

INTERNATIONAL LABOUR
CONFERENCE

ONE HUNDRED AND SECOND SESSION
GENEVA, 2013

RECORD OF PROCEEDINGS

PLENARY SITTING
COMMITTEE REPORTS
RESOLUTIONS
DELEGATIONS

INTERNATIONAL LABOUR OFFICE
GENEVA

Experts. In many of the cases, it had therefore been recalled that freedom of association was a human right and a prerequisite for collective bargaining and healthy social dialogue which was of benefit to employers, workers and social peace. The pressure exerted by the Employer members had forced the Worker members to make concessions that went to the very heart of their beliefs so as not to jeopardize the objective of agreeing on conclusions for all of the cases. Nevertheless, Convention No. 87 was one of the international instruments in which the Worker members found the basis for the right to strike and to take action in support of their claims, which were often the only and the final weapon available to workers whose calls went unheeded and whose rights were denied, even though they were set out in national law. And yet, outside national law, the source of those rights was being denied. But, if a government was not willing to respect the rights of workers that were set out in international instruments, why would it adopt legislation at the national level recognizing the possibility for workers to use such a weapon against itself through its economic or social policy? That type of reasoning resulted in an imbalance in the forces at play in favour of governments and a war against unions and social dialogue decreed by a small group of actors who mistook the social model. No economy could be productive without high-quality work which guaranteed the support of the workers for the plans of their employers. Workers who were not respected would not respect their work!

- 232.** In 2013, the Worker members had therefore had to accept a procedure that was similar to the issue already raised in 2012 by the Employer members concerning the inclusion of a disclaimer in the report of the Committee of Experts. The conclusions of some cases relating to the application of Convention No. 87 therefore included the wording that “the Committee did not address the right to strike in this case as the employers do not agree that there is a right to strike recognized in Convention No. 87”. It should be noted in this regard that the Committee had never commented in its conclusions on the basis of the right to strike and the Employer members were the only ones to disagree on this point. If the Employer members wanted to go further in challenging the mandate of the Committee of Experts and the right to strike, they should seek a solution in other tools available in the ILO Constitution, such as the recourse to article 37(2). In this regard, everything was possible except a new blockage and a new war of attrition.
- 233.** Returning to the discussion of the General Survey, the Worker members welcomed the fact that the Committee had presented the outcome of the discussion to the Committee for the Recurrent Discussion, as that was an essential link. It made it possible to reaffirm the importance of collective bargaining in all sectors, both private and public, in these times of crisis and attempts to reform labour law based on austerity. A failure on this point would have been fatal not only to the ILO, but also for the different industrial relations systems based on a balanced social dialogue between workers and employers at the interprofessional, sectoral and enterprise levels.
- 234.** The Worker members then addressed several individual cases that had been examined by the Committee. With regard to the case of Iceland (Convention No. 159), it had confirmed the beneficial contribution of examining a case of progress. This contribution was also of a qualitative nature, as it had afforded the opportunity to address two very current issues with efficiency and common sense: increasing the overall participation rate in the labour market through the reintegration of persons with reduced capacity and the added value of social dialogue, as the participation of social partners in the search for solutions for employment promotion was a key success factor. Iceland was a country with high unionization rates and high collective bargaining coverage which operated together ensuring an inclusive social policy and high-performance employment protection legislation.
- 235.** Three cases had been mentioned in special paragraphs in the report of the Committee: Uzbekistan (Convention No. 182), Belarus (Convention No. 87) and Fiji (Convention

Moreover, this year, for the first time since 2008, the Committee discussion included the examination of a case of progress: the application of the Vocational Rehabilitation and Employment (Disabled Persons) Convention, 1983 (No. 159), by Iceland.

The Committee's conclusions on all these cases constitute an authoritative and effective compass to guide member States in sustaining their commitments under the Conventions they have ratified. Once again, the Committee has placed priority on ILO technical cooperation assistance to help member States in implementing international labour standards.

The Committee decided to include in its report special paragraphs on the following cases: the application by Belarus and Fiji of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the application by Uzbekistan of the Worst Forms of Child Labour Convention, 1999 (No. 182). The results achieved highlight, in particular, the Conference Committee's remarkable capacity, through dialogue, to discharge its core mandate and to be simultaneously responsive to contemporary challenges. Hence, it makes a lasting contribution in enabling the ILO to discharge, in an effective manner, its core responsibilities.

It has been an enriching experience to participate in this work. I would like to thank the Chairperson, Ms Noemí Rial, in absentia, along with the Employers' and Workers' Vice-Chairpersons, Ms Sonia Regenbogen, also in absentia, and Mr Marc Leemans for their competence, efficiency and spirit of cooperation which has enabled this Committee to carry out its work.

