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Chairperson: Ms Cecilia Mulindeti-Kamanga

Discussion of individual cases (cont.)

Discussion des cas individuels (suite)

Discusión de los casos individuales (cont.)

Discrimination (Employment and Occupation) Convention, 1958 (No. 111) (cont.)

Qatar (ratification: 1976) (cont.). **The Government member of Indonesia (Ms SETYAWATI)** stated that her Government took note of the efforts of the Government of Qatar in implementing Convention No. 111 and welcomed in particular the abolishment of the sponsorship system *(kafala)* to ensure the freedom of movement of workers, including domestic migrant workers. She also welcomed the preparation of a domestic worker act and expressed the hope that the Government of Qatar would expedite the process of finalizing

the act so that the provisions of the Domestic Workers Convention, 2011 (No. 189) could be implemented in an effective manner.

Le membre employeur de l'Algérie (M. MEGATELI) a constaté avec satisfaction que la question de la non-discrimination en raison de l'opinion politique, de l'ascendance nationale et de l'origine sociale avait était réglée par l'article 35 de la Constitution du Qatar, selon les explications fournies par le gouvernement. La législation ne comporte pas de dispositions discriminatoires à l'encontre de l'emploi des femmes. Par ailleurs, le harcèlement sexuel sur le lieu de travail constitue désormais une infraction pénale. Il est clair que le gouvernement a réalisé d'énormes progrès et doit être soutenu et accompagné dans ses efforts.

The Worker member of Kuwait (Mr AL ARADAH) welcomed the measures taken by the Government to address the issues raised by the Committee of Experts concerning the sponsorship system *(kafala)*. Such a system had been replaced by a contractual model. Today, migrant workers had the possibility to freely change their employers. The Government was committed to this new development, and had shown its readiness to address this issue by taking measures in accordance with the requirements of the Convention. The Committee had to take into consideration these efforts when preparing its conclusions.

The Government member of Mauritania (Mr T'FEIL BOWBE) considered that the Government had demonstrated its achievements in implementing Convention No. 111. All discriminations based on opinion and social origin were criminalized and sanctioned. The Law on Human Resources prohibited discrimination between men and women in relation to wages and prohibited sexual harassment at the workplace. Furthermore, the system of sponsorship *(kafala)* had been abrogated. The Committee was called to take into consideration these positive developments when adopting its conclusions.

The Employer member of Sudan (Mr ELGORASHI) welcomed the information provided by the Government, in particular the adoption of new legislation that was inclusive

and covered non-discrimination, promotion of equality in employment, as well as positive discrimination, which allowed women to enter the labour market. In this respect, women could have access to managerial positions in the national economy. Furthermore, training of inspectors had been promoted to ensure a decent working environment. This also prevented sexual harassment in the workplace. Severe sanctions were taken when violations occurred. Moreover, the sponsorship system *(kafala)* was no longer applicable, and workers could freely change employers. Finally, the National Development Strategy aimed at promoting international labour standards and national legislation.

The Worker member of the United Arab Emirates (Mr ALSHAMSI) welcomed the efforts made by the Government of Qatar to improve the conditions of work and, in particular, the abrogation of the sponsorship system *(kafala)* and the possibility given to foreign workers to freely change employer. Women took an active part in the labour market. Furthermore, the Constitution of Qatar prohibited any discrimination and the Government had demonstrated its commitment to fully apply Convention No. 111. The Committee had to take into consideration these good achievements in its conclusions.

The Government member of Malaysia (Ms THANGARAJOO) expressed the belief that the steps taken by the Government of Qatar to address Convention No. 111 constituted a way forward to eliminate the issues listed by the Committee of Experts. Noting in particular the establishment of a platform for workers to submit complaints and the abolishment of the *kafala* system, she expressed support for the position of the Government of Qatar and called on the Committee to consider the important efforts and progress made in addressing the issues raised under the Convention.

The Employer member of Iraq (Mr AL-SAADI) expressed his concern that Qatar was included in the short list of individual cases. The Government and employers of Qatar were committed to international labour standards and fundamental human rights. Qatari laws guaranteed the rights and freedom of all workers. The Iraqi employers supported the statements made by the Qatari Government and employers. The conclusions of the

Committee had to be fair and equitable. Qatar was a major partner in receiving migrant workers at the international level and this should be encouraged, not hindered. Taking into account the Government's goodwill and openness to cooperation in handling the issues raised, it would only be appropriate and fair to remove Qatar from the list of cases to be discussed by the Committee.

The Government member of Sudan (Ms IBRAHIM) took note of the seriousness of the Government in promoting its legislation, which prohibited discrimination in employment and occupation. Article 35 of the Constitution of Qatar prohibited any discrimination whatsoever on grounds of political opinion, national or social basis, and labour legislation was interpreted in the light of this provision of the Constitution. Furthermore, Qatar was considering adopting a law on domestic workers in accordance with the provisions of Convention No. 189, but needed more time to implement its laws in an appropriate manner.

La membre gouvernementale du Sénégal (M^me^ FALL) a remercié le gouvernement pour les informations fournies et a salué l'ensemble des mesures prises, estimant que ces dernières dénotaient la volonté politique de coopérer avec le BIT. Elle a exprimé l'espoir que le BIT continuerait à soutenir le Qatar par l'intermédiaire de la coopération technique.

The Employer member of Oman (Mr AL ZADJALI) recalled that, in the previous discussion in the Committee, the former Labour Minister of Qatar had expressed his readiness to cooperate with the ILO and promised to update national legislation on workers' rights. In this regard, the law on sponsorship *(kafala)* had been repealed by a new Decree, and this promulgation demonstrated the good cooperation of the Government of Qatar. The Committee had to take into consideration these positive developments when preparing its conclusions.

La miembro gubernamental de Cuba (Sra. LAU VÁLDEZ) agradeció la información brindada y alentó a los presentes a que se continúen avanzando por el camino de la cooperación y del diálogo, a través del intercambio de información, de la ayuda a la

creación de capacidades, de la promoción y aplicación de las buenas prácticas, así como del reconocimiento mutuo de los avances logrados y de los retos por superar. Consideró que esas eran las vías que conducirían al cumplimiento efectivo y sostenible de los propósitos que en estas materias se deseen alcanzar.

