



▶ Record of Proceedings

2C

International Labour Conference – 110th Session, 2022

Date: 30 June 2022

Plenary sitting

Reports on credentials

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Monday, 6 June 2022, 10.30 a.m.

President: Mr Moroni

Submission and noting of the first report of the Credentials Committee

The President

(Original Spanish)

It is my great pleasure to declare open the second plenary sitting of the 110th Session of the International Labour Conference.

I would like to draw your attention to the first report of the Credentials Committee, which is contained in *Record of Proceedings No. 2A*.

This report includes detailed information on the composition of the Conference and the various delegations. It also includes the calculation of the quorum required to validate votes held in plenary. Lastly, the report provides additional information regarding the representation of Myanmar.

Please allow me to recall that the members of the Credentials Committee are as follows: Ms Daytec (Philippines), Chairperson; Mr Yllanes Martínez (Mexico), Employer Vice-Chairperson; and Mr Vogt (United States of America), Worker Vice-Chairperson, replaced by Mr Norddahl (Iceland).

I give the floor to the Chairperson of the Credentials Committee, Ms Daytec, who will present to us the Committee's first report.

Ms Daytec

Chairperson of the Credentials Committee

I am honoured and pleased to present to the plenary of the 110th Session of the International Labour Conference the first report of the Credentials Committee.

This report – which is published as *Record of Proceedings No. 2A* – includes information on the composition of the Conference, as well as the Committee's conclusions on the question of the representation of Myanmar at this session of the Conference.

In connection with its mandate to examine the credentials of delegations to the Conference, the Credentials Committee traditionally comments on the overall composition of the Conference. In this regard, I would like to highlight two points.

First, the presence of 177 of the 187 Member States of the ILO can be considered a high level of participation as compared to the past, and almost reaches the record level of 178 Member States at the Centenary Session of 2019. Of course, that was the Centenary Session, and it did not benefit from the option of participating remotely. The Committee therefore regretted that there has been no increase in participation, despite the hybrid format of this session, which allows for remote participation without the costs and prolonged absence from home entailed by a Conference session held entirely in person.

Secondly, following a steady increase in the participation of women in the Conference over a decade, the proportion of women in delegations has dropped by almost 2 per cent this year, compared to 2021. Moreover, women continue to be unevenly distributed by function and group. The Committee once again stressed the importance of reaching the minimum target of 30 per cent women's participation in all groups and in all delegations, including in

leadership positions within delegations, with the goal of achieving gender parity. Let us hope that the negative trend will be resolutely reversed next year.

Let me now turn to the question of the representation of Myanmar. I would first like to recall that, given its mandate to examine objections to the credentials of delegations, this Committee was conceived as a quasi-judicial body. Although its three members derive from each of the constituent groups of the Conference and therefore bring a Government, Employer and Worker perspective to the table, they examine the situations brought before them in complete impartiality, based only on the information submitted, and on the applicable legal rules, principles and precedents.

In the case of Myanmar, the Committee was faced, like last year, with two sets of competing credentials: one from the State Administration Council, which is supported by the military authorities that seized power in February 2021; and one from the National Unity Government, which represents the deposed civilian Government and the members of parliament that were elected in November 2020. The Committee also considered several communications received from both sides in connection with the credentials.

Like last year, the Committee was guided by resolution 396(V) adopted by the General Assembly of the United Nations on 14 December 1950. According to that resolution, whenever more than one authority claims to be the government entitled to represent a Member State, the attitude adopted by the General Assembly concerning any such question should be taken into account in other organs of the United Nations and in the specialized agencies. In line with this resolution, ILO bodies have always considered that the question of recognition of governments and their representation in the ILO was a political matter in relation to which the Organization should be guided by any position adopted by the General Assembly.

The Committee noted that, in December 2021, the General Assembly deferred a decision on the credentials of Myanmar and that it has not considered the question again since then. It also noted that several entities have deferred consideration of the question, including the Committee on Credentials of the Seventy-fifth World Health Assembly. In the light of these considerations, this Committee decided that no delegates for Myanmar would be accredited to the 110th Session of the Conference.

With this decision, the Committee fully aligned itself with other organizations in the United Nations system on this subject. But you will note that, as has not been done in other organizations, this Committee also set out in its report the context of this determination, in particular the developments that have taken place in the ILO concerning Myanmar since the closure of the last session of the Conference, in December 2021. The Committee also reiterated that it sees a link between the capacity and willingness of authorities to nominate representative tripartite delegations to the International Labour Conference and their compliance with principles and obligations arising from their membership in the Organization.

The Committee ended by expressing the hope that the General Assembly will soon be in a position to make a determination on the representation of Myanmar, since the current situation not only concerns the Government of Myanmar, but also precludes the participation of the employers and workers of Myanmar in the Conference.

The President (Original Spanish)

If there is no objection, may I take it that the Conference takes note of the first report of the Credentials Committee?

(The Conference takes note of the first report of the Credentials Committee.)

(The Conference continues its work in plenary.)

Friday, 10 June 2022, 5.25 p.m.
President: Mr bin Samikh Al Marri,
Government Vice-President of the Conference

Submission and noting of the second report of the Credentials Committee and approval of the Committee's proposals

The President

We now move on to the second report of the Credentials Committee, which is contained in *Record of Proceedings No. 2B*.

I now give the floor to the Chairperson of the Credentials Committee, Ms Daytec, who will present to us the Committee's second report.

Ms Daytec Chairperson of the Credentials Committee

I am honoured and pleased to present to the plenary of the 110th Session of the International Labour Conference the second report of the Credentials Committee.

