

INTERNATIONAL LABOUR CONFERENCE

ONE HUNDRED AND THIRD SESSION
GENEVA, 2014

COMMITTEE ON THE APPLICATION OF STANDARDS AT THE CONFERENCE

EXTRACTS FROM THE RECORD OF PROCEEDINGS

- GENERAL REPORT
- OBSERVATIONS OF THE COMMITTEE OF EXPERTS
ON THE APPLICATION OF CONVENTIONS AND
RECOMMENDATIONS – INDIVIDUAL CASES
- OBSERVATIONS AND INFORMATION
CONCERNING PARTICULAR COUNTRIES
- SUBMISSION, DISCUSSION AND APPROVAL

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appeared since a Convention was negotiated or by narrowing the flexibility of Conventions by providing subsequent restrictive interpretations. Standard setting was vested solely with ILO constituents and the Employer members vowed to resolutely defend this principle. The Committee of Experts could not fill the void created by the continued absence of an operational standards review mechanism. There was a consensus in the Governing Body regarding the need for a relevant and up-to-date body of ILO standards and the proposals to commence the standards review mechanism were awaited. The non-binding observations and recommendations of the Committee of Experts were not a substitute for a standards review mechanism and any expansion of the mandate of that Committee by the Experts risked undermining the supervisory system and hampering the work in the Governing Body.

48. The Employer members questioned why the Committee of Experts' annual reports were published with no prior review or approval of the Governing Body. Such a procedure would further strengthen governance within the supervisory system. Moreover, the Committee of Experts should avoid criticizing general government policies, such as austerity measures and fiscal consolidation. Such opinions were not appropriate as the mandate of the Committee of Experts was to examine the application of standards, and it did not have a political mandate.
49. In paragraph 92 of the General Report, the Committee of Experts recalled that it had set out in great detail its observations relating to the right to strike, taking into account the criteria applied by the Committee on Freedom of Association (CFA). This created the risk of a critical misunderstanding. The CFA was neither a mechanism for supervising ILO Conventions nor a tripartite standard-setting body, as its work was based on the call of the ILO Constitution to recognize the principle of freedom of association. The decisions taken by the CFA in relation to specific cases could therefore not be elevated as general principles or general rulings with reference to Conventions Nos 87 and 98. The CFA was not concerned with the application of any Convention, and its recommendations could not be deemed as case law for the interpretation of the principles in Conventions. Moreover, the members of the CFA served in their personal capacities and, while they came from the constituencies of the ILO, they did not represent these constituents.
50. Referring to paragraph 92 of the General Report, the Employer members thanked the Committee of Experts for having recognized that the supervisory system allowed for its work to be questioned and for having confirmed that, if there was a dispute concerning the correct interpretation of a Convention, then article 37 of the ILO's Constitution provided a way forward. This meant that if the constituents in this Committee did not agree with an interpretation, the correct functioning of a credible supervisory system would require that such a disagreement be visible in its conclusions and, if necessary, brought forward pursuant to article 37. The need for visibility of disagreement in this Committee's conclusions was at odds with the opening statement made by the Worker members when they challenged the sentence that had been included in the majority of the conclusions adopted by this Committee in 2013 regarding the application of Convention No. 87. The inclusion of this sentence in the conclusions had reflected the position of the Employer members, and consensus at all costs was no longer sustainable or credible. There was no agreement within this Committee on the recognition of a "right to strike" in Convention No. 87, as developed by the non-binding guidance of the Committee of Experts. The crisis resulting from the 2012 General Survey had confirmed that there was a divergence in views between this Committee and the Committee of Experts on the question of the interpretation of the right to strike, which needed to be addressed. There should be a fresh tripartite examination of this subject in light of the overall current industrial relations in ILO member States. In this regard, a discussion at the ILC on the right to strike deserved serious consideration.