The Government member of India (Mr NAYAK) thanked the Government for providing a detailed submission and expressed appreciation for the various measures initiated to give effect to the recommendations of the tripartite committee set up by the ILO Governing Body, as well as to the comments of the Committee of Experts. He noted the Government's submission according to which sections 93 and 98 of the Labour Act were interpreted in light of article 35 of the Qatari Constitution that prohibited any discrimination based on political opinion and national or social origin. He further appreciated the comprehensive and integrated approach adopted in implementing the National Development Strategy (2011–16), as well as its focus on promoting gender equality and inclusiveness in the education and vocational training systems. Positively noting the steps taken to protect the rights of domestic workers, including the drafting of an act on domestic workers, he encouraged the Government to expedite the adoption of the act and to align it with the provisions of Convention No. 189 and its accompanying Recommendation. The clarification given, in the sense that the new Act No. 21 of 2015 completely abolished the sponsorship system *(kafala)* and replaced it with an employment contract system was also noted. Moreover, the Government member stated that Qatar had extended full cooperation to the high-level tripartite delegation that visited the country and had demonstrated its continued commitment to work with social partners and to avail itself of appropriate technical assistance from the ILO to further improve labour rights and labour protection. Supporting Qatar's efforts to further strengthen its compliance with Convention No. 111 and progressively increase participation of women in the labour market, he requested the Committee to fully take into account the detailed responses provided by the Government when making its recommendations.

The Government member of China (Mr DUAN) took note of the information provided by the Government on the steps taken to implement the measures recommended by the Committee of Experts, such as the adoption of legal provisions expressly defining sexual harassment as a crime, the abolition of the sponsorship system, as well as the provision of vocational training and guidance. He encouraged the ILO to provide the necessary technical assistance requested by the Government.

The Government member of Canada (Ms ZHANG) indicated that her Government remained concerned by the state of labour rights in Qatar. She strongly supported the Committee's urging that the Government take the necessary measures to ensure protection of all workers against discrimination with respect to all prohibited grounds, both in law and practice, and recalled the Committee's request to provide information on measures taken or envisaged to protect migrant workers from such discrimination. She also urged the Government to adopt measures to curb any discrimination against women in the workplace, encouraged it to increase women's participation in the labour market and recommended adoption of draft legislation on domestic workers, a category of workers hitherto excluded from the Labour Act of 2004. Recalling the Committee's observations referring to the insufficiency of the legislative framework to ensure the prohibition and effective protection against sexual harassment in the workplace, the Government member strongly supported the Committee's requests for the Government to take the necessary steps to adopt legal provisions to prohibit quid pro quo and hostile sexual harassment at work, and to provide effective mechanisms of redress, remedies and sanctions. She also concurred with the Committee that the Government should provide further information on the steps taken by the Labour Inspection Department to detect cases of discrimination in the workplace, as well as on the measures being considered to train labour inspectors.

The Government member of Turkey (Mr ÖNAY) noted the important improvements made in legislation and in practice with regard to the application of Convention No. 111, in particular the annulment of the sponsorship system *(kafala)* by a

new act that introduced a contract-based system and the preparation of a draft act to regulate the work of domestic workers by increasing the capacity of the relevant bodies in the Ministry for inspection and to provide guidance and counselling to workers with a view to informing them of their rights and obligations. Noting with interest that the National Development Strategy for 2011–16 included comprehensive and integrated strategies and projects to ensure equality and inclusiveness for each sex and each age in employment and occupation, he urged the Government to continue working closely with the ILO and to take further steps to enhance the enforcement of all the measures, strategies and projects.

Le membre gouvernemental de l'Algérie (M. MERCHICHI) a pris bonne note des informations fournies par le gouvernement, et notamment de l'abrogation du système de parrainage *(kafala)*, de l'instauration d'un système contractuel, de l'adoption d'une stratégie de développement, et de la mise en place d'un service d'inspection du travail. Il a salué la coopération du Qatar avec l'OIT.

The Government member of Bangladesh (Mr KABIR) welcomed the progress made in enforcing existing laws and the initiative for legislative reforms, particularly on wage payments to expatriate workers, employment contract systems, employment of domestic workers and various other improvements. Encouraging the ILO to extend technical cooperation to Qatar to complete the ongoing reform process and to further improve enforcement, the Government member called on the Committee to take into account the significant efforts and progress made by the Government in addressing the issues raised.

Le membre gouvernemental du Maroc (M. SOUKRATI) a remercié le gouvernement pour les informations et clarifications apportées à la commission, ainsi que pour ses efforts présents et à venir pour répondre aux commentaires de la commission d'experts. Le gouvernement a adopté une nouvelle loi assurant la protection des travailleurs contre toutes formes de discrimination dans l'emploi. Il a aussi démontré sa volonté de prendre toutes les mesures nécessaires pour remédier aux problèmes relevés par la commission d'experts, y compris par l'adoption de la Stratégie nationale de développement

(2011-2016), qui met l'accent sur l'égalité et l'inclusion dans l'enseignement et la formation. Cette stratégie devrait faciliter l'adoption de nouvelles lois pour résoudre les questions soulevées par la commission d'experts. Un projet de loi sur les travailleurs domestiques a été préparé, qui s'inspire de la convention nº 189. La loi nº 21 de 2015 permet aux travailleurs migrants de changer librement d'employeur. Toutes ces mesures prises par le gouvernement doivent être saluées et sa coopération avec le BIT pour la poursuite de la réforme du droit du travail encouragée.

Le membre travailleur du Bénin (M. IKO) a noté avec satisfaction que des mesures avaient bien été prises par le gouvernement afin de mettre en œuvre la convention nº 111 et a exprimé l'espoir que la situation des travailleuses et des travailleurs sous le régime de parrainage *(kafala)* change prochainement. Notant également avec satisfaction qu'une loi sur les travailleurs domestiques était en cours d'élaboration, il a prié la Commission de la Conférence de prendre acte des mesures prises et de refléter ces dernières dans ses recommandations.

