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2010 INTERNATIONAL LABOUR CONFERENCE

Whilst the recovery from the crisis permeated the Conference, the agenda items themselves were not particularly chosen to provide further reflections on it. The cyclical review discussion on the ILO's work on employment was the first arising from the follow-up to the 2008 Social Justice Declaration. Whilst the follow-up expectations are clear in the text, readers will see that the Workers saw it as a space to push other policy priorities for their Group, particularly relating to international policy coherence, focusing especially on the interface between the ILO and the IMF. Whilst the conclusions of the discussion give no real concern to Employers, the matter will come before the November Governing Body for further debate.

This session also saw the conclusion of the discussion on the stand-alone Recommendation on HIV/AIDS. As you will read in the report, the outcome of the discussions has produced a useable text for employers in their efforts to combat HIV/AIDS in the workplace.

More difficult was the first of a two-year discussion on "Decent Work for Domestic Workers". Here, the normal tripartite approach was impeded by a large contingent of NGOs attending the debate. Collaborating with the Workers' Group and some governments, many NGO issues were raised in the debate and reflected in a number of proposals tabled for inclusion in the text. Moreover, the nature of domestic work means that the definition of "the employer" is also complicated as is the definition of what work is to be covered. A further discussion next year may provide an opportunity to redress some of the problems, but the concern remains that the final Convention will be unratifiable.

Another concern at this session was a marked deterioration in the application, interpretation and enforcement of the standing orders of the Conference. The understanding of procedure amongst the Office Secretariat was at times poor, further complicating discussions and eating into a lot of time in the work of some of the committees.

Within the Application of Standards Committee, there were increased tensions with the Workers and the Office over the selection of the list of cases for discussion. These tensions need to be resolved in order to ensure a greater acceptance of the validity of requests coming from the Employers' Group for certain countries to be before the Committee, such as Venezuela. The Committee is not simply a Workers' committee and these tensions threaten the proper and efficient utilization of a major piece of the ILO's supervisory mechanism.

Given the changes to the ILC obtained in 2009, this year's effort was "business as usual". Few signs of improvement could be seen. This all adds weight to concerns about the future of the Conference and the need to focus in the Governing Body on ways to make a Conference more relevant to constituents.

As always, we extended our thanks to all of the employer delegates for their presence and participation in the work of the various committees.

THE GLOBAL REPORT

The purpose of the Global Report is to provide a dynamic global picture of each category of fundamental principles and rights at work. At the same time, it serves to determine priorities for technical cooperation projects. This year, the Global Report reviewed the principle of the effective abolition of child labour.

With a view to improving the interaction of this discussion, the debate was divided in two: a tripartite panel and a general discussion.

The panel was an interactive and interesting session where all participants shared their experiences, challenges and successes. Two employer delegates presented their national experiences on how they are involved in the fight against child labour.

During the general discussion, the Group reiterated its support for the ILO Declaration and its follow-up. The Employers are committed to the fight against child labour and believe that there is much more to be done to reach the 2016 target: a world without the worst forms of child labour. Despite the efforts to make this debate interactive, this session was long and full of speeches from the Governments.

The Employers trust that the new modalities adopted by this Conference on the follow-up procedures of the ILO Declaration will make the discussion of the Global Report lively and, more importantly, that it will be able to identify areas for technical cooperation.

FOLLOW-UP TO THE 1998 ILO DECLARATION ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK

This Conference reviewed the follow-up of the 1998 ILO Declaration on Fundamental Principles and Rights at Work with a view to its improvement. Since its adoption, the Employers had been fully committed to the Declaration as it is a promotional instrument that calls for member States to promote, realize and respect the fundamental principles.

For the Employers, the two follow-up procedures of the Declaration – the Annual Review and Global Report - were an integral part of the 1998 Declaration that gave sense to the rest of the text. Unfortunately, the follow-up, despite many efforts, had not lived up to all expectations.

During the discussions, the Employers insisted that the review of the follow-up should concentrate on resolving technical problems, but that the promotional essence and the visibility of the 1998 Declaration should not be diluted.

The modalities of two follow-up procedures were amended by the Conference to increase their visibility and impact. The Annual Review, which involves reporting by countries that have not ratified the eight fundamental conventions, will keep being discussed by the Governing Body. The Reviews are to provide appropriate guidance for technical cooperation.