The Credentials Committee is a discreet committee. It is composed of one Government, one Employer and one Worker delegate, and it meets in private. Yet, it plays the institutional role of guarantor of the genuine tripartite composition of the Conference. Since the First Session of the International Labour Conference, in 1919, the Committee has examined objections to credentials alleging that Governments have not complied with their obligation to nominate their Employers' and Workers' delegates and advisors in agreement with the most representative employers' and workers' organizations of the country respectively. This obligation is contained in article 3, paragraph 5, of the ILO Constitution.

The Committee's case law on the interpretation and application of this provision has been remarkably consistent over the years, and this is due mainly to one key precedent, namely Advisory Opinion No. 1 of the Permanent Court of International Justice. The Permanent Court was the predecessor of the International Court of Justice at the time of the League of Nations. It started operating on 15 June 1922, almost 100 years ago. What was the first case that the judges got on their desks? A request for an advisory opinion concerning the designation of the Workers' delegate of the Netherlands at the Third Session of the International Labour Conference. On 31 July 1922, the Permanent Court issued its Advisory Opinion No. 1.

Some of the main findings of the Permanent Court, which the Credentials Committee applies in many of the cases that are brought before it, are as follows. First, the question of which organizations are the most representative is to be decided in each particular case, having regard to the circumstances in each particular country. Numbers are not the only test

of the representative character of the organizations, but they are an important factor; all else being equal, the most numerous will be the most representative. Second, there may be more than one representative organization in a country, and where several such organizations exist, the Government must take all of them into consideration when nominating their Employers' or Workers' delegates and advisers. Third, the aim of each Government must be to achieve an agreement with all of the most representative organizations; but that is only an ideal and is extremely difficult to attain. What is required of the Governments is that they should do their best to effect an agreement between the most representative organizations. And fourth, a delegate may be nominated in agreement with several organizations which, taken together, represent more workers than the single largest organization in the country. I invite you to read the Committee's report to see how these principles have consistently guided the Committee in discharging its mandate. In honour of its centenary, we have made express reference in the report to Advisory Opinion No. 1.

At this session, the Credentials Committee examined three cases that were before it for monitoring, decided by the Conference at its 109th Session. In each of the three cases, the Committee considered it necessary to renew its monitoring measures. The proposals are in paragraphs 11, 18 and 26.

The Committee received and examined 16 objections. Three of them were time-barred, and one was not receivable for another reason. Of the objections that the Committee examined, 14 concerned the nomination of the delegates and two concerned incomplete delegations, one of which lacked a Workers' delegate and one of which was exclusively governmental.

The Committee also examined two complaints concerning the non-payment of delegates' travelling and subsistence expenses and received two more that were time-barred.

I would like to highlight a few cases. A number of objections made reference to serious allegations of violations of freedom of association. I would like to mention the objection concerning the Employers' delegation of Nicaragua and the objections concerning the Workers' delegations of Angola and Guinea-Bissau. Although there is often a link between flawed nominations of Employers' or Workers' delegations and freedom of association violations, the Committee has no jurisdiction to examine allegations concerning freedom of association. Since 2004, the Committee has had the possibility to propose to the Conference the referral of such allegations to the Committee on Freedom of Association, if the allegations are not already before that Committee. It considered this possibility in the three cases I have mentioned, but eventually made use of it only in the case of Angola. The Committee's proposal appears in paragraph 34 of the report.

Another case I wish to highlight was a complaint concerning the non-payment of travel and subsistence expenses of the Workers' delegation of Costa Rica. The Government decided not to send any delegation from the capital to Geneva. This case gave the Committee the opportunity to apply its case law to this session of the Conference, which combines in-person and remote participation, often referred to as "hybrid" participation. The Committee noted that the applicable provisions on complaints were suspended or modified by the operational arrangements adopted for this session. The Committee considered that there was, in principle, still an obligation for delegates having accepted their nomination to attend the Conference in person, and a corresponding obligation of Governments to cover their related expenses. In the Committee's view, remote participation should be limited to situations where extraordinary circumstances, such as public health-related restrictions linked to the pandemic, make travelling or in-person attendance impossible. The Committee considered that remote

participation is not equivalent to in-person participation, among other reasons because direct in-person contacts, in its view, facilitate consensus-building, which is very much what this Organization is about.

The Committee's second report contains the conclusions on the objections, complaints and communications received by it, as well as the monitoring cases.

In closing, let me express my sincere appreciation to the Employer Vice-Chairperson, Mr Yllanes Martínez from Mexico, as well as to Mr Vogt from the United States, and Mr Norddahl from Iceland, who successively served as the Worker Vice-Chairpersons of this Committee. We worked very well together as a tripartite team, and this report reflects our unanimous views. I also wish to thank the members of the Secretariat of the Committee, Mr Geckeler and Ms Beaulieu, and their team for their support and dedicated work, including the measures taken to ensure reasonable accommodation that permitted me, a person with a physical disability, to focus on the work at hand. I thank you for your attention, and now I have the privilege of commending the report to you.

The President

The Credentials Committee has unanimously adopted its report and requests the Conference to take note of its content and to approve the proposals put forward in paragraphs 11, 18, 26 and 34 of *Record of Proceedings* No. 2B, relating to Djibouti, Mauritania, the Bolivarian Republic of Venezuela and Angola.

In accordance with article 31, paragraph 3, of the Standing Orders of the Conference, the proposals shall be adopted without discussion.

If there is no objection, may I take it that the Conference takes note of the second report of the Credentials Committee and approves the four proposals?

(The Conference takes note of the second report of the Credentials Committee and approves the four proposals.)

I would like to take this opportunity to thank the members of the Committee for their excellent work. I hear that the atmosphere in the Committee was very positive and that work was carried out in a spirit of fruitful cooperation.

(The sitting adjourned at 5.35 p.m.)