The Government representative took note with interest of the observations made by the Employer and Worker members, as well as all the other interventions. The Government would take into consideration these observations and implement them in national law in order to promote and protect workers' rights regardless of their sex, origin or religion. As regards the inequality of wages, the law addressed this issue, as well as the conditions of work. Wages were subject to the demand and supply on the labour market regardless of sex or origin. Qatar had repealed all limitations on freedom of movement. In this regard, the sponsorship system *(kafala)* had been replaced by an employment contract, the new law would enter into force in December 2016 and sanctions would be imposed in cases of violation. Positive steps had been taken by the airline company, in particular the amendment of the employment contract, which would cover all crew members. The new contracts had entered into force and could no longer be declared null for the reasons raised during the discussions. Inspections were organized by the Ministry of Labour and statistics were

available on that matter; the Committee would be provided with inspection reports. In conclusion, the Government of Qatar was going forward in its efforts to maintain and protect the rights of workers by promulgating new legislation encouraging and improving the participation of women in the labour market

The Employer members thanked the Government for its submission and considered that a constructive debate had taken place in which the Government had set out some of the measures taken to address a variety of issues raised in the recommendations formulated by the tripartite committee and adopted by the Governing Body, as well as in the observations of the Committee of Experts. The Employer members hoped the Government would continue to engage in a positive manner to address these most important issues. They urged the Government to: adopt a clear legislative framework addressing discrimination recalling the grounds of prohibited discrimination specified in article 1(1)(a) of Convention No. 111 and including protection against sexual harassment in the workplace; provide the Committee of Experts with a full report on the measures taken in practice to ensure that individuals were not subjected to discrimination on the prohibited grounds in the context of employment and occupation; provide information on the practical measures taken to improve the participation of women in the labour market pursuant to Qatar's National Development Plan and its commitment before the Committee; and continue its steps to ensure real and meaningful equality in employment and occupation. The Employer members were hopeful that the Government would take all measures to declare and pursue a national policy designed to promote, by methods appropriate to national conditions and practice, equality of opportunity and treatment in respect of employment with a view to eliminating discrimination based on the prohibited grounds. They also urged the Government to engage with the ILO and to avail itself of the technical assistance to fully address the issues raised, both in law and in practice.

The Worker members indicated that it could be inferred from the statements made that discrimination in occupation and employment was deeply engrained in Qatari society. While that state of affairs could not be expected to change overnight, it should change and

change should start immediately. Laws prohibiting all forms of discrimination in occupation and employment should be passed as soon as possible, in addition to proactive programmes to promote the employment of women, on equal terms with men. Moreover, in order to ensure full participation of women once in the workforce, it would be necessary to ensure protection against sexual harassment at work, through effective remedies and dissuasive penalties. In addition, discrimination against migrant workers should also be addressed as a matter of urgency. The Worker members were of the view that the 2015 reforms essentially amounted to *kafala* with a new name and did not comply with the Forced Labour Convention, 1930 (No. 29). Furthermore, the protection granted under labour law should be extended to migrant domestic workers.

The Worker members urged the Government to: (1) fully comply, in both law and practice, with the decision adopted by the Governing Body at its 324th Session (June 2015) with regard to the representation made under article 24 of the ILO Constitution by the International Trade Union Confederation and the International Transport Workers' Federation, by January 2017; (2) abrogate Act 21 of 2015, by 2017, before it enters into force; (3) ensure that legislation prohibits discrimination on all the grounds of the Convention; (4) ensure that domestic workers are granted protection under the Labour Code; (5) take proactive measures to address discrimination in the workplace, including also by promoting employment in management positions for women; and (6) take proactive measures to address sexual harassment and gender-based violence in the workplace. Finally, the Worker members fully agreed with the Employer members as to the need for Qatar to request the ILO's technical assistance.

Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)

Convention (nº 87) sur la liberté syndicale et la protection du droit syndical, 1948

Convenio sobre la libertad sindical y la protección del derecho de sindicación, 1948 (núm. 87)

United Kingdom (ratification: 1946). **A Government representative (Mr MATTHEWS)** welcomed the opportunity to inform the Committee on the revisions made to the Trade Union Bill since it was considered by the Committee of Experts and before it was passed into law on 4 May 2016. The Government was confident that the Trade Union Act, which aimed to promote a more effective and collaborative approach to resolving industrial disputes, complied with its international obligations on trade union rights. The ILO Governing Body, the Governmental Committee of the European Social Charter and the European Court of Human Rights had previously accepted its legislative approach to strike the right balance between trade union rights and legitimate interests of others affected by their actions.

The Government had maintained this balanced approach in its proposals to implement its commitments to trade union reform that had received democratic support at the last general election. For example, the introduction of ballot thresholds addressed the fact that industrial action affected large numbers of the public who did not have a say in a strike ballot. In view of the widespread adverse consequences of industrial action in public services, the Act required that strikes in "important public services" received the support of 40 per cent of those who voted, in addition to a 50 per cent turnout, to ensure the necessary democratic legitimacy and clear majority support. The 40 per cent threshold was meant to apply to services extremely significant to the public and the initial use of the term "essential" was not connected with any existing definition. To avoid confusion, the term "important public services" was now used.

Other reforms in the Act included the extension of the notice for strike action from seven to 14 days, so as to allow more time to prepare, though a seven-day notice could still be agreed with the employer. The Act also established a duration of strike ballot mandates of six months, extendable by agreement to nine months, to avoid strikes on outdated mandates. It required more clarity on ballot papers on the matters in dispute, as well as on the type of proposed industrial action.

In relation to picketing, after consultation and concerns in Parliament, the Government had not taken forward the idea of requiring protest plans to be published weeks in advance. Instead of introducing a new criminal offence related to picketing, it had focused on modernizing the Code of Practice on Picketing. Concerning electronic balloting, the Government needed to be satisfied that it allowed all those entitled to vote to do so, that votes were secret and secure, and that risks of intimidation or malpractice were minimized. To that end, the Act required an independent review of electronic balloting within six months.

The Trade Union Act modernized the union regulator, by giving to the certification officer updated powers in line with similar authorities. It introduced a partial levy to share with taxpayers the cost for regulating trade unions and employers' associations. It also required public sector employers to publish information on facility time for union officials and that payroll deductions of union dues be administered only where the cost was not funded by the public purse.

Measures in the Act had been subject to extensive democratic scrutiny during the passage of the Bill and three large public consultations with trade unions, employers and members of the public. The Government was still considering its response on the proposal to repeal the ban on hiring agency workers during strike action and would announce its position in due course. During the consultations and extensive scrutiny by both Houses of Parliament, it had made revisions in light of evidence put forward. For example, it had revised proposals on the duration of strike ballot mandates, from four to six months, and

allowed their extension by agreement to nine months. It had modified its initial proposal to ban check-off arrangements in the public sector to allow them to continue where they were at no cost to the public purse. Specific aspects relating to union political funds had been scrutinized by a Select Committee in the House of Lords; as a result, the Act established that the requirement to opt-in applied only to new union members, which was welcomed by all political parties.