The Global Report that presents a dynamic picture on the latest developments on the areas of promotion of the fundamental principles will be discussed every four years, as opposed to every year as has been the case. It will cover the four fundamental principles at once, as opposed to one principle per year. This new modality intends to align the follow-up of the 1998 Declaration with the new instruments adopted by the ILO during the last twelve years, more specifically the Declaration on Social Justice for a Fair Globalization adopted in 2008 and the cyclical review process.

APPLICATION OF CONVENTIONS AND RECOMMENDATIONS

The work of the Committee on Application of Standards is divided into two main parts: the general discussion (including discussion of the General Survey – which this year was on the Employment Policy Convention, 1964 (No. 122), the Human Resources Development Convention, 1975 (No. 142), the Employment Service Convention, 1948 (No. 88) and the Private Employment Agencies Convention, 1997 (No. 181), the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1998 (No. 189), the Promotion of Cooperatives Recommendation, 2002 (No. 193) and the discussion of the 25 individual cases as well as a Special Sitting concerning Myanmar (Convention No. 29).

Regarding the General Survey, the Employers highlighted that the economic crisis demonstrated the importance of ensuring that coherence with ILO standards did not impair the achievement of full, productive and freely chosen employment. Productive and sustainable employment is the prerequisite for decent work, wealth creation and social justice and should be the cornerstone of all ILO policy and action. Employers emphasized that the best safety net was an economy that created jobs, and that productive jobs that were able to adapt to change remained the best protection against economic uncertainties. They added that it was labour market reform that facilitated labour mobility and employability, generated greater flexibility, balanced with fairness, ensured that labour regulation was up-to-date and did not create unnecessary barriers and disincentives to job creation.

In addition, within the context of the general discussion, reference was made to the need to restore tripartite governance to the application of standards in accordance with Article 23.1 of the ILO Constitution since the ultimate responsibility for ILO standards supervision lay with the ILO's tripartite constituency and not with the Committee of Experts. The Employers therefore proposed that, from now on, the Committee of Experts report reflects tripartite views on standards-supervision related issues.

Discussion of individual cases: the final list included 25 cases. Among the cases, the most noteworthy from an Employers' point of view were: Venezuela C. 87, Peru C. 169 and Uzbekistan C. 182.

In the case of Venezuela C. 87, while reiterating the full text of its conclusions adopted in 2009, the Committee highlighted with deep concern the allegations of acts of violence against employers' leaders and trade unions and other restrictions on basic civil liberties. It deplored the fact that the attacks on the FEDECAMARAS headquarters had not yet resulted in the conviction of those responsible, as well as the situation of impunity. The Committee further regretted the climate of intimidation suffered by employers' leaders at the personal level, including the expropriation of lands, and measures taken against their property.

In the case of Peru no. 169, the Employers recalled the legislative history of the Convention and made it clear that the need to consult with indigenous peoples whenever consideration is being given to legislative or administrative measures which may affect them directly does not, and was never intended to, mean "binding consultations". The Employers also referred to the request made by the Experts according to which the Government was asked, pursuant to article 15 (2) of the Convention, to suspend the implementation of existing projects and pointed out that such request did not have a basis in the Convention and had to be eliminated as soon as possible.

In the case of Uzbekistan C. 182, the Committee urged the Government to accept an ILO high-level tripartite observer mission that would have full freedom of movement and

timely access to all situations and relevant parties, including in the cotton fields, in order to assess the implementation of Convention no. 182 on the worst forms of child labour.

As a consequence of the discussion of the list of cases, special paragraphs were included in the Committee's Report concerning Central African Republic, Convention no. 138, and Myanmar and Swaziland, Convention No. 87.

DECENT WORK FOR DOMESTIC WORKERS (First discussion)

The Governing Body of the ILO decided that "Decent work for domestic workers" should be an agenda item for the 2010 ILC with a view to a two-year discussion to adopt an instrument to provide better protection for domestic workers. This was the first time that "domestic workers" had been discussed by the ILO, even though there are an estimated 100 million such workers worldwide. They often provide considerable income in remittances to their home countries.

The concerns surrounding "domestic work" present challenges, particularly in comparison to other kinds of work, in breadth, scope and characteristics, as work and employment overlap with family and privacy issue. Both the Employers' and Workers' Groups, normally involved with the ILO, have representational challenges for the relevant constituents in this debate, as neither Employers, who are usually families in this case, nor domestic workers, have well-developed formal networks. This hampered the work of the Committee as a number of NGOs were highly vocal and active on the Workers' and Governments' benches.

