

Tripartite Meeting on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike and the modalities and practices of strike action at national level

Geneva
23–25 February 2015

Outcome of the Meeting

The tripartite constituents met in Geneva from 23 to 25 February 2015 in accordance with the decision GB.322/INS/5 adopted by the Governing Body at its 322nd Session (November 2014).

The meeting was conducted in a constructive atmosphere. The social partners presented a joint statement concerning a package of measures to find a possible way out of the existing deadlock in the supervisory system. The Government group expressed its common position on the right to strike in relation to freedom of association and also delivered a second statement in response to the social partners' joint statement. The two statements from the Government group and the Joint Statement from the Workers' and the Employers' Groups are attached to this document. All statements made during the Tripartite Meeting will be included in the report of the Meeting.

In preparing the document on the standards initiative for the 323rd Session of the Governing Body, in view of the developments during this tripartite meeting, the Office will take into account the aforementioned statements, in close consultation with the three groups.

Appendix I

The ILO Standards Initiative – Joint Statement of Workers’ & Employers’ Groups (23.02.2015)

A possible way forward

The right to take industrial action by workers and employers in support of their legitimate industrial interests is recognised by the constituents of the International Labour Organisation.

This international recognition by the International Labour Organisation requires the workers and employers groups to address:

- The mandate of the CEACR as defined in their 2015 report;
- An approach to the way in which the CAS list is elaborated and the role for the workers and the employers representatives of the Committee in drafting of conclusions is to be respected;
- Improvement in the way the supervisory procedures operate (CFA, Art 24, Art 26); and
- Agreement on the principles to guide the regular Standards Review Mechanism (SRM) and its subsequent establishment.

I. The Mandate of the CEACR

The parties recognise the mandate of the CEACR as defined in paragraph 29 of its report of 2015:

“The Committee of Experts on the Application of Conventions and Recommendations is an independent body established by the International Labour Conference and its members are appointed by the ILO Governing Body. It is composed of legal experts charged with examining the application of ILO Conventions and Recommendations by ILO member States. The Committee of Experts undertakes an impartial and technical analysis of how the Conventions are applied in law and practice by member States, while cognizant of different national realities and legal systems. In doing so, it must determine the legal scope, content and meaning of the provisions of the Conventions. Its opinions and recommendations are non-binding, being intended to guide the actions of national authorities. They derive their persuasive value from the legitimacy and rationality of the Committee’s work based on its impartiality, experience and expertise. The Committee’s technical role and moral authority is well recognized, particularly as it has been engaged in its supervisory task for over 85 years, by virtue of its composition, independence and its working methods built on continuing dialogue with governments taking into account information provided by employers’ and workers’ organizations. This has been reflected in the incorporation of the Committee’s opinions and recommendations in national legislation, international instruments and court decisions.”

II. 2015 International Labour Conference

CAS Conclusions

- Involvement in discussion and drafting of conclusions by the Workers and Employers spokespersons is critical;
- CAS should adopt short, clear and straight forward conclusions. What is expected from governments to better apply ratified Conventions should be clear and unambiguous. Conclusions could also reflect concrete steps agreed with the governments to address compliance issues. The conclusions should reflect consensus recommendations. Where there is no consensus there will be no conclusions. Divergent views can be reflected in the CAS record of proceedings.

List of Cases

- Agreement between Workers and Employers on the number of cases to be discussed in the new ILC setting; realistically with the CAS to examine up to four cases per day over six days;
- A long list of 40 cases (12 cases proposed by Employer/12 cases proposed by Workers, plus double footnoted cases, and up to 10 additional cases as agreed by the employer and the worker spokespersons) to be published 30 days before the opening of the ILC;
- The list should be balanced between fundamental/technical conventions, geographical representation and level of development of the country;
- For the 2015 and 2016 ILCs and on a trial basis, and subject to review by the workers and employers group.
 - The short list will consist of up to three cases chosen by each group with special significance for the group; and
 - A reasonable number of double footnoted cases identified by the CEACR; and
 - The remaining cases reached through negotiation based on objective criteria;
 - The draft list should be established by Workers' and Employers' spokespersons by the Friday before the opening of the ILC. It becomes definitive after the adoption by the groups before the official adoption by the CAS.

III. Special Supervisory procedures (CFA, Art 24, Art 26)

- Clarification of the roles and mandates of the CFA and the Art. 24/26 procedures vis-à-vis regular standards supervision.
- Clear objective admissibility criteria, as set forth in the constitution and standing orders, will be re-affirmed with any additional criteria as agreed.
- Art 24 and 26 mechanisms are valuable tools where resolution of dispute is not possible. Representation and Complaints should be accompanied by an explanation of the measures that were taken at national level to resolve the issue(s) complained of, to the extent relevant, and indicating where pursuing such measures may have been futile. This does not impose any obligation to exhaust domestic remedies.

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- Employer and Worker GB Vice Chairpersons (and where agreed employers and workers organisations) should make every effort to engage in bilateral discussions with a view to a potential resolution prior to the GB debate of cases.
 - CFA process of review and clarification of the roles and mandates of the CFA is scheduled, and the parties recognise that the Committee report on these matters by March 2016.