In conclusion, the Government was confident that the provisions in the Trade Union Act were reasonable, proportionate and based on a balanced approach, and that they were in line with its international obligations; they did not intend to prevent industrial actions, but to ensure they enjoyed a reasonable level of participation and support, to the benefit of everyone.

The Worker members pointed out that the Trade Union Bill had been introduced by the Government in July 2015 to severely restrict the right of workers to undertake industrial action, including pickets and strikes. The situation had been worsened by a proposed amendment to the 2003 Regulations on employment agencies to allow the use of agency workers as strike breakers. In addition, the Government had been allowed to interfere in voluntarily concluded collective agreements on trade union facilities – including time facilities related to health and safety, members' representation, consultation on redundancies and negotiations on pay and working conditions. The Act also granted to the certification officer significantly expanded powers to engage in highly intrusive investigations into trade union activities at the behest of employers and other groups.

The Government had failed to put forward any compelling arguments for the reforms introduced. The current laws already heavily regulated industrial action and did not need further tightening. The reforms, which ignored international obligations under Convention No. 87 and other instruments, would undermine rather than improve industrial relations. The Committee of Experts had examined the proposed legislation and made a number of observations, with regard to the additional ballot requirements for industrial action in certain

sectors, the limitation on the methods of strike balloting, and the use of agency workers to replace strikers. Other matters had been referred to the Government for further information by means of a direct request.

Concerning ballot thresholds, the Bill proposed higher minimum levels of participation for lawful industrial action. In all sectors, such action would be lawful only if 50 per cent of those entitled to vote did so, and that if a majority of those voting supported the action. For six sectors deemed "important public services" – namely: health services; education; fire service; transport services; decommissioning of nuclear installations and management of radioactive waste and spent fuel; and border security – an overall 40 per cent vote in favour was required. Thus, in the case of a participation of 50 per cent, 80 per cent of those voting would be required to support the proposed action. The Committee of Experts had expressly urged the Government to ensure that education and transport would not be covered by the new higher threshold, as they were not essential public services in the strict sense of the term.

As to the ballot methods, unions had to comply with complex notice requirements and to hold a postal ballot to ascertain support for the proposed action; they were prohibited from using other means such as allowing for strike votes at the workplace or electronically. The Government had opted for means to suppress strikes rather than to increase turnout for strike votes, if indeed its concern was that strikes were not sufficiently supported by membership. After the House of Lords had voted by a large majority, amendments requiring the Government to commission an independent review into the use of electronic voting and to publish a strategy to roll-out electronic voting, the Government had introduced amendments to ensure that it would be under no obligation to act following the review. The extent to which social partners would be a part of the review process remained unclear.

The use of agency workers to replace workers on strike had been banned since 1973 and there was no defensible reason to repeal that ban now or at any time. Allowing it could have no other purpose than to weaken strikes and ultimately to prevent workers from

exercising their right to take strike action. As with other proposals, this would only worsen industrial relations, by making it far more difficult for parties in a dispute to resolve differences. It would create resentment among workers, which would last long after the dispute had ended. It would also put agency workers in a difficult if not impossible position. It had to be recalled that many employment agencies, including those affiliated to the International Confederation of Private Employment Agencies (CIETT), had agreed with unions not to use agency workers to break strikes, creating the space for less professional and accountable agencies to supply strike-breakers. Even the striking enterprises would stand to lose, as the agency staff would be inadequately trained, resentful and far less productive. In some occupations, the lack of adequate training would likely involve health risks. The ILO was unequivocal in condemning the use of replacement workers and had condemned countries such as the United States, Chile and Zimbabwe for allowing the hiring of replacement workers. In particular, the Committee on Freedom of Association had explained that "the hiring of workers to break a strike in a sector which could not be regarded as an essential sector in the strict sense of the term constituted a serious violation of freedom of association". The Government had not yet announced whether it would go ahead with its plans to introduce regulations lifting the ban on the use of agency workers to replace striking workers.

The Trade Union Bill had also introduced several limitations on picketing, a power to cap union facilities, even where arrangements would have resulted from voluntary negotiations between employers and unions, and enhancing the powers of the certification officer. These matters were not addressed in the observation of the Committee of Experts but were instead referred to the Government in a direct request for further information. In these areas, some important concessions had been made in the legislative process.

Taken together, the various proposals amounted to an unprecedented assault on the right to take industrial action. They were in clear breach of the Government's obligations under international labour law, including the practice of the ILO supervisory system over

several decades. Indeed, in February 2015, the Government group, including the Government of the United Kingdom, had issued a unanimous statement in which it recognized "that the right to strike was linked to freedom of association which is a fundamental principle and right at work of the ILO. The Government group specifically recognized 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, could not be fully realized." Of course, the right was not absolute, and no one had ever claimed that. However, the Trade Union Bill struck at the heart of that right, rendering it difficult if not impossible to exercise it lawfully.

The Employer members thanked the Government representative for the information provided and noted with interest the process of consultation in relation to the drafting of the Trade Union Bill. The application in the United Kingdom of this fundamental Convention had been the subject of observations from the Committee of Experts on 12 occasions since 1995. Its antepenultimate observation of 2013 dealt with the right of unions to draw up their rules and formulate their programmes without interference from the authorities, in particular with regard to the expulsion of individuals on account of their membership in an extremist political party with principles and policies repugnant to the trade union. It also raised the need for fuller protection of the right of workers to exercise legitimate industrial action, including the issue of immunities from civil liabilities. That observation was not discussed by the present Committee.

The latest observation took note of the Trade Union Bill tabled in July 2015 and of the concerns expressed by the Trade Union Congress (TUC) in relation to the Government's legislative proposals. This raised two primary concerns for the Employer members. First, it was clear that when the Committee of Experts made its observation, it was commenting on a draft Trade Union Bill, which was still subject to social dialogue, a democratic process of discussion, debate and review; its comments were therefore premature. Revisions had been

made since, hence the said comments did not reflect the current situation. The basis and status of the observation were unclear and needed clarification.