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51. It was clear that the dispute concerning the right to strike would not go away simply if it was ignored or by postponing consideration of the issue. With regard to the discussion of individual cases concerning the application of Convention No. 87 containing a right to strike issue, the Employer members would be coherent with their approach of the previous year, and would support proposals for conclusions that did not, explicitly or implicitly, call upon governments to bring their law and practice into line with the detailed right to strike rules outlined by the Committee of Experts. Governments under examination for the application of Convention No. 87 were free to confirm during the supervision process whether or not they agreed to adhere to the Committee of Experts non-binding guidance on this subject in their country. The Employer members would insist that, when appropriate, the conclusions should explicitly state that there was no consensus concerning the right to strike and that the conclusions therefore did not cover that subject. The Employer members expected that the agreement of the previous year would continue, particularly as the list of cases for examination this year contained cases concerning the right to strike. The Employer members emphasized that the conclusions adopted had to reflect the views of the participants of the discussion.
52. Regarding the individual cases that had not been selected for discussion, the Employer members indicated that the case of Chile on the application of Convention No. 87 was a clear example of the Committee of Experts exceeding its mandate, as that Committee had been requesting for a number of years the amendment of various sections of the Labour Code regarding the right to strike. Regarding the application by El Salvador of Convention No. 144, the Employer members requested the Government to comply with the Convention by meaningfully consulting with the most representative employers' and workers' organizations, within the framework of the Labour Council, to find a solution guaranteeing a balanced tripartite composition in all board councils of autonomous institutions. Moreover, observations submitted to the Committee of Experts had not been taken into account for several cases, including Serbia concerning the application of Conventions Nos 87 and 144, Uruguay concerning the application of Convention No. 98, and the Plurinational State of Bolivia concerning the application of Convention No. 131. The Employer members indicated that the case of Togo, concerning the application of Convention No. 87 was a clear demonstration of breach of freedom of association principles due to government interference in the free and democratic election process of the President of the most representative employers' organization at national level.
53. The Employer members recalled that the previous year they had made a number of proposals regarding the working methods and outputs of the Committee of Experts. They welcomed the fact that the Committee of Experts had already taken measures to accommodate some of those proposals and trusted that there would be a broader discussion in which all the parties would engage constructively. With regard to the individual points raised the previous year, they made the following comments.
54. *Closer cooperation between the Conference Committee, the Committee of Experts and the Office.* The previous year, the Employer members had expressed their appreciation of the informal exchange of views organized in February 2013 between the members of the Conference Committee and members of the Committee of Experts, together with representatives of the Office. They emphasized the vital relevance of more direct dialogue with the Committee of Experts to facilitate its understanding of the realities and needs of the users of the supervisory system. They trusted that further steps would be taken in the future to intensify that dialogue and cooperation. One important measure to strengthen links between the Committee of Experts and constituents could be to involve the Bureau for Employers' Activities (ACT/EMP) and the Bureau for Workers' Activities (ACTRAV) in the briefing programme for new members of the Committee of Experts.

Participation in the work of the Committee

198. The Committee wished to express its gratitude to the 52 governments which had collaborated by providing information on the situation in their countries and participating in the discussion of their individual cases.
199. The Committee regretted that, despite the invitations, the governments of the following States failed to take part in the discussions concerning their countries and the fulfilment of their constitutional obligations to report: **Burundi, Croatia, Democratic Republic of the Congo, Côte d'Ivoire, Djibouti, El Salvador, Fiji, Guinea, Haiti, Iraq, Jamaica, Kyrgyzstan, Malaysia** (Malaysia Peninsular, Malaysia Sarawak), **Mali, Malta, Mozambique, Pakistan, Rwanda, San Marino, Sierra Leone, Somalia, Syrian Arab Republic, Turkmenistan** and **Uganda**. The Committee decided to mention the cases of all these States in the appropriate paragraphs of its report and to inform them in accordance with the usual practice.
200. The Committee noted with regret that the governments of the States which were not represented at the Conference, namely: **Belize, Dominica, Equatorial Guinea, Gambia, Guinea-Bissau, Marshall Islands, Saint Kitts and Nevis, Saint Lucia, Sao Tome and Principe, Solomon Islands, Tajikistan, Timor-Leste, Tuvalu** and **Vanuatu** were unable to participate in the Committee's examination of the cases relating to them. It decided to mention these countries in the appropriate paragraphs of this report and to inform the governments, in accordance with the usual practice.

E. Discussion on the 19 remaining individual cases

201. The Worker members stated that they were facing a situation where it was no longer feasible to reach any kind of conclusions by consensus, and that the Employer members had tabled demands that were simply not compatible with the working methods of the Committee. The Worker members asked the Employer members to explain why elements on which there was no consensus should be included in the Committee's conclusions.
202. The Employer members wished to clarify their position on the issue. They remained ready to negotiate the conclusions of the cases before the present Committee. The Employer members were of the view that it had been the Worker members who had refused to negotiate the conclusions of 19 cases because of a disagreement between the parties with respect to a legal issue that involved three cases. The Employer members considered that it was the Worker members who must explain the reason why they had adopted the position to decline negotiations on the conclusions of 19 cases due to difficulties that had arisen in three cases.
203. The Worker members stated that they did not refuse to negotiate the 19 cases which had been discussed, but they emphasized that it was impossible to negotiate consensual conclusions. It was inappropriate to introduce divergent elements in the conclusions since the latter should give governments clear guidelines on adjusting and improving practices. The difference of views between the Worker members and the Employer members only related to three cases, but that put into question the whole mechanism, which had been functioning since the 1980s. Today, it concerned three cases, but tomorrow it could be four, five or six, depending on the number of cases relating to Convention No. 87 to be discussed. Consequently, the Worker members requested that the Employer members explain why they wanted to include non-consensual elements in the conclusions.