I would like to recommend that the Conference adopt the report of the Committee on the Application of Standards.

Mr KLOOSTERMAN (*Employer, United States*)

On behalf of the Employers' group, I, too, commend the report of the Committee on the Application of Standards to the plenary today and recommend its adoption.

We Employers believe we had a very successful session this year. Having a successful Conference allows for a certain amount of reflections on the events of the past year. Last year, as I am sure most of you are aware, the Committee on the Application of Standards heard no cases whatsoever. And instead of a speech focusing, like this one will, on a successful Conference, my colleague's speech last year focused on issues that the Employers had with the Committee of Experts, their mandate and the interpretations they have given to certain standards, especially their view that Convention No. 87 contains a sweeping right to strike. I will try not to dwell on those issues any further. Instead, I would prefer to focus on this year and on the future.

Hopefully, what will be my last comment on the past is that last year's events showed that the ILO's standard supervisory system has a few problems, but we want to focus on solving those problems. We think tentative solutions have certainly been found on some critical issues and we certainly see the potential for a far more consensual approach in the work of this Committee, but continuing efforts need to be made to put the system back on stable ground and to make it resilient and sustainable for the future.

Now let us move on to this year and the future. This year, unlike last year, the Committee heard cases. As you have heard, we have heard 25 cases. We heard one case of progress, that of Iceland.

In September of last year, the Employers and the Workers jointly pledged that there would be a list of cases this year. We delivered on that pledge, I am happy to say. It means that we can all leave Geneva proud.

The shortlist was even finalized by Thursday of the first week. That timing gave governments ample time to prepare their cases before the Committee. Now the compromise achieved that allowed us to do these things came about only after some difficult negotiations – but we did it. Nevertheless, we all need to find some ways to make the list-making process less difficult in the future. So, in addition to the double-footnoted cases that we hear every year, we think it might be useful to consider, perhaps, some automatic elements in the selection process similar to that. A rotation system could be one, or perhaps covering all member States within a defined number of years.

Now the actual discussion we had of the 25 cases and one case of progress was full and constructive, led by the determined will on everyone's part to come to objective and fair assessments. We had mutually agreed upon conclusions for all of the cases and those conclusions gave clear and unambiguous messages to governments as to what this Committee wants them to do to better comply with their obligations. Was this easy? No, it was not!

A continually contentious matter is cases under Convention No. 87 where strikes are an issue. I mentioned it before, and we all know by now the Committee of Experts has delineated a sweeping right to strike in Convention No. 87. Everyone knows that the Employers' group disagrees with that.

This year, eight of the 25 cases involved Convention No. 87 and, of those eight, seven involved this unilaterally interpreted right to strike. Because there is no consensus on this issue agreeing on conclusions can be difficult in these cases.

So the Committee took an innovative step this year. The conclusions on Convention No. 87 right-to-strike cases, for the very first time, have included a clarifying phrase: "The Committee did not address the right to strike in this case as the Employers do not agree that there is a right to strike recognized in Convention No. 87."

The phrase certainly is not perfect. It is absolutely a compromise and it is most likely an exemplar of what a compromise is. But the phrase makes two things transparent that have not been transparent in the past. First, there is no agreement in the Committee that Convention No. 87 recognizes a right to strike. Second, because there is an absence of consensus on this issue, the Committee recognizes that we are not in a position to ask governments to change their internal laws and practices with regard to strike issues.

In February of this year we had the last of a set of informal discussions on the way forward. Some representatives from the Committee of Experts attended that meeting and they challenged this Committee to make our views clearly evident. They questioned whether our Committee was properly and adequately supervising the cases before us if our conclusions avoided mentioning areas of dispute. So, this year we have very clearly indicated

functioning. It functioned well this year and we hope it continues to function well in the future.

We want to make it absolutely clear to everybody in this House that the Employers support the ILO standards supervisory system. We are 100 per cent committed to maintaining an effective supervisory system. We want that supervisory system to be consistent with the ILO Constitution. We want it to be envied by every other international body.

We appreciate the constructive but robust dialogue we have had with the Workers, the Governments and with the Office over the past few weeks and, certainly, over the past year.

