

INTERNATIONAL LABOUR CONFERENCE

CREDENTIALS COMMITTEE

Note prepared
by the
International Organisation of Employers



Geneva, June 2001

IOE NOTE ON CREDENTIALS COMMITTEE

This note is intended as a guide to the Credentials Committee of the International Labour Conference for IOE members. It seeks to outline the work of the Committee and serve as a guide for those members who may need to avail themselves of its procedures.

INTRODUCTION

Article 3 of the Constitution of International Labour Organisation requires every Member state to be represented at the International Labour Conference by two government delegates and two other delegates representing respectively the employers and the workpeople of that state. A delegate may be accompanied by a maximum of two advisers for each item on the agenda. The non-governmental delegates and advisers have to be nominated by the Member state (meaning government) “in agreement with the industrial organisations, if such organisations exist, which are most representative of employers or workpeople, as the case may be, in their respective countries.” This implies that a process of consultation with these organisations occurs as part of the selection of the non-governmental delegates.

Paragraph 9 of Article 3 also provides that the credentials of delegates and their advisers shall be subject to scrutiny by the Conference that may; by two-thirds of the votes cast by the delegates present, refuse to admit any delegate or adviser whom it deems not to have been nominated in accordance with the Article.

In order to give effect to this provision, Article 5 of the Conference Standing Orders requires the nomination of a Conference Credentials Committee. This consists of one government representative, one employer and one worker. Although the Standing Orders specify that the members of the Committee have to be delegates, substitute delegates have served on the committee on occasion. Article 26 of the Standing Orders sets out the procedures to be followed by the Credentials Committee.

The Committee meets in closed sessions and invites the governments concerned to respond when objections are receivable and a case is made. The objector may also be invited to present the case or to clarify points.

The first session of the Committee deals with setting the quorum and voting rights of delegates (Articles 4.2 and 13.4 of the ILO Constitution), these are official communications to the Conference and not decisions of the Committee.

The ILO Credentials Committee deals only with objections to credentials (Article 26 paragraph 3 of the Standing Orders) and the determination of the quorum, (Article 20 paragraph 2 of the Standing Orders). This is unlike for example, the United Nations General Assembly, where the credentials of *all* delegates are routinely gone through by the Credentials Committee. It should be noted however, that in recent years following pressure from the Employers' Group the ILO Credentials Committee has also begun to touch on related matters such as tripartism (the balance between employer and worker delegations) and the financing of delegations.

The power of the Credentials Committee is very strictly defined. It does not have the power to invalidate credentials; it can only make recommendations to the Conference, which then decides the matter. On the other hand, it can decide on the receivability of objections according to the four criteria listed in paragraph 4 of Article 26 of the Standing Orders, (see later in the paper for an explanation of the criteria), as well as the non-acceptance of objections. The Committee's decisions have to be unanimous. If there is dissent on either the receivability or the non-acceptance of objections, the matter will have to be decided upon by the Conference.

The work of the Committee has a quasi-judicial character and its decisions are treated as case law. However, there is nothing to prevent the Conference, which decides matters on political rather than legal considerations, from overturning principles carefully established over decades by the Committee.

The possibility of the Conference overturning proposals made by the Credentials Committee probably explains the reluctance of the Committee to propose the invalidation of credentials even where it finds that nominations are patently contrary to paragraph 5 of Article 3 of the Constitution. By stopping short of proposing invalidation, the Committee is therefore able to retain its ability to criticise the government concerned if it repeats its non-observance of its Constitutional obligation. If the Committee were to propose invalidation and the Conference refused to accept the proposal, the government concerned would be able to continue the alleged violation with impunity, being protected from further criticism regarding the same "offence" by paragraph 4(d) of Article 26 of the Standing Orders (explained below). The discretionary character of the Committee's powers is therefore useful in this respect.

WORK OF THE CREDENTIALS COMMITTEE

Paragraph 1, Article 3 of the ILO Constitution reads as follows:

- “1. *The meetings of the General Conference of representatives of the members shall be held from time to time as occasion may require, and at least one in every year. It shall be composed of four representatives of each of the members, of whom two shall be Government delegates and the two others shall be delegates representing respectively the employers and the workpeople of each of the Members*”.

Paragraph 5 of the same Article reads:

- “5. *The Members undertake to nominate non-governmental delegates and advisers chosen in agreement with the industrial organisations, if such organisations exist which are the most representative of employers or workpeople, as the case may be, in their respective countries*”.

These two paragraphs are the foundation for the work of the Conference Credentials Committee.