IV. The Establishment of the SRM

Modalities of the SRM Objectives

Overall Objective: The ILO has a robust body of ILS that respond to the constantly changing patterns of the world of work, for the purpose of the protection of workers and taking into account the needs of sustainable enterprises.

Common Principles for the Modalities of the SRM (November 2011 LILS discussion agreed on the establishment of the SRM)

- Create a coherent policy framework within ILO standards machinery;
- A clear, robust and up-to-date body of standards;
- For the purpose of the protection of workers and taking into account the needs of sustainable enterprises;
- Adopt decisions by consensus;
- Negotiate in good faith to have a clear, robust and up-to-date body of standards;
- The social partners agree to implement these commitments.

Framework: The framework for the SRM would be the principles contained in the ILO Declaration on Social Justice for a Fair Globalization

Overview and follow up to SRM decisions: By the Governing Body in its LILS section

Tripartite WG: the Governing Body should establish a tripartite working group

Scope: All ILS, except outdated, withdrawn, replaced or recently consolidated ILS, should be subject to discussion and if agreed, review. In a first instance, Standards not reviewed by the Cartier Working Party and adopted between 1985 and 2000, the instruments for which the Cartier Working Party had requested further information, those classified by the Cartier Working Party as having interim status, and those that remained to be revised could be the subject of review.

Composition: 24 members, 8 G, 8 E, 8 W

Working Methods: the working group will meet for three days in March and November every year.

This statement shall remain in force from the March 2015 Governing Body session until the November Governing Body session in 2016. It shall continue thereafter unless in the opinion of either the Workers' or Employers' Group, it is, as of November 2016, not working according to its intent when it shall then be reviewed in line with the ILO Constitution.

Appendix II

Government Group Statement (23/2/2015)

Mr. Chairperson,

1. I speak on behalf of the Governments participating to this Tripartite Meeting.
2. At the outset, let me express on behalf of Governments, our strong commitment to make this meeting a tangible progress on unpacking the complex issue at hand. We will work, under your able leadership, in a constructive spirit and in good faith, so as to present to the Governing Body concrete views that will help it adopt an informed decision in March. Mr. Chairperson, you can count on the Governments' convinced support to make these three days of deliberations a success. We look forward to the same spirit by all the Members of the Tripartite Meeting.
3. Mr. Chairperson, the Government Group had the opportunity to thoroughly ponder on the question that is posed to us all, namely the relation between Convention 87 on Freedom of Association and the right to strike.
4. The Government Group recognizes that the right to strike is linked to freedom of association which is a fundamental principle and right at work of the ILO. The Government Group specifically recognizes that without protecting a right to strike, Freedom of Association, in particular the right to organize activities for the purpose of promoting and protecting workers' interests, cannot be fully realized.
5. However, we also note that the right to strike, albeit part of the fundamental principles and rights at work of the ILO, is not an absolute right. The scope and conditions of this right are regulated at the national level. The document presented by the Office describes the multi-faceted regulations that States have adopted to frame the right to strike.
6. We are ready, right from this Tripartite Meeting, to consider discussing, in the forms and framework that will be considered suitable, the exercise of the right to strike. We believe that the complex body of recommendations and observations developed in the past 65 years of application of Convention 87 by the various components of the ILO supervisory system constitutes a valuable resource for such discussions, which will also be informed by the multi-faceted regulations that States and some regions have adopted to frame the right to strike.
7. Mr. Chairperson, in conclusion, Governments will spare no effort to achieve a tangible outcome in the days to come through sustained consultations and dialogue.

Thank you Mr. Chairperson.

Appendix III

Government Group Statement (24/2/2015)

Mr Chairperson,

1. I take the floor on behalf of the Governments participating to this Tripartite Meeting.
2. We acknowledge the “Joint Statement of Workers and Employers groups on a possible way forward to the ILO standards initiative” which we received yesterday, just before entering the Plenary. We welcome the efforts and the progress made by the social partners in reaching a common position on an extremely complex issue. The supervisory system of this Organization was put in an impasse for the past three years. We therefore take note of the willingness of the social partners to revitalize their dialogue.
3. We underline that the Government Group seriously prepared for the original task that this Tripartite Meeting was given by the Governing Body. Our common position is expressed in a comprehensive and balanced statement that was delivered yesterday afternoon. We consider of the utmost importance that the statement be reflected in the outcome and report of this meeting and be taken into account in tripartite development of a durable solution in the GB
4. We observe, that the issues raised by the social partners’ statement mainly pertain to the competence of the Governing Body and that they exceed the mandate of the current Tripartite Meeting. We therefore want to hold a comprehensive tripartite discussion at the next session of the Governing Body in March and we are ready to engage in a fruitful debate in that occasion. We want also to explore ways to advance the discussion in the weeks leading to the GB session.
5. We recall that, according to the ILO Constitution, Member States are responsible for the effective implementation and observance of labour standards. We have therefore a stake in the well- functioning of the supervisory system.
6. We look forward to a renewed, long lasting cooperation and to contributing in a tripartite way to a durable and effective solution to the issues related to the supervisory system, which is the pulsing heart of the Organization to which we all belong.