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- 204.** The Employer members pointed out that, in paragraph 91 of its General Report, the Committee of Experts had taken note of the arguments advanced by both sides on the issue as to whether the right to strike was included in Convention No. 87, and had observed that the views of the two groups continued to be diametrically opposed. The Committee of Experts had therefore recognized the divergence of views in its report. The Employer members were prepared to negotiate conclusions with respect to the three cases involving the right to strike issue, provided that their view on the right to strike was reflected in the conclusions by the inclusion of the sentence agreed upon by the social partners and adopted by the Committee the previous year. This sentence had constituted the compromise solution at the 2013 Conference. Since the issue remained unresolved, the Employer members had requested that the very same sentence be included in the conclusions to record their views in this regard. It was thus regrettable that the Worker members refused such inclusion and any negotiation of the conclusions relating to these three cases. The Employer members found it, however, deeply regrettable that, because of their request to have the difference of opinion appropriately reflected, the Worker members had now taken the position not to negotiate any conclusions on the remaining 19 cases. They requested the Worker members to clarify why they declined the negotiation of 16 conclusions, none of which faced any divergence of views and which concerned the supervision of a variety of Conventions. The Employer members remained willing to negotiate conclusions for all outstanding cases and asked for an explanation as to why a disagreement on three cases had to result in a refusal to negotiate on all 19 cases.
- 205.** The Worker members confirmed their willingness to provide the necessary explanations. They emphasized that the situation facing the Conference Committee was not of their making and stated that they were willing, in line with what had been decided under the agreement reached within the Governing Body at its 320th Session in March 2014, to participate in the work of the Committee in a constructive manner. Regarding the reference made by the Employer members to the mandate of the Committee of Experts, it should be recalled that the Governing Body had unanimously accepted the Committee of Experts' own formulation of its mandate and that this was not the place to be calling that mandate into question again. The differing views of the Employer members concerning the right to strike were well known but that was not an issue to be settled in the context of the Conference Committee but in another place, at another time and according to other procedures. After some 30 years of adopting consensus-based conclusions, consensus was no longer possible today. It was regrettable to observe that certain elements had been brought into the debate albeit clear that they were going to create problems. Today it was Convention No. 87 that was concerned but tomorrow it might be other Conventions on which the Employer members disagreed with the Committee of Experts. It should be recalled that the purpose of the conclusions was to give clear and consensual instructions to governments reflecting the agreement of the two groups.
- 206.** In reply to the Employer members, the Worker members set out the reasons why such a situation had been reached and started by recalling certain elements to be taken into consideration in order to have a clear understanding of the situation and to assess the kind of solutions capable of achieving the future restoration of the standards system in which they believed. The ILO had a key role to play in promoting and achieving progress, social justice and fundamental rights such as freedom of association and the effective recognition of the right to collective bargaining. Social dialogue and the practice of tripartism by governments and representative workers' and employers' organizations at the national, regional and international levels were the most meaningful way to arrive at solutions that were useful not only to workers and employers but also to governments.
- 207.** The Worker members believed in the standards system of the ILO, whose tripartite structure was unique within the United Nations system. At the heart of that system was the supervision of the application of standards in law and in practice, through the interaction

between the Committee of Experts and the Committee on the Application of Standards, together with the work of the Committee on Freedom of Association, which was another tripartite component of the supervisory machinery. There now appeared to be a growing tendency to push for a “soft law” approach and for purely voluntary rules as opposed to binding standards, and that was something that the Worker members refused to countenance. It was testimony to the fact that the issues which had been fiercely debated when the ILO had been founded in 1919 were still relevant in 2014, and more so than ever. Standards were just as relevant today and there was no question of forgetting the lessons of the past.

