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The Standards Initiative – Appendix II

Final report of the Tripartite Meeting on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike and the modalities and practices of strike action at national level (Geneva, 23–25 February 2015)

Introduction

1. The Tripartite Meeting on the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), in relation to the right to strike and the modalities and practices of strike action at national level was held from 23 to 25 February 2015 at the International Labour Office in Geneva, in accordance with a decision taken by the Governing Body at its 322nd Session (November 2014). The Governing Body had decided that the Meeting, open to observers with speaking rights through their groups, would be composed of 32 Governments, 16 Employers and 16 Workers and would report to the 323rd Session (March 2015) of the Governing Body.
2. The Meeting had before it a background document which contained a Part I entitled: “ILO Convention No. 87 and the right to strike”; and a Part II entitled: “Modalities and practices of strike action at the national level”. Its two appendices contained information on modalities and practices of strike action at the national level, as well as statistical data on strike action and lockouts extracted from the ILO statistical database. This document was widely acclaimed by participants as a useful basis for the discussions.¹

¹ The document can be found in document GB.323/INS/5/Appendix III.

3. The Meeting was chaired by H.E. Mr Apolinário Jorge Correia, Ambassador, Permanent Mission of Angola, current Chairperson of the Governing Body. Mr Jorgen Rønne (Denmark) and Mr Luc Cortebeeck (Belgium) were Employer and Worker spokespersons, respectively.

ILO Convention No. 87 and the right to strike

4. *The Clerk of the Meeting* said that, following group meetings held earlier in the day, a joint statement had been agreed by the Workers' and Employers' groups and another statement agreed by the Government group.²
5. *The Director-General* welcomed participants and expressed the hope that their combined efforts in the days ahead would enable the Governing Body to take decisions that would then permit agreement to be reached on the action to be taken on the overall package of interconnected issues that made up the standards initiative, as well as on how to ensure the sound and effective functioning of the Committee on the Application of Standards (CAS) and the ILO supervisory system as a whole.
6. *The Worker spokesperson* said that representatives of the Workers' and Employers' groups had continued discussions following the 322nd Session of the Governing Body, in order to find at least a partial resolution that would allow the supervisory system to function again. The joint statement agreed by the Workers' and Employers' groups included the following:
- Respect for the mandate of the Committee of Experts on the Application of Conventions and Recommendations (CEACR).
 - A functioning CAS in 2015.
 - A proposal for the establishment of the lists of cases, to be implemented on a trial basis in 2015 and 2016, with increased involvement of the spokespersons in the elaboration of consensual conclusions.
 - A review of the working methods of the Governing Body Committee on Freedom of Association (CFA), as already planned.
 - A review of the use of procedures under articles 24 and 26 of the ILO Constitution.
 - An agreement to proceed with the Standards Review Mechanism under guidelines to be agreed.
7. He hoped that the Governments recognized the important steps taken by the Workers and Employers and would lend them their support. The agreement would allow the ILO to resume its supervision of standards. It was of critical importance that the supervisory system functioned for the promotion of decent work everywhere. That would require a commitment to social dialogue, in order to address violations of standards when and where they occurred. While the Workers would spare no effort to ensure that the proposals contained in the joint statement worked, a review of the proposals was foreseen by the Governing Body at its 328th Session (November 2016).

² These statements are reproduced in full in document GB.323/INS/5/Appendix I.