We wish to thank the Office for its excellent support for our work, in particular, once again, Ms Doumbia-Henry and her excellent team. Ms Doumbia-Henry has actually been able to smile occasionally this year. I know she did not have a good year last year. A special thanks go to our Chairperson, Ms Noemí Rial, in absentia; I know she had to return to her country. She ran the Committee well this year and we certainly thank her for that. We thank our Reporter, Mr David Katjaimo, who this year ensured the Committee's work was properly kept on record. I would also like to thank all my colleagues in the Employers' group, especially Sonia Regenbogen, who was our spokesperson at the beginning of the Committee, and for whom I am delivering this speech. I would like to thank my colleagues Sandra D'Amico, Alberto Echavarría, Juan Mailhos and Paul Mackay for their excellent help in preparing and presenting the cases we heard this year. I would certainly like to express our gratitude to the IOE, particularly Roberto Suárez, Maria Paz Anzorreguy, Alessandra Assenza and Catalina Perafan. And we appreciate all the work provided by ACT/EMP, Christian Hess and Sanchir Tugschimeg.

Last, and certainly by no means least, I thank Mr Leemans, my Worker colleague and his team because, as I have said over and over again, we had an interesting year. It was a constructive year, and I thank them for their constructive collaboration in what have been some very difficult matters.

Original French: Mr LEEMANS (Worker Vice-Chairperson of the Committee on the Application of Standards)

I would like to begin by extending, on behalf of the Workers' group, our condolences to the Indian Government following the sudden passing away of Mr Vikas.

In 2012, the Committee on the Application of Standards stopped its work prematurely, having found some flaws which were very worrying for the Committee itself and for the future of the supervisory machinery. Everything had gone wrong. There was no list or consideration of individual cases and no conclusions. In addition, it was impossible for the Committee to reach joint conclusions on the recurrent discussion which, last year, was about promoting the application of fundamental principles and rights at work.

The Employers later described the events of June 2012 as a "rupture point", meaning that maintaining the status quo was not possible, but that their participation in the system would be unaffected as long as the system itself was "mended". I am quoting here the summary record of the tripartite consultations which took place on 19 and 20 February 2013.

During these informal consultations, Governments recalled that they were relying on the social

partners to establish a list of cases, and the social partners responded by committing to this. So my first objective in representing the Workers' group of the Committee on the Application of Standards was to reach agreement with the Employers on a list of 25 cases to be considered at this session of our Committee. I have to say sincerely that through the months of April and May 2013, everything possible was done by the Workers and the Employers to guarantee the normal working of the Committee on the Application of Standards.

I must say that some very constructive meetings were organized between the spokespersons of the two groups, in the firm intention of being able very soon to submit a list of individual cases and so get down quickly to work.

In order to achieve this, there was a condition that had to be met, which was that no veto would be applied by either of the parties when it came to a choice among the cases proposed. It was clear that we expected to be able to talk about all the Conventions, respecting, as always, a geographical and thematic balance between fundamental Conventions, priority Conventions or more technical ones. On 6 June we did in fact have a list.

My second objective was to reach conclusions based on a consensus between Employers and Workers. This is what Governments were expecting from us and, in any case, it is the only common sense way of working if the supervisory bodies are to work on a tripartite basis.

Achieving consensus-based conclusions required two things, as far as the Workers' group was concerned.

First, to set aside matters relating to the events of 2012 solely within the Committee on the Application of Standards, in view of the processes that had begun, either officially, within the Governing Body, or in its margins with the help of high-level individuals. We said it would be all right to mention these matters, but only when it was appropriate.

Secondly, we expected to be able to discuss all the cases on the list agreed upon with the Employers, in the very promising climate, which I have already mentioned. So we have to welcome the fact that the discussion on individual cases took place. We can be glad that all of the Conventions on the list of individual cases were discussed, including one of two cases where progress had been made. I think we need to welcome the fact that it has been possible to present to the Committee for the Recurrent Discussion on Social Dialogue unanimous conclusions on the General Survey. The relationship between the Committee on the Application of Standards and the Committee for the Recurrent Discussion is still an important question. It was agreed upon in 2012, but the procedure was reinstated this year.

From our point of view, the contribution of our Committee to the work of the Committee for the Recurrent Discussion should be seen as the expression of a tripartite determination to reaffirm the importance of collective bargaining in all sectors, private and public, in these times of crisis in which attempts are being made to reform labour laws on a basis of austerity policies. But I must emphasize that it was by no means easy to achieve this result. We have to say it loud and clear: the Workers agreed to make concessions. They were bent on saving the supervisory machinery through the role of the Committee of Experts, acting in concert with the Committee on the Application of Standards.

This is in fact the role which was chiefly under attack.

From the very first day, the Workers' group insisted that the ongoing consultation process had to be given every chance to succeed, focusing our hopes on an improved outcome. There was no question of blurring the issues. So the Workers' group this year has made not only huge efforts, but significant concessions too, and I do not think that these concessions can be used to our detriment or analysed outside of the ILO as a confession of weakness. Let me put it another way. These concessions are a one-time event, and they cannot be repeated every year.