- 208.** In March 2014 the Governing Body had reaffirmed that “in order to exercise fully its constitutional responsibilities, it was essential for the ILO to have an effective, efficient and authoritative standards supervisory system commanding the support of all constituents”. There was thus tripartite agreement on the standard-setting activity, on the one hand, and on the supervision of that activity, on the other. The Governing Body had also stressed “the critical importance of the effective functioning of the Committee on the Application of Standards in conformity with its mandate at the 103rd Session of the International Labour Conference”. The Committee’s mandate was linked to the application of articles 19 and 35 of the Constitution, and implicit in supervising the application of Conventions and Recommendations was a discussion of the information that would be supplied by member States, and specifically those on the list of 25 cases. According to the document on working methods, the list was established in terms of the likelihood of the discussion having a tangible impact on the countries on the list. As the governments had often asserted, notably in the discussions on working methods, drawing up the list was the joint responsibility of the social partners. That responsibility presupposed that joint conclusions reached by consensus could be adopted on the cases that the Employer and Worker members had together decided to examine. Consequently, if the Committee was to function fully and effectively as required by its mandate, it needed to be able to consider conclusions that were presented jointly by the two groups.
- 209.** The Worker members refused to submit conclusions that became non-consensual as soon as it concerned the interpretation of Convention No. 87, and considered that accepting once again the reservations put forward by the Employer members on the cases concerning Convention No. 87 would give the impression that a tacit jurisprudence in relation to freedom of association cases was creeping into the Committee. Furthermore, discussions in the Committee had shown that the Employer members were also turning their attention to other Conventions. In the case of the application of Convention No. 98 by Croatia, for example, the Employer members had requested that the conclusions should reflect their disagreement with the interpretation given by the Committee of Experts to Article 6 of the Convention in question. However, conclusions were meaningless unless they had a tangible impact on the country concerned, and it might be asked how a tangible effect could result from conclusions in which the Employer members stated that they did not agree that the right to strike was recognized in Convention No. 87. That formulation served no purpose at all. As far as effectiveness was concerned, one might wonder how asking one group to give in to another could be effective. The Worker members declared that they did not intend remaining silent and referred once again to the Governing Body decision of March 2014, in which the Governing Body “deemed it necessary to give further consideration to options to address a dispute or question that may arise with respect to the interpretation of a Convention”. A reference to paragraphs 1 and 2 of article 37 of the ILO Constitution was clearly implicit in those words. The Governing Body had also recognized “that a number of steps could be examined with a view to improving the working methods of the standards supervisory system”. This was not an attempt to avoid discussion because a working group could be set up on the matter. By reiterating their request to introduce the reservations they had expressed the previous year, the Employer members were clearly

undermining the attempts to find common ground that had been made within the Governing Body.

- 210.** In 2012, even though there had been nothing to suggest it would happen, the Conference Committee had failed to function. In 2013, to prevent any recurrence of the failure of 2012, the Worker members had made a one-time concession. They had also clearly indicated that they would no longer accept that the situation of 2012 repeated itself nor a repetition of the 2013 wording. The Employer members had expressed their disagreement at the time, as freedom of speech had entitled them to do, but they had been informed of the clear and determined position of the Worker members. In June 2014, the Worker members were resolved to negotiate the conclusions as they had undertaken to do in March but the situation had turned out differently and, in order to reach solutions, they had had to make constructive proposals throughout the negotiations. They had proposed to include in the Committee's report, after the summary of the statements but before the jointly adopted conclusions, the following sentence (in bold and in the same font as the conclusions): "The Committee took note of the opinions expressed by the Employers' group according to which it does not agree that the right to strike is recognized in Convention No. 87 and recalled that the question of the interpretation of Conventions is currently under discussion in the Governing Body". The Worker members deeply regretted that that proposal had not been supported by the Employer members.
- 211.** The Worker members emphasized that the absence of conclusions, which was not their choice but something imposed upon them, did not do justice to the Worker members who, for the second time, were returning to their countries more vulnerable than ever. As part of the follow-up to the Conference, the Worker members proposed that the Committee should request the Governments whose cases had been discussed to provide a report for examination by the Committee of Experts at its next meeting. Deploring the situation that had been imposed on them, the Worker members concluded that the intransigence which had been shown could never, in the context of tripartism and social dialogue, be the way to finding a solution that was acceptable to all.
- 212.** The Employer members emphasized their commitment to the ILO supervisory system. They recognized the immeasurable value of the work of the Office, of the Committee of Experts and of the International Labour Standards Department within the Office. This work was particularly important at the present time, due to the increasing globalization that was taking place. The Employer members wished to participate in the work of the Organization in every way, including in the supervision of international labour standards. They remained fully committed to tripartism and recognized the unique nature of the ILO. Tripartism was the ILO's greatest strength, which gave it relevance and credibility. However, tripartism did at times entail difficult disagreements. That said, there was much more that united the Worker and Employer members than that which divided them. It was possible to move forward, while at the same time allowing tripartite constituents to express disagreement from time to time. The legitimate difference between the Employer and the Worker members on the question as to whether the right to strike was included in Convention No. 87 had existed for decades. In 2012, it had become clear that this difference of view needed to be managed with a new approach. As a result, in 2013 the social partners had agreed to resolve their disagreement with the inclusion in the conclusions of six cases that involved the issue of the right to strike of a single simple, short sentence that nevertheless represented compromise. The sentence had been "The Committee does not address the right to strike in this case, as Employers do not agree that there is a right to strike in Convention No. 87." It had been a compromise that allowed the Employers' view to be reflected visibly within the conclusions of the Committee.
- 213.** During the current session of the Conference, the Employer members had negotiated the list of cases for consideration in good faith, and had delivered the list to the governments