RECEIVABILITY

Article 26 of the Conference Standing Orders sets out the procedure for dealing with questions of credentials. In order for an objection to be considered, it first has to pass the test of receivability. The Standing Orders impose four tests for the receivability of objections to the credentials of delegates and advisers, and they are set out in paragraph 4 of Article 26.

- (a) An objection is only receivable if it is lodged with the Secretary-General within 72 hours from 10 a.m. of the date of the publication in the Provisional Record of the name and the function of the person to whose nomination objection is taken, provided that, where the name of the person is published for the first time in a revised list of the names and functions of delegates, the above time limit shall be reduced to 48 hours from 10 a.m. of the date of publication.
- (b) An objection is irreceivable if the authors of the objection remain anonymous
- (c) An adviser cannot object to the nomination of the delegate he serves.

- (d) An objection is irreceivable if it is based on facts or allegations which the Conference, by a debate and a discussion referring to identical facts or allegations, has already discussed and recognised to be irrelevant or devoid of substance. The Committee considers that its own decisions refusing to accept objections to credentials, which are noted by the Conference, amount to decisions of the Conference for the purposes of this provision.

REPRESENTATIVITY

The great majority of objections to the credentials of employer and workers delegates are based upon the non-representative or insufficiently representative character of the organisations that nominated them. This is in fact the central issue in the question of credentials with respect to employer and worker delegations.

The International Court of justice (which has exclusive competence to interpret the ILO Constitution) has had occasion to do with respect to the terms of Article 3 paragraph 5. In Advisory Opinion 1 dated 31 July 1922, in relation to a complaint regarding the credentials of the worker of the Netherlands, the Court said:

“The obligation is, that the persons nominated should have been chosen in agreement with the organisations most representative of employers or workpeople, as the case may be. There is no definition of the word “representative” in the Constitution. The most representative organisations for this purpose are, of course, those organisations which best represent the employers and the workers respectively. What these organisations are, is a question to be decided in the particular case, having regard to the circumstance in each particular country at the choice falls to be made. Numbers are not the only test of the representative character of the organisations, but they are an important factor: other things being equal, the most numerous will be the most representative... the Conference has the power by a two-thirds majority, to refuse to admit any delegate whom it deems not to have been nominated in accordance with the Article. Such a refusal may be based on any grounds, either of fact or of law, which satisfy the Conference that the delegates have not been so nominated.”

The Committee has found the Court’s interpretation useful in arriving at decisions in many cases. A few examples are below:

- In 1982 the Committee held that the trade union elections held five years earlier in Morocco were too long to be the basis of a decision on the relative representativity of organisations.

- In 1955 regarding the Worker delegate of Chile the Committee held that simply requesting trade union organisations to submit a list of names, and thereafter having the Government select the delegation, does not guarantee that the criteria of agreement has been met.
- In 1982 regarding the Worker delegate of India, the Committee ruled that the government could not impose a system of rotation for the representation of rival organisations at the Conference. Such a system may be introduced however, with the agreement of the parties concerned.
- In 1931 regarding the Employer delegate of India, the Committee considered that in looking at representativity of an employers' organisation it is not only the number of employers in membership but also the size of their workforces which have to be taken into account.
- In 1983 regarding the Employer delegate from Algeria, the government's taking account of the proportion of national economic activity was considered legitimate.
- In Peru the government had nominated the Workers' delegate by rotation from among the four most important trade union centres in the country. In 1978 the delegate whose credentials were being challenged had been appointed delegate at previous sessions of the Conference with no objection. This led the Committee not to accept the objections in 1978. This is rather inconsistent, but seems to indicate that potential objectors should object at the very first opportunity to do so or else accept the situation, (unless perhaps there have been significant changes in the situation to justify new grounds that did not exist before).

When making a complaint it is absolutely necessary that the complainant submits as much information as possible (on membership figures, role at national level etc) to the Committee so as to demonstrate its representative nature.

NEW DEVELOPMENTS IN THE WORK OF THE CREDENTIALS COMMITTEE

Following sustained pressure from the Employers' Group, in November 1996, the ILO Governing Body considered a paper which contained recommendations from the Conference Credentials Committee that consideration be given amending or clarifying the Conference's Standing Orders so as to set out the role and functions of the Credentials Committee with respect to non-compliance with the constitutional obligation on governments to pay the travel and subsistence expenses of their delegates and advisers.