The first concession we made was to agree to take Colombia off the list of the 25 individual cases. It was not easy to accept this, because the case has not been discussed in the Committee on the Application of Standards since 2009, in spite of the systematic violation of workers' rights and those of their representatives, and despite the violence committed against trade union members and leaders. Today, they are still under threat and in mortal danger.

We know that throughout this Conference, contact took place between all interested parties under the guidance of Mr Guy Ryder, the Director-General. The intention of all parties seems to be to continue the dialogue in Colombia, and to make the most of the opportunity represented by the tripartite consultation committee as a space for dialogue.

There is still a lot to do, but a positive message has certainly been sent at this Conference. As spokesperson of the Workers' group, I expressed the wish that our Committee's report take note of the promises made and that the follow-up of the contacts made should also be communicated to our Committee in 2014, in the most appropriate manner.

The second concession we made was with regard to the interpretation of Convention No. 87. These concessions were perhaps not always fully understood within our own group, and indeed their scope has perhaps been underestimated by the Employers, who would have preferred a thousand times to reopen the debate on the mandate of the experts, and on the question of the legal basis of the right to strike. The sole objective of the concessions we made was to avoid the failures of 2012; in this sense, 2013 marks a turning point: this approach will not be repeated.

On our list we had nine Convention No. 87 cases, which we approached with moderation, trying to recall everything that the fundamental Convention contains in terms of important principles which go beyond the question of strikes and the experts' mandate for interpretation. Many of the discussions of Convention No. 87 cases began with a statement of principle, recalling that the Convention is, above all, a useful tool for workers and employers, and that freedom of association is a human right and a precondition for collective bargaining and for a healthy social dialogue benefiting employers and workers alike and fostering social peace.

We had to go further under pressure from the Employers, to avoid failing to achieve one of our objectives, which was to have conclusions for all cases. Anybody who reads the conclusions closely will find that in six of the nine conclusions relating to the discussion of Convention No. 87, there is the following comment: "The Committee did not address the right to strike in this case as the Employers

do not agree that there is a right to strike recognized in Convention No. 87."

The right to strike exists, but the exercise of the right has to be decided by national law? Seeking to have the right to strike legislated for at national level alone places the government of the member State concerned in an unequal balance of power in which the main weight falls to its advantage. I repeat now what I have said on many occasions. What we are talking about here is a war at the national level against trade unions and against social dialogue. By taking this line, the Employers are simply repudiating texts such as Article 8.1(d) of the International Covenant on Economic, Social and Cultural Rights, Article 6.4 of the European Social Charter of 1961 and also the Additional Protocol to the American Convention on Human Rights in the Area of Economic, Social and Cultural Rights.

It is interesting to recall that the European Committee of Social Rights, through the supervisory mechanisms for the application of the European Charter, has compiled a digest of its case law which not only sets out in detail the points raised by the Committee of Experts and the Committee on Freedom of Association, but actually goes further.

The tripartite supervisory bodies of the ILO recognize the right to strike, which they regard as a fundamental instrument for workers' organizations to defend their economic and social interests.

Apart from the Committee of Experts, which now takes the view that the right to strike is an essential corollary of the right to organize, we also have the various opinions of the Committee on Freedom of Association, which is a tripartite committee. At its 1952 meeting, it recognized the existence of this right.

For its part, the Committee on Freedom of Association bases the right to strike on the texts of the Conventions dealing with freedom of association, but also on the fact that this is a right which is generally accepted and recognized in the various member States. The Committee on Freedom of Association is not bound by the text of Conventions. Taking a wider view, it bases its recommendations more broadly on international principles in the area of freedom of association.

I would like to say, in passing, that on a number of occasions, the Employers' group has referred to the Committee on Freedom of Association when discussing the cases that come to our Committee.

So it seems that only the Employers fail to agree with the finding that Convention No. 87 recognizes a right to strike, and certainly not the Workers! The right to strike is a collective right and is regarded as an activity of workers' organizations, within the meaning of Article 3 of the ILO Convention.

Once more, what was essential for us this year, 2013, was to bring everything to bear to ensure that when work is completed on the 25 chosen cases, the mandate of the ILO for the promotion of social justice and of all the rights of the workers and employers is respected.

If the Employers wish to go further, we suggest they look at article 37(2) of the ILO Constitution. We hope they will come up with solutions. We await their proposals, and the door is not closed.

With regard to the conclusions adopted by our Committee for the 26 cases we examined, I would particularly like to focus on three cases, which are given a separate paragraph in the report of our Committee. The case of Uzbekistan for Convention