Given the nature and complexity of the issues surrounding domestic work, the Employers' Group favoured a flexible and non-binding instrument – a Recommendation – so that current employment arrangements could be accommodated without the threat of increased informality. Unfortunately, the Conference preferred to choose the form of a Convention supplemented by a Recommendation.

After some heated debates, the text adopted by the Committee provided a better definition of domestic work that could be applied in all countries. The Employers' Group succeeded in excluding occasional domestic workers, such as babysitters. There is also a clause in the current text which allows additional exclusions if the text were to be ratified. The Employers' Group was also able to differentiate domestic workers employed by an employment agency from those employed by a householder. In the first case, the text recognizes the relevance of Convention 181 on private employment agencies and does not impose additional burdens on them. The text, whilst recognizing the rights of domestic workers, does not yet mention their responsibilities.

Nevertheless, most countries would find the text, as it currently stands, impossible to ratify. Although several Governments recognised this dilemma, it did not prevent them from supporting Workers' amendments that exacerbated it. In addition, many difficult points for Governments, such as migration policies, repatriation of migrant workers, inspection of private homes, definition of overtime and standby periods, remain to be resolved.

The text will be incorporated into an ILO report which will be sent this summer to all ILO member states. They are obliged to consult Employers' as well as Workers' organizations. It will be important for all Employers' Organizations to inform their Governments about the challenges to implementation and threats to sustainable employment that the text provides. The final discussion at the 2011 ILC will be long and difficult given the points which have been postponed from this year's debate.

HIV/AIDS IN THE WORLD OF WORK (Second discussion)

The Committee on HIV/AIDS and the World of Work met during the 99th Session of the Conference to complete its work on a standard setting item on HIV/AIDS in the workplace. This was the second discussion of the Committee. A decision was reached by the Committee last year that the form of instrument adopted should be a Recommendation. This position was not shared by the Workers' and some Government Groups who preferred a Convention.

The Committee in its first year of discussions adopted a set of conclusions on how to address HIV/AIDS in the workplace. Based on these conclusions, the ILO had prepared a draft Recommendation which formed the basis of the discussions. The Employers' Group took advantage of the start of the second discussion to reiterate its strong preference for a Recommendation over a Convention, as this would build on the ILO Code of Practice on HIV/AIDS and the World of Work. Moreover, a Recommendation would have the requisite flexibility to meet the needs of countries from different parts of the world that were facing a very diverse HIV/AIDS situation. This position was finally adopted by the Committee at its opening session. The Workers' Group, which had all along been calling for a Convention, finally accepted the idea of a Recommendation although they still wished to see a strong instrument. Employers again appealed for a non-prescriptive document.

As in the first discussion, the Employers' Group wanted to make sure that the scope of the instrument aimed at addressing HIV/AIDS in the workplace and did not give the impression that the World of Work was going to replace the health care sector which had the main responsibility of addressing health care issues. The Committee, with the support of the Employers' Group, took a decision that the Recommendation should apply to "all sectors of economic activity, including the private and public sectors and formal and informal economies". There was pressure from some Committee members that we should list categories of workers, particularly those considered to belong to at-risk groups such as healthcare professionals, sex workers etc. The Committee decided to keep the scope broad, as naming certain categories would contribute to their stigmatisation.

The Employers' Group is satisfied that the Recommendation's main objective is to guide governments and organizations of employers and workers in defining their roles and responsibilities at national level in addressing HIV/AIDS in the workplace. These efforts will support national policies and programmes in response to HIV/AIDS. The workplace will play an important role as regards information about access to prevention, treatment, care and support. The Recommendation recognizes the need to continue and increase international cooperation particularly with UNAIDS.

Finally, the Committee also adopted a Resolution on HIV/AIDS in the World of Work. The Resolution was submitted by the Workers' Group and supported by the Employers' Group with amendments. The Resolution is a political statement aimed at guiding the ILO in terms of promotion of the Recommendation, the implementation of its guidelines and what needs to be done in order to ensure follow-up. The Employers' Group is satisfied that the Resolution calls for reporting activities that do not go beyond what is provided for under article 19 of the ILO Constitution. It is important that the Employers' Group continues to call on the ILO to help build the capacity of the social partners so that they can respond effectively to the pandemic.