The Governing Body considered that the primary objective should be to ensure that, at the very least and as a matter of priority before making any other appointments, Members appoint and make provision for covering the expenses (for the whole period of the Conference) of the four delegates specified in Article 3, paragraph 1 of the Constitution. The amendment was also intended to discourage unequal treatment, as between the three groups, in the number of advisers appointed. The following paragraphs were therefore introduced at the end of Article 26 of the Standing Orders:

“9. *The Credentials Committee may consider complaints that a Member has failed to comply with Paragraph 2(a) of Article 13 of the Constitution where:*

- a. the Member is alleged to have failed to pay the travelling and subsistence expenses of one or more of the delegates that it has nominated in accordance with article 3, paragraph 1, of the Constitution; or*
- b. the complaint alleges a serious and manifest imbalance as between the number of Employers’ or Workers’ advisers whose expenses have been covered in the delegation concerned and the number of advisers appointed for the Government delegates.”*

“10. *A complaint referred in paragraph 9 shall not be receivable in the following cases:*

- a. if the complaint is not lodged with the Secretary-General of the Conference before 10 a.m. on the seventh day following the opening of the Conference and the Committee considers that there is insufficient time to deal with it properly;*
- b. if the complaint is not lodged by an accredited delegate or adviser alleging non-payment of travel and subsistence expenses in the circumstances set out under (a) or (b) or paragraph 9 or by an organisation or person acting on his or her behalf.”*

The Credentials Committee presents any conclusions on complaints it reaches unanimously in its report to the Conference.

HOW THE IOE CAN HELP

OBJECTIONS TO CREDENTIALS BASED ON NON-REPRESENTATIVITY

As stated above, the majority of objections to employer or workers delegates are based upon the non-representative or insufficiently representative character of the organisations that nominated them. Acting in its capacity as Secretariat of the Employers' Group to the Conference, the IOE is able to prepare representations on behalf of its members in instances where another less representative organisation may have been selected to provide the Employer delegate. Examples of this have included Nicaragua during the 1980s and more recently, Algeria. Objections can be filed by the IOE or by the leaders of the Employers' Group on behalf of a member. In these cases the IOE can appear before the Committee to present the case.

In order to challenge nominations however, it is important that members contact the IOE as soon as the problem emerges with as much information as possible. The type of information that is of particular use includes:

- the consultation process (how, when and with whom consultation has been undertaken);
- how the decision to appoint the Employer delegate was taken;
- comparable information on the organisation under challenge and the challenger, (including membership figures, spread of coverage etc) and the role of the respective organisations at national level, including participation in labour and social affairs issues and any tripartite bodies;
- historical information on participation at the ILO Conference and other ILO activities.

Putting this information together is essential so that a credible "case" can be built up.

In some circumstances, where the credentials of an Employer delegate are under challenge, the Employers' Group as a whole has refused to admit these delegates to membership of committees, believing that they do not represent the interests of employers.

NON-PAYMENT OF TRAVEL AND SUBSISTENCE EXPENSES

The IOE has been able to make representations on behalf of its members concerning the non-payment of travel and subsistence expenses of certain Employer delegations. In 1998 for example this concerned Peru where the Committee considered that the government had not fulfilled its Constitutional obligation and asked the government to pay the travel and subsistence expenses of the Employer delegate. In addition, it asked the government to give equal treatment to employers and workers in relation to the payment of the travel and subsistence expenses of technical advisers. In 1999, the IOE made representations on behalf of the Employer delegations of Cameroon, the Democratic Republic of Congo and Venezuela. In 2000 we highlighted once again the cases of Venezuela and the Democratic Republic of Congo.

In order for the IOE to assist members who may have problems, a form drawn up by the IOE is circulated to all employer delegations when they arrive at the Conference and request registration on Conference Committees. This form asks delegations:

- If their Government bears the travel and subsistence costs of the employer delegate for the full duration of the Conference;
- How many accredited employer advisers there are in the delegation and how many of them receive travel and subsistence expenses from the Government?

In cases where the Government concerned does not respect its obligation to bear the travel and subsistence costs of an employer delegation, that delegation is asked whether they agree that the fact be drawn to the attention of the Credentials Committee. The IOE can do nothing without the agreement of the Employer delegate concerned.

On behalf of the Employers' Group, the IOE is therefore able to draw the attention of the Credentials Committee to the extent of the problem of non compliance by a government with the requirement to pay travel and subsistence expenses. The governments concerned are asked to explain the situation to the Committee. The Committee usually makes recommendations to governments rather than upholding complaints. This is because, as explained above, by not putting the matter to the Conference, the Committee is able to continue to address the issue in future years if the government concerned does not follow the recommendations of the Committee.

* * *