo, the employers complained that the Government refused to pay the travel and subsistence expenses of the employer delegate on the grounds that there were no funds available. The Government did not reply to the allegations made and the Credentials Committee upheld the complaint and reminded the Government of its obligation under the ILO Constitution to make such payments.

Further complaints concerned the partial payment of the travel and subsistence expenses of the employers' delegations of Swaziland and Venezuela. In both instances the complaints were upheld.

THE EMPLOYMENT RELATIONSHIP RECOMMENDATION (Single discussion)

The debate on a Recommendation on the Employment Relationship was never going to be an easy one, so perhaps the biggest surprise was just how close to a consensus the Committee came.

Going into the debate, two critical issues stood out for employers - triangular relationships and criteria for determining an employment relationship (the former, in particular, appearing insurmountable). The Committee established a working group early in the process to look specifically at triangular relationships. Using innovative 'interest-based techniques' the working group was able to resolve satisfactorily this issue and suitable language was found. Unfortunately, it was only one of the critical issues and the other members of the Committee underestimated the importance of the second issue for employers - that of criteria.

Employers had stated clearly from the outset that they could not support the language surrounding indicators and criteria, nor could they support language that would create presumptions of an employment relationship. That concern was not listened to and, as a consequence, the text includes criteria that is not helpful, and which could be misused to characterize many independent contractor relationships as employment relationships. This is counter to entrepreneurship promotion and the development of enterprise. It threatens many businesses in the services sector and it creates new uncertainty as to relationships. It is not helpful at the national or international level, because it does not reflect a balanced view.

The Workers' Group worked with the employers in trying to find a way through the difficult issues. Sadly this constructive approach was not reciprocated by governments. They blindly supported the workers' position and failed to take any kind of leadership role. The failure to reach agreement can to some extent be attributed to this approach. The Employers' Group was deeply disappointed with the contribution of the governments towards finding a way to a solution that all could support.

Additionally, the role of the Office did not help. The hard-fought consensus to agree to discuss a Recommendation at the 2003 ILC was disregarded by the Office. The employers had cautioned the Office that failure to respect that tripartite agreement would lead to critical difficulties. The Office did not respond to these concerns, and produced a text that contributed to this failure.

All that said, the Employers' Group was successful in creating an instrument that removes many of the more dangerous elements from the original text, particularly around triangular relationships. The Group was also successful in agreeing on language that demonstrated respect for true commercial relationships, along with explicit recognition of Convention N° 181 (on employment agencies). However, the Employers' Group had particular concerns relating to paragraph 11 regarding the presumption of an employment relationship and paragraph 13 regarding the establishment of criteria for determining the existence of an employment relationship. Both of these issues were opposed by the Group.

So, despite a promising start in overcoming one major hurdle, the Conference ultimately ended up with an instrument that is largely bipartite, between workers and governments. It is an instrument that the Employers' Group could not support. Many will rightly look on this as a missed opportunity.

Placed before the plenary sitting for record vote, the Recommendation was adopted by 329 votes in favour, 94 against and 40 abstentions.

The text of the Recommendation adopted by the Conference can be found at: <http://www.ilo.org/public/english/standards/relm/ilc/ilc95/pdf/pr-21.pdf>

OCCUPATIONAL SAFETY AND HEALTH CONVENTION AND RECOMMENDATION (Second discussion)

Following upon the 2003 Conference debate on an integrated approach to occupational safety and health (OSH), and with the aim of placing OSH higher on national agendas, the Conference had before it this year, for second discussion, a draft Convention and Recommendation on a Promotional Framework for Occupational Safety and Health.

The employers firmly believed from the outset of last year's first discussion that the more appropriate form for the instrument to take would have been that of a Declaration – a position that was not supported in 2005 neither by the worker members nor the majority of the government members of the Committee. This having been said, the latter shared the employers' view that, in order for member States to be able to ratify and implement the Convention, it must remain simple and flexible. Thus, during this year's second discussion, pressure from the worker members for the Convention to become a more prescriptive and rights-based instrument rather than a promotional one were opposed not only by the employer members but also by the majority of the governments.

Indeed, very few changes were made to the text as compared with that drawn up by the Committee in 2005. The Convention adopted calls upon Members, in consultation with the most representative organizations of employers and workers to, *inter alia*, promote continuous improvement of occupational safety and health by the development of a national OSH policy, system and programme; to take active steps towards achieving progressively a safe and healthy working environment by taking into account the principles set out in ILO

instruments relevant to the Promotional Framework; and to consider what measures could be taken to ratify relevant ILO OSH Conventions. The right of workers to a safe and healthy working environment is to be promoted and advanced at all relevant levels, and the basic principles of assessing risks or hazards and combating them at source are to be promoted.

Having not succeeded in their attempts to have the Convention more prescriptive and rights-based, the worker members continued to press for inclusion of more detailed provisions in the Recommendation – pressure which, again, was resisted by both the employer members and the majority of the governments. The Convention and Recommendation were thus both texts to which the employers were able to give their full support.