***RECURRENT DISCUSSION ON THE STRATEGIC OBJECTIVE OF EMPLOYMENT
(General discussion)***

2010 saw the first in a series of cyclical reviews, or recurrent ILC discussions, to follow up on the 2008 ILO Declaration on Social Justice for a Fair Globalisation (SJD) on the promotion of employment. The SJD sets out four strategic objectives for the ILO. It also contains follow-up provisions that require the ILC to review the four strategic objectives across a seven-year cycle.

The conclusions of the work of the committee are essentially in two parts:

- Introductory description of background trends and challenges, which addresses various policy considerations discussed by the committee; and
- More practical and directive conclusions regarding what Governments, social partners and the International Labour Office (the Office) should do to improve efforts in promoting employment and better deliver on the objectives under the SJD. These are organised into seven parts in the Committee conclusions:
 - i. Macroeconomic frameworks
 - ii. Employment and labour market policies
 - iii. Employability, productivity and living standards
 - iv. Trade and investment policies
 - v. Standards-related action
 - vi. The interrelationship between the four strategic objectives
 - vii. Requests to the Governing Body

The key tensions in the work of the Committee were caused by the Workers wanting to use the review to make policy and political statements beyond both the role of the ILO and the scope of the cyclical review, and to cover ground already covered in the 2009 Global Jobs Pact, the 2008 SJD, and the Global Employment Agenda. Employers worked to ensure the review was practically focused, as required under the SJD and its follow-up arrangements, and yielded concrete initiatives to improve delivery on the strategic objective of promoting employment.

In the conclusions, the Committee agreed a substantial programme of practical work, for the Office in particular. Major deliverables arising from the 2010 review included:

- A commitment to improve the capacity of more countries to deliver high-quality labour market statistics.
- An improved recognition of the importance of sustainable enterprises, encouraging investment, and the legitimacy of changing forms of work.
- Enhancing the ILOs services to support education, skills development and lifelong learning.
- A review of mechanisms used to deliver on nationally agreed employment priorities, including options to better consolidate with Decent Work Country Programmes.

This also included an improved commitment to the high-quality evaluation of ILO action, and to better incorporate evaluative feedback into how the organisation delivers its work going forward.

These outcomes will translate into a substantial body of work for the Governing Body and in particular its Employment and Social Policy (ESP) Committee during coming sessions. In turn, it should shape the work of the Office and revise approaches to better deliver on the strategic objective of promoting employment.

Employer Priorities

In addition to the above list of actions, the Employers also succeeded in having a range of important matters acknowledged in the conclusions, including:

- The central importance of investment and sustainable enterprises for job creation.
- The importance of a supportive regulatory environment for job creation.
- The need for the Office to be more responsive to new and changing forms of work.
- The importance of greater peer review and rigour in the ILO's work.

It will be important to now ensure these new and clarified approaches better inform the work of the Office.

In turn, the Workers sought to have the 2011 ILC consider a new Recommendation on policy coherence and, in particular, coherence between economic and trade policies and employment policies administered by labour ministries.

This was not accepted. Rather, the Governing Body will have an opportunity to consider options for a framework for greater policy coherence in November 2010 (which is expected to include further discussions on the proposal for a Standard / Recommendation). The ILO Director-General will also initiate discussions with key international financial and economic institutions towards "better coherence between economic, financial, employment and social policies at the international level".

The 2011 ILC will include the second cyclical review discussion on Social Security. The Committee also emphasised the importance of learning lessons from this initial cyclical review to improve future reviews, and invited the Governing Body to evaluate the initial cyclical review in November 2010.

STANDING ORDERS

Following discussions in November 2008 (303rd Session), March 2009 (304th Session) and November 2009 (306th Session), the Governing Body had recommended several amendments to the Standing Orders of the Conference that would introduce a new type of complaint under articles 5 and 26ter of the Standing Orders. The Committee examined the proposed amendments which are aimed to create an efficient and impartial procedure to quickly address an alleged act or omission on the part of a government that has prevented an accredited delegate or adviser from attending the Conference. The proposed procedure would maintain the essential role of the Credentials Committee in addressing the problem early and also introduced a role for the Officers of the Conference.