by the proposed deadline. The Employer members had advised the Worker members that there were cases on the list that involved the right to strike, which the Employer members considered to be outside the mandate of the Committee of Experts. For the last two years, the Employer members had been transparent about their views both before the present Committee and the Governing Body that the Employers' view on the right to strike was to be visibly reflected in the conclusions of the Committee. They had therefore highlighted to the Worker members that they expected that the conclusions of cases concerning Convention No. 87 which involved the right to strike would again include the sentence that had been agreed upon the previous year. After negotiating the list of cases for examination, the Committee had moved forward, and had completed the discussion of all 25 cases over the course of the week. The discussions of each case had been fruitful and the Committee had had the opportunity to provide guidance to governments on how to ensure that national law and practice complied with international labour standards. The Employer members appreciated the effort the Government members had made to travel to Geneva, as well as their time and the presentations they had made. The Committee's work had proceeded, and, in their view, the cases had been supervised. A number of cases had raised extremely serious issues relating to violations of fundamental Conventions. The Committee's work had progressed well and conclusions had been adopted for the six double-footnoted cases. The Employer members had worked diligently towards reaching conclusions on the remaining 19 cases. There had only been three cases (Algeria, Cambodia and Swaziland), where disagreement had emerged as to how to reflect the difference of opinion regarding the right to strike. The Employer members had expressed the expectation that the issue could be addressed by using the same sentence that had been used in 2013. However, they had been open to other forms of compromise, such as the inclusion of a second sentence in the conclusions expressing the Worker members' views on the right to strike; or the use of different language to reflect the Employer members' views, provided that the substance remained the same. The Committee of Experts had observed the divergence of views in paragraph 91 of its report. The Employer members had proposed that the exact wording of that paragraph of the Committee of Experts' report be included in the conclusions, as a possible compromise. However, the Worker members had adopted the position that under no circumstances could the Employer members' view be reflected in the conclusions.

- 214.** The Employer members had not proposed a new approach this year; they had believed, and hoped that, given that the issue had remained unresolved before the Governing Body, the sentence agreed upon the previous year and adopted by the Committee could be used again, at the current session, and would again provide a way of coping with the difference of opinion. However, the Worker members had rejected that approach. The Employer members had been disappointed, but they had nevertheless tried to remain constructive, and had proposed to continue negotiating conclusions on the 16 outstanding cases to which the disagreement was irrelevant. In their view there had been an opportunity for broad consensus on those cases. The Employer members had been, and were still ready, to proceed to adopt conclusions on the cases where agreement already existed. Disagreement on one issue should not be used to prevent consensus on other issues. The Worker members' refusal to work to agree conclusions on all the remaining 16 cases was unfortunate.
- 215.** The Employer members reaffirmed their commitment to the supervisory system including the present Committee. The work that the Committee had accomplished over the last two weeks was very important and was central to the work of the ILO. The Employer members regretted that the Committee's work would not culminate in conclusions, at the election of the Worker members. Nevertheless, Governments had been made aware of the Committee's opinions on the cases that concerned them, and the Employer members hoped that they would take appropriate action. They agreed that the relevant Governments should report to the next meeting of the Committee of Experts. The Employer members remained willing and committed to seek solutions to the issue relating to the right to strike in a

tripartite manner. In their view, a sentence reflecting the views of the Employer members did not in any way undermine the nature of the conclusions or the authority of the present Committee. The direction given to governments with respect to the supervision of the cases remained clear. Disagreements were part of tripartism, and it was appropriate that they be reflected from time to time.

- 216.** The Government member of Costa Rica, speaking on behalf of the Group of Latin American and Caribbean Countries (GRULAC), regretted the present scenario which put the Committee in a similar situation to that of June 2012, in which it seemed that the Governments' role was reduced to one of mere spectators. GRULAC had never been a mere spectator in the discussion and those present knew that in all situations, from 2012, it had presented well-founded views aimed at safeguarding the good name and leadership of the Organization, with strict respect for legality. GRULAC called on the social partners to intensify their dialogue and involve the governments from the outset, as a core component of tripartism, which was the fundamental pillar of the Organization. The speaker regretted that the institutional channels made available by the Office had not been used with regard to the Governments. She urged the social partners to find an inclusive solution for the benefit of the system. Until now, short-term solutions had been proposed but no holistic remedy had been identified. GRULAC reaffirmed its commitment to the roadmap adopted in March 2014 relating to the present situation, and recalled that the Organization had the support of the Governments of Latin America and the Caribbean in finding a solution. The regional group reserved the right to comment more extensively to the Conference, once it was provided with more complete and accurate information on the current events.
- 217.** The Government member of Canada, speaking on behalf of the members of IMEC, noted that the situation was profoundly disappointing and worrying. The issues that had so deeply divided the Committee in 2012 were presently under Governing Body consideration and, while that work was under way, it was imperative for the good of the entire ILO supervisory system that differences of opinion regarding the right to strike not prevent the Conference from fulfilling its appointed task. That previous March, the Governing Body had "underscored the critical importance of the effective functioning of the Committee on the Application of Standards in conformity with its mandate at the 103rd Session of the International Labour Conference" and had "called on all parties concerned to contribute to the successful conclusion of the work of the Committee on the Application of Standards [CAS]". The IMEC members welcomed the fact that a final list of country cases had been negotiated by the Worker and Employer members and had been adopted, on schedule, by the Committee, which was an important accomplishment. However, it took more than a list of cases to bring the Committee's work to a successful conclusion. While Governments had no role in negotiating the conclusions or determining the contents of the list of country cases, they had a vested interest in the Committee's successful adoption of conclusions in all cases which had been discussed. Those conclusions reflected the Committee's deliberations and highlighted the importance that the Committee attached to the application of international labour standards in those cases. If they were unable to reach conclusions, the Committee would not have fulfilled its commitment to ensuring the successful completion of its work, and the IMEC members were deeply troubled by the message which that failure would send, not only to the rest of the Conference but, more importantly, to the entire international community about the strength and credibility of the ILO supervisory system, of which their Committee was an essential component. The IMEC members urged, once again, that the Worker and Employer members find a mutually-acceptable solution that would allow for the adoption of conclusions. They recognized that the solution would not be perfect, as that was the nature of compromise, and that it could be temporary. Nevertheless, the Governing Body must be allowed to continue its deliberations with a view to finding more lasting solutions that all groups could accept. They reiterated their strong support for the Director-General and the process towards a

lasting solution. If the conclusions could not be adopted for the 19 cases, their Governments would be profoundly disappointed.

218. The Government member of Greece, speaking on behalf of the European Union and its Member States, aligned themselves with the statement of IMEC. She emphasized the importance of the ILO supervisory system, which contributed to the promotion of universal human rights and which played a key role in monitoring and promoting international labour standards. The members attached great importance to maintaining a functioning Conference Committee for its impartial supervision of the implementation of international labour standards. The failure to produce conclusions jeopardized the credibility of the ILO supervisory system and freedom of association, a basic human right all over the world. It also affected the European Union, as some of its policies and instruments made references to the promotion of international labour standards and to the results of their supervision, including the conclusions of the Conference Committee. The members were seriously concerned about the current situation of the Committee, observing a real risk for the ILO's unique tripartite setting and its cornerstone activity of supervision. They called on all constituents, in particular the social partners, to support the work of the Governing Body and the Director-General in seeking a long-term solution to the points of disagreement.

219. The Government member of Brazil aligned himself with the statement of GRULAC. As agreed at the session of the Governing Body in March 2014, it was essential that the ILO had an efficient system of standards which had been agreed upon by Governments and Worker and Employer members. The Governing Body had stressed the importance of the good functioning of the Conference Committee and encouraged all members of the Committee to contribute to ensure that its work would be conducted successfully. Under article 37 of the ILO Constitution, all questions or disputes relating to the interpretation of a Convention had to be submitted to the International Court of Justice. That article gave only one alternative, i.e. a tribunal to expeditiously deal with the interpretation of Conventions. Without prejudice to the authority of the International Court of Justice, the Constitution provided that the Governing Body might establish rules for the setting up of that tribunal and submit them for approval by the Conference. The Conference Committee could not act as the tribunal. Questions regarding the interpretation of Conventions should not be included in the conclusions of that Committee. He recognized the historical role of the Committee of Experts in consolidating international labour standards. Members of the Conference Committee could express individual views on questions related to international labour standards. In this respect, he considered that the right to strike was recognized under international law. However, it had to be emphasized that the Conference Committee had no interpretation mandate, and needed to abstain from pronouncement on matters that were the object of the consensus achieved in March 2014.

F. Adoption of the report and closing remarks

220. The Committee's report was adopted as amended.

221. The Government member of Libya asked why his country had been mentioned in paragraphs 177 and 186 of the General Report, as he had provided explanations in this regard to the Committee.

222. The Chairperson underlined that the explanations to which he referred had been noted in the General Report in paragraphs 184 and 191 respectively.

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- 223.** The Worker members referred to the issue of who was responsible for the absence of conclusions on the 19 individual cases. They observed that draft conclusions had only been discussed for the six double-footnoted cases, and not for the other 19 cases. They emphasized that their position was the product of mature reflection after several fruitless attempts to reach a compromise in accordance with the spirit of social dialogue. Fundamentally, what was at stake was a conception of the role of the ILO. It was easier to destroy than to save what had been built up over the years in the very complex perspective of finding a lasting means of reconciling human development, peace and prosperity, based on cultural, geographical, geopolitical and legal realities that sometimes appeared irreconcilable. The Worker members reaffirmed their will to save the situation, without being bogged down in an ideological debate on “how it could be saved”, while at the same time being aware that the status quo was not a viable option. In their view, the responsibility for this task now lay with the Governing Body. They reiterated their readiness to explore short-term solutions, particularly for the work of the 2015 Conference, through discussion of working methods or any other solution which would provide an uncontested framework for discussion in the years to come, and for however long that was necessary.
- 224.** The Worker members recalled that there was nothing neutral in political terms in the work of the ILO. Those who made the law, who applied it and enforced it were by default engaged in political activity. ILO Conventions were negotiated in the Conference, taking into account the need to reconcile legal cultures strongly influenced by social and economic factors, and also by societal choices that influenced the law. The supervision of standards was a legal, but also a political, process, as member States made political choices in terms of both the ratification and application of standards.
- 225.** The Worker members referred to certain cases that had been examined by the Committee in the course of its work, the discussion of which shed light on the probable roots of future difficulties over and above the disagreements concerning Convention No. 87. They referred in particular to the discussion of the application by Greece of the Social Security (Minimum Standards) Convention, 1952 (No. 102), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), in 2013 and 2014 respectively, during which the Employer members had expressed the view that the Committee was not supposed to address issues of economic policy. However, addressing legal and political aspects was not in itself an error. Convention No. 102 was an instrument that addressed economic systems and the level of development of countries. In 2013, in Oslo, there had been tripartite agreement that the Convention was a legal treaty which was necessarily embedded in a political context. The Worker members also referred to the discussions on the application of the Employment Policy Convention, 1964 (No. 122), by Portugal and Mauritania, during which the Employer members had denied the right of the Committee of Experts, the Conference Committee and the ILO to assess the validity, efficacy or soundness of the measures adopted by a government, or to take inspiration from the principles of the Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy (MNE Declaration). The Worker members reaffirmed that in its work the Committee of Experts made use of all documents relevant to the application of Conventions, including texts produced by the ILO, such as the MNE Declaration. Finally, in the discussion of the application of Convention No. 98 by Croatia, the Employer members had raised the issue of the mandate of the Committee of Experts in relation to certain articles of that Convention. The Worker members reiterated their belief in the relevance of binding standards, the supervision of their application, and not in corporate social responsibility, which would only be worth discussing when it left the sphere of the optional and a framework was developed within which assessment and supervision could be exercised.

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- 226.** The Worker members refused to be denied the right in the future to discuss individual cases relating to freedom of association in which reference could be made to the right to strike. Convention No. 87 was one of the international instruments that provided a basis for the right to strike and for collective action. The claim to regulate the right to strike solely at the national level was unacceptable, as the strengths at that level were clearly unbalanced. What was happening was a national war against unions and against social dialogue, instigated by a very small group of actors who had chosen the wrong social model and had failed to understand that there could be no productive economy unless there was a high quality labour supply from the workers.
- 227.** The Worker members welcomed the fact that it had been possible to complete the preparatory work during the months of April and May 2014 with the Employer members. The Committee had been able to discuss the six double-footnoted cases and to adopt conclusions on a consensual basis. It had also been possible to discuss the other 19 cases. Only the question of the conclusions to the three cases involving Convention No. 87 had tipped the balance developed in good faith when agreeing on the list of 25 cases. According to the Employer members, agreement had been reached in 2013 on a wording for Convention No. 87 cases which would be used at all the sessions of the Committee. The Worker members did not agree with that interpretation, as they had indicated in their statements in 2013 (see, for example, paragraph 231 of the General Report of the Committee of 2013) and in 2014. In 2013, so as not to repeat the failure of 2012, they had made concessions, as a further failure would have been fatal to the Committee. Moreover, the work of the Governing Body in March 2014 had “underscored the critical importance of the effective functioning of the Committee on the Application of Standards in conformity with its mandate”. The decision adopted by the Governing Body had also “deemed it necessary to give further consideration to options to address a dispute or question that may arise with respect to the interpretation of a Convention”. Underlying that point there was a clear reference to the possible use of paragraphs 1 and 2 of article 37 of the Constitution. The Governing Body had also “recognized that a number of steps could be examined with a view to improving the working methods of the standards supervisory system”. The Committee should therefore have been able to work without raising issues of interpretation, which were due to be addressed by the Governing Body in November 2014 and thereafter, if necessary. In the meantime, it was clear that it was not appropriate to change working methods that were considered valid until a decision was made to modify them. The Worker members considered that the only error they had made was to have kept their word to the Governing Body and to have wanted the Committee to fulfil its mandate by seeking conclusions on a consensual basis, as only such conclusions were of any use, in all the cases discussed. They reaffirmed their belief in the ILO, which had a vital role to play in promoting and achieving progress and social justice, and in the importance of fundamental rights, such as freedom of association and the effective recognition of the right to collective bargaining. They believed in social dialogue and tripartite practices involving governments and the representative organizations of workers and employers.
- 228.** The Employer members reiterated their full commitment to the ILO supervisory system. They also remained fully committed to tripartism, which was a driving force behind the work of the ILO. However, tripartism did at times entail difficult disagreements, which had occurred this year in the Committee’s work. The legitimate difference between the Employer and the Worker members on the question as to whether the right to strike was included in Convention No. 87 had existed for decades. In 2012, it had become clear that this difference of views needed to be managed with a new approach. As a result, in 2013 the social partners had reached a compromise to address this disagreement, with the inclusion in the conclusions of cases that involved the issue of the right to strike of a single simple and short sentence.