Three Resolutions were also submitted to the Committee – one calling for the ratification and implementation of the Labour Inspection Conventions, Nos.81 and 129; one concerning the promotion of the ILO Global Strategy on OSH; and one calling for the prohibition and elimination of the use of all forms of asbestos and asbestos-containing materials.

The first two Resolutions were withdrawn by their authors, as support for their discussion was not forthcoming from the majority of the Committee members. The Resolution on Asbestos, however, was the subject of lengthy and heated debate. The employer members were of the firm opinion that the Committee was not the right forum for discussion of the Resolution, as it did not relate to the Promotional Framework for Occupational Safety and Health. Moreover, they did not concur with the legal advice subsequently provided by the Office that discussion of the Resolution on Asbestos was legally permissible. The employer members therefore unanimously decided not to participate in the discussion of the Resolution, nor on the vote called for by the Chairman of the Committee upon completion of its examination. When submitted to the Conference plenary for adoption, as an annex to the Committee's Report, the employers repeated their opposition to the Resolution having been considered for examination by the Committee.

Placed before the plenary sitting for record vote, the Convention was adopted by 455 votes in favour, two against and five abstentions; and the Recommendation adopted by 458 votes in favour, three against and six abstentions.

The text of the Convention and Recommendation adopted by the Conference can be found at: <http://www.ilo.org/public/english/standards/relm/ilc/ilc95/pdf/pr-20.pdf>

THE ROLE OF THE ILO IN TECHNICAL COOPERATION (General discussion)

According to a resolution adopted by the International Labour Conference in 1987, the ILC should review, at least every five years, the ILO's technical cooperation (TC) programme.

In its review, the Committee assesses how the TC programme has responded to the various changes that have taken place in the global technical cooperation arena since the last discussion and makes suggestions on how the programme could be adapted to improve its relevance, effectiveness and sustainability. The Committee also deliberates on the way forward for the programme for the next five years. This year's discussion had as its main focus the design and implementation of technical cooperation programmes at country level aimed at promoting the Decent Work Agenda (DWA).

The global development cooperation arena has changed considerably since the last ILC discussion in 1999. The ILO's programme is increasingly funded through extra-budgetary resources which by themselves are not adequate, hence the need to look for other sources of funding. The employers' view was that a time had come for the ILO to give due recognition to the importance of the private sector in helping realize the DWA. The private sector was contributing immensely to entrepreneurship development, skills development, wealth creation, job creation and employment promotion. Moreover, the private sector could only prosper in stable societies, with a skilled, educated and healthy workforce. It was thus a natural partner to the ILO's technical cooperation programme. It was therefore important for the ILO to engage the private sector through Public-Private Partnerships (PPP), not only to mobilize resources but also much-needed expertise to help deliver technical cooperation activities in areas where the private sector had a business case for engagement. The Workers' Group expressed some misgivings on this initiative, fearing that companies would take advantage of their association with the ILO to "bluwash" themselves. This same argument has been advanced against the UN Global Compact. The workers did eventually give their support to the idea, on condition that the ILO Governing Body develops and adopts clear guidelines on how private companies could engage with the ILO.

Equally linked to the role of the private sector was the ILO's programme on employment promotion. The Employers' Group expressed its disappointment that, since 1999, resources for the Employment Sector had dropped considerably. This was happening at a time when the international community had given recognition to the role of the ILO in helping attain full and productive employment. The Employers' Group felt that the ILO had developed expertise in areas such as enterprise development, SME development and productivity. By focusing on these areas, the ILO could make a real difference to people at country level. Youth employment was another area that needed much attention as it could help build synergies between the ILO and the UN through the Youth Employment Network. The ILO also needed to do more in implementing the ILO Global Employment Agenda at country level. It was only by implementing concrete programmes at national level that a real impact on people's lives could be made and, in documenting successful initiatives, the ILO could build its profile. The ILO should focus less on global fora and more on country activities.

The ongoing discussions on reforming the United Nations system also impacted on the discussions, with many countries insisting on the need for the ILO to be fully integrated into the UN system - particularly when delivering technical cooperation programmes at country level. Governments wanted to see better coordination and synergy among UN agencies. The Governments favoured the famous "three ones approach" - one coordinator, one programme, one team. While appreciating that there were potential benefits for the ILO to engage more proactively with the UN system, particularly in countries where the ILO had no country offices, the Employers' Group favoured an arrangement that would give space for each UN agency to contribute its expertise and comparative advantages to a common UN programme. They did not want to see a system that would dilute tripartism. The Decent Work Country Programmes (DWCP) provided an excellent opportunity for the ILO to bring its tripartite structure at country level to the discussions with the UN, and the Employers' Group hoped that the social partners would be considered for joint programmes with the UN system, thus reinforcing tripartism.