8. The Workers' views on the right to strike had not changed. The right to strike was a foundation of democracy and a fundamental option for workers facing protracted opposition to collective bargaining, unsafe workplaces and exploitation. It was protected by Convention No. 87. He welcomed the Employers' commitment to restore mature industrial relations and acknowledged their recognition of the right to take industrial action, by workers and employers, in support of their legitimate interests. He asked for the joint statement agreed by the Workers' and Employers' groups, together with the observations of the Governments, to be transmitted to and acted upon at the next session of the Governing Body.
9. *The Employer spokesperson* said that he had believed social dialogue had not been exhausted at the conclusion of the 322nd Session of the Governing Body. Through the good offices of members of the Workers' group, discussions had been resumed and a common position had been reached that morning. It had not been possible to inform governments in advance but he trusted that their support would be forthcoming. Indeed, without active government involvement and contributions, the process would not be successful.
10. *Speaking on behalf of the Government group*,³ a Government representative of Italy said that the group recognized that the right to strike was linked to freedom of association which was one of the ILO fundamental principles and rights at work. The group also recognized that, without protecting a right to strike, freedom of association, and in particular the right to organize activities for the purpose of promoting and protecting workers' interests, could not be fully realized. However, albeit part of the fundamental principles and rights at work of the ILO, the right to strike was not an absolute right: its scope and conditions were regulated at national level. The background document described the multifaceted regulations that States had adopted to frame that right. Governments were ready to consider discussing, in the forms and framework that would be considered suitable, the exercise of the right to strike. The complex body of 65 years of recommendations and observations on Convention No. 87 by the various components of the ILO supervisory system constituted a valuable resource for such discussions.
11. *Speaking on behalf of the group of Latin American and Caribbean countries (GRULAC)*, a Government representative of the Bolivarian Republic of Venezuela noted that the abundant information regarding the modalities and practice of strike action contained in studies on the Latin American region had not been included among the sources cited in the background document. He recalled that the Meeting was part of a broader package that included the question of the necessity or not for a request to the International Court of Justice (ICJ) to render an urgent advisory opinion, and the working methods of the CAS. The group understood that the right to strike existed in international law: it was an essential component of freedom of association and the right to organize. Countries in the region attached considerable importance to the International Covenant on Economic, Social and Cultural Rights and the Additional Protocol of the American Convention on Human Rights in the area of Economic, Social and Cultural Rights, known as the "Protocol of San Salvador", both of which were legally binding documents that made specific reference to the right to strike. The right of a trade union to freely organize its activities and to formulate its programme of action, set out in Article 3 of Convention No. 87, would be limited if the trade union did not have the right to strike, to be exercised in conformity with the laws of the country. While freedom of association was neither exclusive to Convention No. 87, nor to the ILO, the Preamble to the ILO Constitution and the Declaration of Philadelphia both enshrined the concept of freedom of association, as did the ILO

³ First statement of the Government group, reproduced in full in document GB.323/INS/5/Appendix I, Annex II.

Declaration on Fundamental Principles and Rights at Work. In the legal systems of the region, the right to strike was an inherent right directly linked to freedom of association. The issue that had arisen at the 101st Session of the International Labour Conference in 2012 had been rooted in the interpretation of the right to strike by the CEACR, rather than in the existence of the right to strike per se. The question to be considered by the Meeting was therefore how that right should be protected in the frame of competence of each body in the ILO supervisory system. Convention No. 87 could not be considered in isolation; in particular, due account should be taken of the provisions of article 19(8) of the ILO Constitution, whereby the adoption or ratification of any Convention could not be deemed to affect any law or agreement that ensured more favourable conditions to the workers concerned than those provided for in the Convention.

12. *Speaking on behalf of the Africa group*, a Government representative of Zimbabwe observed that over the years, the right to strike had become associated with Convention No. 87 owing to the position taken by the CEACR. He welcomed the statement agreed by the Workers' and Employers' groups and expressed his group's willingness to engage with other groups in finding a lasting solution to the problem.
13. *Speaking on behalf of the European Union (EU) and its Member States*, a Government representative of Latvia said that all 28 Member States of the EU had ratified Convention No. 87 and were bound by the Charter of Fundamental Rights of the European Union, which recognized the right to collective bargaining and strike action. The European Court of Justice stated that the right to collective action, including the right to strike, was a fundamental right, but the exercise of that right could be subject to restrictions. The dispute that began in 2012 regarding the interpretation of Convention No. 87 could be resolved by referring the matter to the ICJ or by appointing a tribunal, in accordance with article 37 of the Constitution of the International Labour Organisation. The EU and its Member States were ready to accept such referral to the ICJ as part of a six-point package, though hoped it might be avoided. The question before the present Meeting concerned Convention No. 87 in relation to the right to strike. Since its entry into force, Convention No. 87 had been supervised by the CEACR, the CAS and the CFA, without persistent objections from governments, but only some disagreement on specific findings. Article 19 of the ILO Constitution contained a minimum standard provision whereby ratified Conventions should not be deemed to affect any law, award, custom or agreement which ensured more favourable conditions for the workers concerned than those provided for in ILO Conventions. The United Nations International Covenant on Economic, Social and Cultural Rights, 1966, in its Article 8(d), protected the right to strike. