

**FOR DEBATE AND GUIDANCE**

FIRST ITEM ON THE AGENDA

Measures relating to the representation of Employers and Workers at the International Labour Conference: Addressing tripartite imbalance within delegations

1. At its 98th Session (2009), the Credentials Committee of the International Labour Conference examined cases of delegations which comprised a disproportionately low number of advisers to the Workers' delegate as compared to the number of advisers to the Government delegates. This had been justified by the concerned Governments with current budgetary restrictions. Upon the Credentials Committee's recommendation, the Conference requested the Governing Body to consider possible measures to improve the situation in this regard.¹ It should be noted that the question is far from new: tripartite imbalance in Conference delegations has been pointed out by successive Credentials Committees for the last 35 years.
2. The purpose of this paper is to provide a factual and legal background to the question in order to enable the Committee to examine it.

The requirement of balanced tripartite delegations

3. As the Credentials Committee stated:

... there is a general principle requiring Governments to send delegations to the Conference which do not present a serious and manifest imbalance as between its three parts, so that Government, Employers and Workers have a comparable ability to actively participate in the work of the Conference. This can be inferred from the very principle of tripartism as reflected in the ILO Constitution, in particular its article 3 concerning the delegations to the Conference and article I(d) of the Declaration of Philadelphia (1944), and the *Resolution*

¹ ILO: *Provisional Record* No. 4C, International Labour Conference, 98th Session, Geneva, 2009, para. 122.

concerning the Strengthening of Tripartism in the Over-all Activities of the International Labour Organisation adopted by the International Labour Conference on 21 June 1971.²

4. Article 3, paragraphs 1 and 2, of the ILO Constitution provides that the Conference is composed of four representatives of each of the Members, two Government delegates, one Employers' delegate and one Workers' delegate, each of whom may be accompanied by advisers, whose number may not exceed two per delegate for each item on the agenda of the session. While it is clear from the wording and legislative history of paragraph 2 that there is no obligation for Members to nominate advisers, these provisions nevertheless suggest an even distribution of advisers between the three groups or, more precisely, between the four delegates, when advisers are nominated.
5. Tripartism implies a notion of "equality of arms" between the three groups, even if it may be tempered by the choice made by the Constitution to give Governments double the weight of each of the other two groups in final decision-making. The Declaration of Philadelphia (1944) makes it an obligation for the ILO to pursue a "continuous and concerted international effort in which the representatives of workers and employers, enjoying equal status with those of governments, join with them in free discussion and democratic decision ... " (Part I(d)). This passage was also taken up in the 1971 Conference resolution on strengthening tripartism cited by the Credentials Committee, which invited the Governing Body, *inter alia*, "to consider all measures which are necessary for ensuring that the tripartite structure is fully effective in respect of the entire range of the activities of the International Labour Organisation."
6. In practice, the main function of advisers is to participate in the work of the committees of the Conference as titular or deputy members in accordance with the Standing Orders of the Conference and through participation in the meetings of the respective groups of the Committee. Since there are usually four or five major tripartite committees working in parallel at any regular session of the Conference, the number of advisers in each part of the tripartite delegation determines to a large extent the capacity of each of those parts to actively participate in the substantive work of the Conference. For this reason, serious tripartite imbalance in delegations may affect tripartism itself, by making it difficult for the social partners to play their constitutional role.

The mandate of the Credentials Committee concerning tripartite imbalance

7. The Credentials Committee has addressed the question of tripartite imbalance in the composition of delegations under its general mandate relating to the composition of the Conference. Since 1965, the Credentials Committee has consistently noted an imbalance, at every session of the Conference, between the number of advisers to each group. Over the years, its comments have evolved from only "draw[ing] the attention of governments to the fact that it would be desirable" to reduce the imbalance to, in recent years, "urg[ing] governments to make a genuine effort" to do so. Based on this general mandate, the Credentials Committee accepted at the last session of the Conference to examine a communication from the Workers' group concerning a case of an imbalanced delegation.
8. The Credentials Committee does have a specific mandate concerning imbalance in the payment of travelling and subsistence expenses of advisers under article 26ter(1)(b) of the Standing Orders. Under that provision, the Credentials Committee hears complaints concerning failure by a Member to comply with article 13(2)(a) of the Constitution –

² *ibid.*

which obliges Governments to pay the travelling and subsistence expenses of their tripartite delegations – where 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”. The question in those cases is not how many advisers have been accredited for each delegate but for how many of the accredited advisers on each side the Government has paid their expenses. Therefore, while some cases of imbalanced delegations may be partially addressed through a complaint resulting from the fact that there is at the same time an alleged serious and manifest imbalance as regards payment of expenses, others may not fulfil the conditions for receivability of a complaint, in particular the condition requiring that the complaint be lodged by or on behalf of an accredited adviser concerned by such non-payment of expenses (article 26ter(2)(b) of the Standing Orders).

Occurrence of tripartite imbalance

9. Indications as to the overall occurrence of imbalanced delegations can be found in the figures of accredited delegates and advisers, which are published in the brief report on credentials presented by the Chairperson of the Governing Body on the opening day of each session of the Conference. The number of accredited advisers at the last five regular sessions is shown in table 1.

Table 1. Overall number of advisers accredited

Session	Governments	Employers	Workers
98th (2009)	954	419	520
97th (2008)	1 030	491	607
96th (2007)	1 017	475	595
95th (2006)	948	483	565
93rd (2005)	1 001	444	545

10. It appears from these figures that the overall tripartite composition of the Conference has largely remained within the limits of the “model” of article 3 of the Constitution, in that the number of Government advisers roughly equals the combined number of Employers’ and Workers’ advisers. It also appears that the overall number of Workers’ advisers has consistently been higher than the number of Employers’ advisers.
11. In order to be able to examine these figures further, it is necessary to determine what would be considered an imbalance significant enough to affect tripartism. Based on the cases in which the Credentials Committee found a serious and manifest imbalance at the 98th Session (2009) of the Conference and which motivated the Committee’s request to the Governing Body to examine the situation,³ a possible formula for illustrating imbalance would be the following: a significant imbalance exists: (1) if the number of either accredited Employers’ or Workers’ advisers is less than a quarter of the number of accredited Government advisers (provided that there are at least four Government

³ In the case of the Complaint concerning a serious and manifest imbalance between the number of Workers’ and Government advisers whose expenses have been covered by the Government of Italy (*Provisional Record* No. 4C, International Labour Conference, 98th Session, Geneva, 2009, paras 97–100), the respective numbers of accredited Government and Workers’ advisers were **10:2**; in the case of the Communication concerning the Workers’ delegation of Ireland (*ibid.*, paras 118–121), the respective numbers were **7:0**.

advisers);⁴ or (2) if the number of accredited advisers to one of the non-Government delegates (Employers' or Workers') is less than half of the number of accredited advisers to the other non-Government delegate (provided that at least two advisers were appointed to the former non-Government delegate).⁵ On the basis of this formula, significant tripartite imbalance in the delegations would have occurred as follows at the last five regular sessions of the Conference.

Table 2. Delegations showing imbalance as between the number of accredited Government advisers and the number of Employers' advisers or Workers' advisers or both

Session	To the disadvantage of <i>Employers</i> only	To the disadvantage of <i>Workers</i> only	To the disadvantage of <i>both</i> Employers and Workers	Total
98th (2009)	17	6	12	35
97th (2008)	8	7	22	37
96th (2007)	13	8	14	35
95th (2006)	13	7	12	32
93rd (2005)	17	4	16	37

Table 3. Delegations showing imbalance as between the number of accredited advisers to one of the non-Government delegates and of accredited advisers to the other one

Session	To the disadvantage of <i>Workers</i>	To the advantage of <i>Employers</i>	Total
98th (2009)	9	21	30
97th (2008)	7	26	33
96th (2007)	8	30	38
95th (2006)	12	18	30
93rd (2005)	5	22	27

12. As the Conference has been attended by 166–170 delegations at those sessions, the above figures show that as many as one fifth of all delegations might have been considered to be significantly imbalanced as regards Government versus non-Government advisers and a little less on average as regards Employers' versus Workers' advisers. It must be pointed out, however, that those figures do not reflect the reasons for an apparent imbalance in a delegation, some of which may be legitimate and bona fide. For example, a Government may appoint for itself, or for one or both of the non-Government delegates, a relatively high number of advisers not all of which will be attending the Conference at the same time so that the tripartite balance will not be affected. Reasons for this may be that the advisers will alternate or that it is not sure at the time of submission of the credentials which of the nominated persons will actually be able to attend. In order to identify such cases, the list of *accredited* delegates and advisers could be matched against the list of *registered* delegates and advisers. However, that latter list is not entirely reliable since the non-attendance or departure of advisers is not systematically notified to the Conference secretariat. In

⁴ The condition in brackets excludes cases in which no adviser has been nominated for one side but the difference in absolute figures is still small (e.g. 3 Government – 0 Employer – 0 Worker).

⁵ As no cases of employer versus worker disparities were raised at the Conference in recent years, this second alternative is a simple adaptation of the government versus employer or worker formula taking into account the Government–Employer–Worker ratio envisaged in article 3 of the Constitution.

addition, permanent missions sometimes register advisers by proxy which are in fact not or not yet attending.

Possible measures aiming at improving the situation

- 13.** Since the Credentials Committee's repeated appeals to Governments over the last 35 years to reduce tripartite imbalance in delegations do not seem to have borne fruit, the following measures could be envisaged by the Credentials Committee, separately or cumulatively, under its current mandate, without any amendment to the Standing Orders of the Conference:
- (a) The Credentials Committee could publish in its reports to the Conference figures showing the number of member States whose delegations it considers significantly imbalanced. It would take into account and report on explanations which the Governments concerned may wish to provide.
 - (b) The Credentials Committee could identify a limited number of the most serious cases of tripartite imbalance and invite the concerned Governments individually to state the reasons for such imbalance in their delegation. This information would be reported to the Conference in one of the reports on credentials.
 - (c) In order to reinforce the authority and visibility of its calls on Governments, the Credentials Committee could propose a draft resolution for adoption by the Conference. Such a resolution could request the Director-General to examine to what extent and for what reasons Members are not fulfilling their obligation to send reasonably balanced tripartite delegations to the Conference and to report this information to the Governing Body.⁶
- 14.** The Governing Body and the Conference could also envisage amending the Standing Orders of the Conference to give the Credentials Committee the additional mandate to examine specific submissions (objections) based on alleged significant tripartite imbalance in a delegation.

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Submitted for debate and guidance.

⁶ This could introduce a type of monitoring similar to paragraph 2(g)(ii) – concerning incomplete delegations – of the 1971 Resolution concerning the Strengthening of Tripartism in the Over-all Activities of the International Labour Organisation.