The Employers' Group expressed its support for the proposed amendments which had been discussed comprehensively in the Governing Body. The Governments of the Latin American and Caribbean States (GRULAC) emphasized that the proposed amendments would not give rise to an automatic mechanism as a means to punish or control governments but rather as an objective and impartial procedure to address particular situations, with no self-executing effect in a member State, but with a view to cooperating with the government concerned to resolve the issue.

CREDENTIALS

Amongst the work of the Credentials Committee the following cases were important for the Employers.

Objections

In the case of **Venezuela**, the objection related mainly to the inclusion by the Government of delegates from unrepresentative, or even fictitious Employers' bodies.

The Committee noted the historical recognition of FEDECAMARAS as the most representative employers' organization and found that the Government had not provided objective information that convinced it that any other organization could be considered as most representative.

In order to advance in the establishment of objective and verifiable representativeness criteria, the Committee, as in prior years, restated its recommendation that the Government avail itself of the technical assistance that the ILO may offer in that respect

The Committee expected the Government to ensure that the nomination of the non-governmental delegations at future sessions of the Conference will be in full compliance with article 3, paragraph 5, of the ILO Constitution.

As to **Romania**, the Government had unilaterally altered the composition of the Employers' delegation. The point of contention was the order in which the advisers were listed in the credentials, as the expenses of only the first five representatives on the list were borne by the Government.

The Committee expressed the hope that next year the Government will implement such criteria allowing it to be satisfied that the nomination of the delegate and all advisers of the employers are made in agreement with the most representative employers' organizations of the country.

In the objection related to **Bosnia and Herzegovina**, the Government had failed to deposit credentials of an Employers' delegate, arguing that it had received no reply to its invitation to the Employers' Association of Bosnia and Herzegovina (APBiH) to nominate a representative. The Employers' Group submitted that the APBiH, which had been created in 2004 as a result of a merger between three employers' associations, was the most representative association of employers in the country and was duly registered.

The Committee stressed that it is the obligation of member States under article 3, paragraph 1 of the ILO Constitution to nominate full tripartite delegations and urged the Government to ensure that the nomination of the Employers' delegation at future sessions of the Conference will be in full compliance with article 3, paragraph 5 of the ILO Constitution.

Complaints

Both complaints concerning the non payment of expenses for the employer delegates from **Botswana** and the **Democratic Republic of Congo** were withdrawn as the Governments concerned responded to their obligations under article 13, paragraph 2(a) of the ILO Constitution and paid the attendance expenses of the employers' delegates.

As to **Nicaragua**, the Committee acknowledged the difficult financial situation that many member States are facing at this moment and understands the financial burden that the

participation of a full tripartite delegation to the Conference implied. It noted that all the Government representatives registered came from its Permanent Mission. However, once again, the Committee reminded the Government that while most governments could rely on the support of their Permanent Mission in Geneva to ensure participation of a governmental delegation, the social partners could not rely on such a system. The decision not to cover expenses of the Employers' delegate is incompatible with the Government's obligation under article 13, paragraph 2(a) of the ILO Constitution to cover the expenses of a complete tripartite delegation. The Committee, therefore, expected that, in the future, the Government will comply with its constitutional obligations in this respect

Communication

Concerning the Employer's delegation of **Iran**, the Employers' Group had submitted a communication requesting the Government of the Islamic Republic of Iran to clarify why some of the employer delegates of that country represented an employer association which had ceased to exist. Indeed, a final judgement by the Tehran Court of Appeal had recognized the legitimacy of the IOE member federation, the Iranian Confederation of Employers' Associations (ICEA) and, as existing Iranian law only recognizes the existence of one representative organisation of employers, it could reasonably be supposed that the existence of the other employer association, the Confederation of Iranian Employers (CIE) had therefore been invalidated.

The Committee noted that this judgement annulled the dissolution of the ICEA, but that it did not mention any consequences on the legal existence of the CIE. To the extent that Iranian legislation permits the existence of only one national employers' organization, the Committee recalled that last year it considered, in line with recommendations of the Committee of Freedom of Association, that "the Government should take measures as a matter of urgency to amend the Labour Law so as to ensure the exercise of freedom of association and, in particular, the right to establish more than one employers' and workers' organization."

To access the Reports and the Conclusions of the various Committees, please click on the following link: http://www.ilo.org/global/What_we_do/Officialmeetings/ilc/ILCSessions/99thSession/lang--en/index.htm