Second, the observation contained a number of comments on issues such as picketing, strike ballot and quorum requirements, use of replacement workers in the event of strike, that is, issues which were all related to the regulation of strikes. The position of the Employer members that Convention No. 87 did not include the right to strike was well known and did not need to be repeated. It sufficed to say that there was no consensus in the present Committee on the issue. Since the Worker members had referred to the statement made by the Government group in February 2015, but only to quote its paragraph 4, it was useful to recall that the following paragraph of the same statement also noted "that the right to strike, albeit part of the fundamental principles and rights at work of the ILO, was not an absolute right", that "the scope and conditions of this right were regulated at the national level" and that "the document presented by the Office described the multifaceted regulations that States had adopted to frame the right to strike". The Employer members had heard the Government explain the complex issues and the act of balancing competing rights when considering these issues and looked forward to continuing the discussion.

The Worker member of the United Kingdom (Ms BROWN) underlined the far-reaching restrictions of the Trade Union Act on trade union activities. The Trade Union Act provided the certification officer with wide-ranging powers to investigate unions and access confidential records, including the names and addresses of union members. In addition, the Trade Union Act curtailed the freedom of the unions to decide on the use of their funds and empowered the Government to restrict the ability of public sector unions to represent their members. Unions were required to appoint picket supervisors whose contact details had to be given to the police. These changes exposed the unions to an increased risk of legal challenges and to punitive financial penalties. Politicians from all major parties had spoken publicly against the Trade Union Act. Non-profit organizations had warned that the Bill

would render the right to strike illusory. The devolved Scottish and Welsh governments had both publicly opposed the Bill.

Regarding the high voting thresholds, the Trade Union Act introduced a new requirement for a 50 per cent turnout. The Government assessed that 45 per cent of ballots in the last five years would not have been valid under this new rule. The Chartered Institute of Personnel and Development (CIPD), the leading human resources body in the United Kingdom, had called the thresholds "outdated" and had pointed out that in the last 20 years, the number of workdays of strike actions had fallen by more than 90 per cent. In parts of the public sector qualified as "important public services", the Government would additionally require unions to meet a 40 per cent favourable votes of all those entitled to vote. When analysed together, the two voting requirements entailed that a 50 per cent turnout on a ballot would require an approval rate of 80 per cent. This law would permit much wider restrictions to freedom of association than the ones allowed by ILO standards. This law would also have a disproportionate gender impact, considering that an estimated 73 per cent of the workers in these "important public services" were women. The Secretary of State had justified the inclusion of education and transport in the list of "important public services" by the inconveniences caused by stoppages in those areas, and not for reasons of public safety and security. The Minister had also said that the thresholds ensured that strike actions could only be carried out with a "reasonable" level of support. There were no other areas in which a requirement for up to 80 per cent support is considered reasonable, least of all when related to exceptions to fundamental democratic rights. The process for industrial action was already long and highly regulated. The Trade Union Act not only added further complex procedural requirements, including a doubling of notice periods for action, and extensive additional information to be included on the voting paper, it also provided that a ballot for action would expire after six months and thus had to be repeated if the dispute had not yet been resolved. The postal ballot process had to be simplified and modernized to allow for electronic voting.

The Government also intended to undermine any future action by allowing striking workers to be replaced by agency staff. This replacement of strikers was not desired by the employment agencies, as it was against the spirit of the Temporary Agency Worker Directive, and contrary to the European sector's professional code of conduct. It also constituted a serious violation of freedom of association and aggravated potential disputes between employers and employees. The Worker member concluded by highlighting that the Trade Union Act constituted a serious interference with the rights of United Kingdom workers under the Convention and called the Committee to request the repeal of the Trade Union Act and a discussion with social partners on how to develop a legal framework adequate to the challenges of the twenty-first century.

The Employer member of the United Kingdom (Mr SYDER) recalled that trade unions were declared lawful by the Trade Union Act of 1871, long before the creation of the ILO and that the United Kingdom had no problem ratifying the Convention in 1949. Before its enactment the Trade Union Bill had received a high level of national tripartite engagement and parliamentary scrutiny. Following the Conservative Party's election, the new Government had announced package reform measures, as promised during the electoral campaign, that included the Trade Union Bill and three consultation papers on the use of agency workers, ballots thresholds and intimidation picketing. Following the consultations, the Confederation of British Industry (CBI), the United Kingdom's leading business organization, and the TUC, an organization comprising 52 unions, had given oral evidence. The Bill had later been read by the House of Lords where all the main political parties were represented and where sat, among others, 16 former union leaders and 70 former union members. Subsequently, the Government had taken into consideration the outcome of the consultations and had amended the Bill to: remove the extension of the 40 per cent threshold to auxiliary workers; apply the 40 per cent threshold to private sector union members carrying out a specific important public service; and require ballots to be run under the 40 per cent threshold where a majority of workers involved are carrying out an important public

service. The Government also concluded that the ILO definition of essential services was not definitive and confirmed the six identified important public sectors. The legislative process had followed its course and later on, the CBI had given further written evidence, the House of Lords report had been published and several amendments had been proposed and adopted. On 4 May 2016, the Bill had received Royal Assent and had become the Trade Union Act 2016. The Government still had to draft secondary legislation for some parts, including on the use of agency workers, and had to consult on other parts. This meant that more parliamentary and public scrutiny would come and that it was unlikely to be a speedy implementation process.

The Employer member supported the consensus between the social partners, as expressed in their joint statement of February 2015, that: "[t]he right to take industrial action by workers and employers in support of their legitimate industrial interest is recognized by the constituents of the ILO". There was no consensus that the Convention included the right to strike and its modalities. The consensus position of the Government group, as expressed in the Governing Body in March 2015, confirmed: "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 situation was problematic on many levels with regards to the Convention and the issue of the right to strike remained unresolved both legally and politically. The recent difficulties were appreciated and lessons have been drawn from the dramatic events in 2012 and 2014. The Director-General, in opening this Conference, had highlighted: "So facing up to the responsibilities which the ILO's mandate for social justice imposes upon each one of us means adjusting our actions, our behaviour, our decisions to ensure that the undoubted opportunities of transformative change at work are realized. So that all – not just the few – can look to the future not with fear but with confidence, not with an eye only to individual advancement but also with a real sense of common purpose." The Director-General had also recalled the crucial role of the Conference Committee in finding a way forward despite the underlying divergences of

opinions and had emphasized the importance of a strong, authoritative and relevant standards system for an effective and influential ILO. The speaker wanted to constructively engage to help the ILO find lasting and harmonious resolutions of these divergences. A more private forum would help build the understanding necessary to find those resolutions. To conclude, the Employer member expressed his hope that the conclusion of the case would be in accordance with the guidance of the Director-General and would respect the tripartite consensus.

The Government member of the Russian Federation (Mr BOGATYREV) expressed concerns over the indication by the Government of the adoption of a series of measures to reform the labour laws which may adversely affect the realization of the workers' rights of association guaranteed by the Convention. Actions that would affect the basic labour rights had to be the object of discussions with the social partners and, where appropriate, the ILO should be consulted to assess whether such measures would be in conformity with the international labour standards.

The Employer member of the United States (Mr KLOOSTERMAN) emphasized that the present case was not ripe and as such should not be heard by the Committee. Under the ILO Constitution, the Committee was a legislative committee in charge of examining whether a member State was applying its domestic law in a manner that was consistent with the Conventions it had ratified. The legislation under scrutiny was a draft that had never been implemented. At the time of the comment by the Committee of Experts, the legislation was a draft Bill that had not passed one of the Houses of the Parliament. Instead of reviewing a Bill, the Conference Committee should dedicate its precious time to hearing more important cases that had been left off the list. It was unlikely that governments would allow the Committee of Experts to interfere with their internal legislative processes. To conclude, the Employer member questioned the decision of the Committee of Experts to formulate an observation on a draft Bill, especially when its subject matter, the right to industrial action, was extremely controversial.

The Worker member of New Zealand (Mr SISSONS), **also speaking on behalf of the workers of Australia**, **Canada, Fiji**, **New Zealand**, **Tonga** and the **United States** addressed the voting mode for industrial action in the United Kingdom. A mandate for strike action had to be sought by secret postal ballot, the costs of which appeared to be almost £200,000 per ballot and had to be borne by the union. The Trade Union Act significantly increased the requisite frequency of balloting. Moreover, there were new threshold requirements for strikes and the possibility of employers to either seek injunctive relief to halt a strike action, or to use agency workers to replace striking workers.

The laws on industrial action were widely regarded as some of the strictest in Europe with the United Kingdom being an outlier even among the so-called "Anglo" countries (that is, Australia, Canada, New Zealand and the United States). The Committee of Experts and the Committee on Freedom of Association had been clear that procedural rules which substantially attenuated the right to strike might violate the Convention. In paragraph 170 of the 1994 General Survey on Freedom of Association and Collective Bargaining, the Committee of Experts indicated that in relation to member authorization for industrial action: "… the ballot method, the quorum and the majority required should not be such that the exercise of the right to strike becomes very difficult, or even impossible in practice". Similarly the Committee on Freedom of Association, in paragraph 547 of the 2006 Digest of Principles on Freedom of Association indicated that "The conditions that have to be fulfilled under the law in order to render a strike lawful should be reasonable and in any event not such as to place a substantial limitation on the means of action open to trade union organizations."

Recalling that the Members of the House of Lords had requested an independent review into the use of electronic voting in industrial action ballots to which the Government had not yet given follow-up, he called on the Government to work with the social partners to permit electronic voting and workplace voting as soon as possible.

El miembro empleador de la Argentina (Sr. ETALA) reiteró la postura de los empleadores en relación con el derecho de huelga y el Convenio. Cada Estado tiene el legítimo derecho a legislar sobre el derecho de huelga a fin de permitir su ejercicio. Sin embargo, en el caso del Reino Unido la Comisión de Expertos cuestiona un proyecto de ley que regula aspectos del derecho de huelga, a saber cuestiones como la votación, las restricciones para la formación de piquetes, el reemplazo de los trabajadores en huelga, etc. Al hacerlo, la Comisión de Expertos cuestiona ámbitos que no le corresponde cuestionar. Cada Estado regula el derecho de huelga, que no es un derecho absoluto, y si bien debe contemplar la posibilidad de su ejercicio también debe contemplar que sea compatible con otros derechos como, por ejemplo, los de propiedad del empleador, libre circulación, y fundamentalmente con el derecho de los trabajadores que quieren trabajar, cuyo número puede superar a los que quieren adherirse a medidas de fuerza, y no pueden hacerlo por la existencia de piquetes. Concluyó diciendo que tampoco es posible sostener que es el empleador el que debe financiar las entidades gremiales o los piquetes.

An observer representing the International Transport Workers' Federation (ITF) (Mr SUBASINGHE) commented on sections 2 and 3 of the Trade Union Act, namely the new requirement of a 50 per cent participation quorum in strike ballots and the requirement of 40 per cent support of all workers in "important public services". The critical economic role of the transport sector was being used as a pretext to defend the free movement of passengers and goods over the rights of workers involved in transportation. Crackdowns of strikes in the transport sector had been occurring across the world in recent years. While the Trade Union Act did not ban strikes in the sector outright, the additional requirement of 40 per cent support would in fact deprive transport workers and all other workers in charge of "important public services", from their right to strike, as they would not be protected through compensation guarantees. This negative result would be further aggravated by the existing legal mechanisms available to employers to obtain injunctions to cease actions. The additional 40 per cent requirement for important public services implied that 50 per cent of

the members plus one member had to vote in a ballot and that 80 per cent of votes had to be in favour of an industrial action for such action to be lawful. The request of the TUC for electronic balloting had to be considered in the international context. In Germany, where some unions voluntarily laid down ballot thresholds in their rulebooks, ballots were held in workplaces rather than by post, producing higher turnouts. In Australia, a highly prescriptive system of strike ballots, it was possible to permit workplace and electronic voting. The comments of the Committee of Experts indicated clearly that the new ballot threshold would contravene with Article 3 of the Convention. The ILO supervisory bodies had held that the right to strike could only be restricted in the public service for those exercising authority in the name of the State or in essential services in the strict sense of the term. Transport occupations listed by the Government, namely local bus services, passenger railway services, airport security services and port security services, could not be considered essential services. The right to strike was a human right protected by the Convention and constituted international customary law. To conclude, the observer urged the Government to comply with the request formulated by the Committee of Experts to abandon the heightened requirement of support of 40 per cent of all workers in education and transport services.

Le membre travailleur de la France (M. ROCH) a déclaré que ce cas mérite l'attention de la commission. La commission d'experts, sur la base des observations du TUC, prie le gouvernement de réexaminer, conjointement avec les partenaires sociaux, le projet de loi en vue de sa modification. Or, depuis qu'il a été examiné, ce projet de loi a déjà subi de nombreux amendements. Cette commission a donc pour tâche difficile d'examiner un texte en évolution dans le cadre d'un processus normatif national. La convention encadre les règles portant sur l'exercice de la liberté syndicale et la protection du droit syndical en prévoyant deux limitations pour les autorités publiques. Aux termes de ces limitations, prévues aux articles 3, paragraphe 2, et 8, paragraphe 2, les autorités doivent s'abstenir de toute intervention de nature à limiter la liberté des organisations de travailleurs et

d'employeurs de s'organiser librement, et la législation nationale ne doit pas porter atteinte ni être appliquée de manière à porter atteinte à la liberté de créer des organisations de travailleurs et d'employeurs. Le projet de loi examiné ne vise aucune de ces limitations. Toutes les modalités auxquelles se réfère la commission d'experts n'intéressent pas cette commission puisque, comme il convient de le rappeler, les gouvernements sont les seuls compétents pour élaborer le régime des cas de suspension du contrat de travail en cas de conflit. En conclusion, il y a lieu de constater que la commission d'experts ne démontre pas qu'il y a violation de la convention, laquelle a seulement vocation à garantir la liberté de créer des organisations de travailleurs et d'employeurs.

The Worker member of Italy (Ms CAPUCCIO) stressed that in addition to the measures contained in the Trade Union Act, the Government proposed to authorize the recruitment of agency workers to replace strikers. This proposal infringed workers' freedom of expression, and rights to organize and protest. The proposal would also have severe detrimental effects on recruitment agencies, which have expressed their opposition to the replacement of strikers with agency workers. Furthermore, the proposal would increase tensions between employers and workers, and would lead to employees seeking new employment opportunities, thus reducing productivity and causing an increase in recruitment and training costs. The Committee on Freedom of Association had found that the hiring of workers to break a strike in a sector which cannot be regarded as an essential sector constituted a serious violation of freedom of association. In 2015, the Government of Italy and the trade unions issued a joint statement in which they called for the reaffirmation of the right to strike in all national and international forums in which the fundamental rights of people and workers were protected. The joint statement read as follows: "[t]he Treaty of Lisbon recognizes this right as one of the EU fundamental rights and defines a sort of joint European notion of this right, in addition to the national ones, by considering it a universal right. The ILO Committee of Experts, entrusted with the task of analysing national reports and detecting the infringements of Convention No. 87 signed by all EU Member States, has

operated along these same lines. Said Convention, together with the other seven, contributes to define the minimum level of protection to be ensured to the rights recognized by the EU Charter of Fundamental Rights." In reaction to the criminalization of strikes by the Italian fascist regime, the right to strike had been recognized as a fundamental right protected under the Italian Constitution. The right to strike, by giving to trade unions an economic leverage, also guaranteed freedom of association. To conclude, the Worker member called on the Government to reconsider its proposal and engage in a dialogue with the social partners.

The Employer member of Denmark (Mr DRESSEN) stated that the national modalities of industrial action had to consider diverse elements of the national labour market. The obligations in respect of industrial action had been clearly reflected in the Government group statement of February 2015, adopted by the Governing Body in March 2015, which should be the basis for the work of the Committee of Experts and the Conference Committee. According to this statement, the scope and conditions of industrial actions should be regulated at the national level. He therefore noted with concern that the comments of the Committee of Experts dealt almost entirely with the aspects of industrial action in national draft legislation. Emphasizing that the Committee of Experts had exceeded its mandate, the employer member refrained from commenting further on these comments.

The Worker member of Germany (Mr SCHUSTER) said that he was very worried about the freedom of association of British workers. The attack on these rights was reminiscent of a very dire period of British social policy, that is, the Thatcher era, during which all rights of workers had been severely curtailed. As a result of that policy, industrial relations had not recovered until today. While the provision concerning the explicit permission of the use of agency staff to replace striking workers had been removed from the Bill upon extreme pressure, the strike-breaking by agency workers remained a major issue for the Government. However, permitting the use of strike-breakers had wide-reaching consequences: not only did it compromise or render impossible the right to strike of trade unions, but – coupled with the minimum notification of two weeks prior to the strike –

enterprises could take all their time to employ agency workers and any strike would be pointless. In addition, agency workers were generally poorly paid and suffered deplorable working conditions. The balance of powers would be shifted in favour of the employer and the bargaining power of workers would be lost completely. Therefore, such would not only be contrary to Convention No. 87, but also to the Right to Organise and Collective Bargaining Convention, 1949 (No. 98). During the consultation procedure concerning the Bill, there had been criticisms not only from trade unions, but also from think tanks, law firms and recruitment agencies. It had also been found that British employers already had many means to replace striking workers. In conclusion, he claimed that strike-breaking should be prohibited as had been successfully done in the United Kingdom in 2003.

The Employer member of Turkey (Mr YLDIZ) stressed that the case relied solely on the observations of the Committee of Experts and emphasized that the issues surrounding the right to strike modalities were not within the scope of the Convention. Conflicts, such as the one witnessed in 2012 and following years, had been settled with the tremendous efforts of the tripartite constituents. The outcome of the settlement on the matter, while not definitive, had to be taken into serious consideration by the Committee of Experts. The issues raised by the Committee of Experts, such as essential services, strike ballots and picketing stemmed from highly contentious strike restrictions which had no legal basis in the Convention and could lead to further conflicts within the ILO system. Furthermore, the comments of the Committee of Experts in this case predominantly referred to a draft Bill which legislative process was not expected to be finalized in the near future and had not yet been implemented. This approach contradicted the rationale behind the existence of the Conference Committee and its fundamental mission to supervise the actual implementation of the Conventions instead of reviewing draft laws.

The Worker member of Zimbabwe (Mr NIKIWANE) expressed his serious concern over the recent changes to the legislation in the United Kingdom concerning freedom of association and was shocked to see that the Government of the United Kingdom had now

started to adopt the same strategies as the Government of Zimbabwe. Some provisions in the Trade Union Act were very similar to the provisions in the legislation of Zimbabwe, which had contributed to mass violence and economic downfall. In 2008, a Commission of Inquiry had been established with an overwhelming majority in the Committee to examine the situation in Zimbabwe.

The Commission of Inquiry had found that the list of essential services (including fire and health services as well as transport) was excessive in depriving workers from their right to strike. The United Kingdom had now created additional barriers for workers in essential public services (including health, education, fire, transport and nuclear services) concerning their right to strike in the form of a 40 per cent threshold of all workers entitled to vote with respect to strike ballots. Moreover, the notice period for taking industrial action in the United Kingdom had now been increased from seven to 14 days, which was similar to the one in Zimbabwe, which substantially undermined the right of workers to take industrial action. Indeed, the Commission of Inquiry found that the procedure for the declaration of strikes was problematic and explicitly confirmed that the right to strike was an intrinsic corollary of the right to organize protected by the Convention.

He emphasized that even though Zimbabwe had been operating under some of the provisions recently adopted by the United Kingdom that had not led to more jobs or economic security. On the contrary, Zimbabwe had one of the highest unemployment rates in the world. In conclusion, he expressed the firm belief that promoting fundamental rights and most importantly the right to freedom of association was the only way to create decent jobs and shared prosperity.

The Government representative reiterated that the approach throughout the legislative process on the Trade Union Act had been to strike a reasonable, proportionate and careful balance between the rights of trade unions and their members, and the legitimate interests of others affected by their actions. The measures in the Act had been subject to extensive democratic scrutiny. In addition, there had been three public consultations: (1) on

the scope of the 40 per cent support ballot threshold for important public services; (2) on whether the legal framework for picketing had to be strengthened; and (3) on a proposal to repeal the ban on hiring agency workers during strike actions (a measure that had not been included in the Trade Union Act).

The Government had listened to the views expressed on specific measures during consultations and scrutiny by both Houses of Parliament, and had made revisions in the light of all the evidence put forward. For example, the Government had revised proposals concerning the duration of strike ballot mandates. It had also modified proposals to ban check-off arrangements in the public sector. Indeed, uniquely there was a separate independent select committee set up during the passage of the legislation through Parliament on the proposals regarding the contribution mechanism for union political funds. The Government had accepted the vast majority of the recommendations of that Committee and the requirement to opt-in to a union's political fund now only applied to new union members. This had been welcomed by all political parties. Concerning the new powers of the certification officer, this agency was independent from the Government and trade unions could appeal any decision. With regard to electronic voting, the Government had to assess certain issues and would provide information in this regard in due course.

Finally, the Trade Union Act had only received Royal Assent on 4 May 2016 and key provisions were yet to come into effect, including through secondary legislation. Finally, observing that there was a wide range of views concerning the perception on industrial action among ILO constituents, the Government remained confident that the Trade Union Act struck a fair balance between the rights of unions and their members and their responsibilities towards the rest of society to everyone's benefit – and that it fully complied with its international obligations.

The Worker members indicated that the discussion had reflected the Government's determination in adopting the legislation and showed that the issues raised could not be considered "non law". The Trade Union Act did not enjoy the support of the people of the

United Kingdom, did not enjoy support among elected representatives of all parties and would put the United Kingdom on the far fringes of industrial relations systems in Europe. Moreover, the Act also violated well-settled observations and conclusions of the ILO supervisory bodies that had enjoyed decades of tripartite support.

The United Kingdom appeared to be associating itself more with countries that had been identified by the ILO supervisory bodies for their non-compliance with freedom of association rights. The Trade Union Act would mean that workers would face even greater limitations to stand up for decent services and safety at work, or defend their jobs or pay. The legislation appeared to be motivated wholly by ideological considerations without forethought as to its social and economic consequences. And the issues were not limited to the right to strike. The Act also granted to the certification officer significantly expanded powers to engage in highly intrusive investigations into trade union' activities and to investigate into union activities and obtain records at his own initiative, even without any complaint from a union member. The certification officer would have an insight into the internal organization, access to confidential union records, including correspondence between unions and members, access to membership records, including members' names and addresses. The certification officer would also be able to investigate all such information in employers' organizations and even in companies – as they were also a party to a collective bargaining agreement.

In the view of the Worker members, this very serious case, like many others cases discussed, deserved to be included in the list. The Government was seeking to effectively eliminate by law the fundamental right of freedom of association. Furthermore, the case had been included in the list in consensus with the Employer members. In conclusion, the Government should be urged to: (1) immediately repeal the Trade Union Act and organize full consultation and dialogue with the social partners on any preparation of legislation relating to industrial relations; (2) amend secondary regulation in full compliance with the Convention, including by: (i) withdrawing the proposal to remove the ban on the use of

agency workers during strikes; and (ii) remove references to the transport and education sectors from the draft regulations regarding the 40 per cent threshold for strike balloting; (3) in consultation with social partners, develop and introduce legislation to permit the use of other forms of ballots other than postal ballots, including electronic ballots and workplace balloting; (4) with the social partners, review new restrictions on picketing, on union political freedoms and the greater overall control of trade unions through enhanced powers of the certification authority, in order to bring them into conformity with the Convention; (5) refrain from interference in the collective bargaining agreements which have been voluntarily agreed between employers and unions; (6) refrain from interference into trade union activities and into the internal organization of trade unions; and (7) provide a detailed report on progress to the Committee of Experts.

The Employer members welcomed the Government's commitment to continue the constructive engagement and debate with both employers' and workers' organizations. Moreover, the information on the process of consultation and dialogue in the drafting process and on the proposed opt-in clause for union member contributions to political funds was welcomed. The Government also referred to the complexity of the issues and the need to balance competing rights. Acknowledging the constructive attitude of the Government, the Employer member requested more information on: (1) the status of the proposed abolition of a dues check off across all public sector organizations; (2) the status of the proposed opt-in clause with limited time validity for union members' contributions to political funds; (3) the status of the proposal to increase the powers of the certification authority, including information on how it may limit employers' and workers' organizations to organize their programme in accordance with their own rules. Finally, there was a lack of consensus in the Committee on the relationship between the Convention and the right to strike. The Employers' group was of the view that the issue of strike action could be regulated at national level, in line with the Government group statement of February 2015. Therefore, the Government should not be requested to repeal the Bill or amend its strike regulations.

This position, which diverged from the views of the Committee of Experts should be reflected in the records of proceedings of the Conference Committee.

(…)
The sitting closed at 9.15 p.m.
La séance est levée à 21 h 15.
Se levantó la sesión a las 21.15 horas.