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- 229.** During the current session of the Conference, the Employer members had negotiated the list of cases for consideration in good faith, and the short list had been delivered to the Governments by the proposed deadline during the first week of discussion. They had advised the Worker members that there were cases on the list that involved the right to strike, which the Employer members considered to be outside the mandate of the Committee of Experts. The Employer members had accordingly highlighted that they expected that the conclusions of any case which involved the right to strike would again include the sentence that had been agreed upon in 2013. After negotiating the list of cases for examination, the Committee had moved forward, and had completed the discussion of all 25 cases. A number of cases had raised extremely serious issues relating to violations of fundamental Conventions. The Committee's work had progressed well and conclusions had been adopted for the six double-footnoted cases. The Employer members had worked diligently towards reaching conclusions on the remaining 19 cases. They disagreed with the characterization by the Worker members of their work in this regard, as they had provided comments and engaged in negotiations with regard to conclusions on 14 of the cases discussed. They had also intended to review and negotiate conclusions for four other cases when the Worker members had made it clear that they would not move forward with negotiations with the remaining cases.
- 230.** While larger issues were being considered by the Governing Body, it had been necessary to find methods to allow the Committee to continue with its work. Therefore, the Employer members had not proposed a new approach this year. They had hoped that the sentence agreed upon in 2013 could be used once more, to again provide a way of coping with the divergence of views with regard to Convention No. 87 and the right to strike.
- 231.** In an effort to be constructive, the Employer members had proposed using the language of the Committee of Experts to reflect this divergence. They had proposed that the exact wording of paragraph 91 of the General Report of the Committee of Experts, which referred to the diametrically opposing views of the two groups, be included in the conclusions, as a possible compromise. The Employer members had also remained open to amending the language in the sentence, as long as the substance of the concerns raised were reflected, and they had been receptive to inserting an additional sentence to reflect the views of the Worker members regarding the right to strike. However, the Worker members had rejected these approaches. The Worker members had subsequently refused to continue negotiations on the three cases (Algeria, Cambodia and Swaziland) where disagreement had emerged as to how to reflect the difference of opinion regarding the right to strike, and had indicated that they were not prepared to adopt conclusions on the other 16 cases. The position of the Worker members was regrettable, as the Employer members had remained open to adopting conclusions for the cases on which there was agreement. There had been an opportunity for broad consensus, and disagreement on one issue should not be used to prevent the adoption of conclusions for such cases. It was unfortunate that a disagreement on the legal and technical provisions of a Convention, which impacted only three cases, had prevented the negotiation on conclusions for all of the cases discussed by the Committee, save six. The Employer members emphasized that their conduct could not be understood as a refusal to supervise or discuss cases on the application of Convention No. 87 in the Committee. They had agreed to several cases concerning Convention No. 87 on both the short and long lists, and had engaged in negotiations on the conclusions of those cases. There had also been agreement on several issues within these cases.
- 232.** The Employer members indicated that they would not respond to the comments of the Worker members concerning the individual cases discussed in the Committee. The opportunity for discussion of these cases had passed, due to the Worker members' refusal to negotiate conclusions. Despite the regrettable position of the Worker members, and the adoption of conclusions in only six cases, the Committee had been able to engage in supervision of 25 cases. Governments had been able to make submissions on all cases, and

had been made aware of the opinions of the social partners with regard to guidance and supervision in the application of various Conventions. The Employer members hoped that governments would take appropriate action to bring national law and practice into compliance with the Conventions examined. The Employer members remained willing and committed to seek solutions to the issue relating to the right to strike in a tripartite manner. They looked forward to a constructive and positive resolution of these issues in the future.

- 233.** The Chairperson said that she shared the concerns expressed and considered that the approach to be adopted to resolve them was to further develop social dialogue and tripartism. She thanked the Employer and Worker Vice-Chairpersons, the Reporter and all the Government, Employer and Worker members for their engagement in the work of the Committee. She also thanked the secretariat for its continuous collaboration and support.

Geneva, 10 June 2014

(Signed) Ms Gloria Gaviria Ramos
Chairperson

Ms Cecilia Mulindeti
Reporter