Linked to tripartism was the need to build strong, independent and representative employers' and workers' organizations. The special roles of the Employers' and Workers' Bureaux in the ILO in helping build the capacity of ILO constituents were recognized and the Office was asked to make every effort to ensure that they had the required resources to meet

their objectives. The Employers' Group also supported the use of the expertise and facilities of the ILO's Training Centre in Turin to deliver technical cooperation programmes and to build the capacity of constituents. It was also important to use the research facilities of the ILO's International Institute for Labour Studies to enhance the knowledge base of the ILO in technical cooperation and to document good practices and lessons learned.

Finally, the Employers' Group pushed for strengthening the evaluation of ILO technical cooperation programmes, in order to assess their "impact". This was essential to the ILO's resource mobilization strategy, as donors would only contribute to programmes that were yielding positive results. The text of the conclusions adopted by the Conference can be found at: <http://www.ilo.org/public/english/standards/relm/ilc/ilc95/pdf/pr-19.pdf>

THE ILO PROGRAMME, FINANCIAL AND ADMINISTRATIVE COMMITTEE (PFA)

As is customary every two years, a session of the PFA was held to consider the Report of the External Auditor. This year, the Report presented specific recommendations to the ILO on three issues. The first one concerned IRIS, the ILO's new computer system. This Report insisted on the need for staff training as well as knowledge transfer and was concerned by the lack of "risk" consideration in the project. The Office has already implemented most of the recommendations on this issue.

The second issue was the most problematic and related to the issue of governance. The External Auditor proposed the establishment of an audit committee – composed only of financial experts – which would be in charge of monitoring recommendations made by the Internal and External Auditors. This Committee would meet three times per year and report to the Director-General and the Governing Body. While most governments supported this proposal, both the Employers' and Workers' Groups raised concerns about bypassing the PFA. The Office will make further proposals on this, after consultations, in November or March.

The third issue related to the inappropriate use by the Office of short-term and external collaborator contracts for regular ILO work instead of regular contracts. While supporting the need for flexibility in some cases, the Employers' Group supported the External Auditor in insisting on better and more appropriate use of these contracts.

COMMITTEE ON THE APPLICATIONS OF STANDARDS (CAS)

The work of the CAS is divided into three main parts - the general discussion, the discussion of the General Survey (this year it was on labour inspection) and the discussion of the 26 individual cases (which included a special sitting on the application of Convention No. 29 on Forced Labour by the Government of Myanmar).

Within the context of the general discussion, one of the main issues addressed was the selection process of the limited number of 25 individual cases the Committee intended to examine. For the first time the preliminary list was slightly extended to include 42 possible cases. The list was reduced to 25 during the Conference.

It was decided that the case of Colombia would not need to be discussed by the Committee this year because of a tripartite agreement of the Colombian delegation. This was the first time in many years that the case was not discussed and the signatories of the

agreement were congratulated by the Committee for their success. It is hoped that other tripartite delegations will follow this example in future years.

Among the 25 cases selected, the most noteworthy cases were: Venezuela for Convention No. 87; Bosnia & Herzegovina for Convention No. 87; Bangladesh for Convention No. 98; Belarus for Convention No. 87; Croatia for Convention No. 162, as well as Myanmar for Convention No.29.

Concerning Venezuela, the Committee reached favourable conclusions and the Government was asked to take a number of steps to comply with the principle of freedom of association, and specifically Convention 87. The Employers' Group was astonished by the mildness of the Worker members' view on this case, especially as it concerned two of the cornerstones of the ILO's philosophy: the independence of organizations of the social partners and tripartism.

The case of Bosnia & Herzegovina was a case suggested by the Employers' Group and it concerned the application of Convention No. 87 about the legal requirements for the establishment of employers' and workers' organizations. The Committee expressed its concern about the limitations imposed by the national legislation, which represented a serious violation of the Convention. Therefore it requested the Government to modify the legislation without delay.

The other case that was mentioned in a special paragraph was that of Belarus, on Convention No.87. The Committee recalled the serious discrepancies between the law and the practice of the provisions of the Conventions that had been raised by the Commission of Inquiry in 2005 and the Committee of Experts and requested the Government to provide a full report on all measures taken to implement the recommendations of the Commission of Inquiry for examination in next year's Committee of Experts report.

SELECTION COMMITTEE – MYANMAR

The case of the application of Convention No. 29 by the Government of Myanmar continues to receive special attention at the International Labour Conference.

First, it was discussed in a special sitting of the Applications Committee. During that discussion, the Government of Myanmar announced that it would institute a six-month moratorium on the prosecution of complaints of forced labour made by citizens of Myanmar. While the Committee noted the commitment to the moratorium made by the Government, it repeated its strong appeal that the Government take serious and concrete action to eradicate forced labour at the national level.

The issue was also considered by the Selection Committee. A number of concrete actions both internal and external to the ILO were discussed. The conclusions reflected the Committee's willingness to allow the Government to prove its good intentions and urged it to enter into discussions with the ILO with a view to reaching an agreement on a process for dealing with complaints. The matter will be addressed at the November 2006 Governing Body.

The text of the Conclusion of the Selection Committee can be found at: www.ilo.org

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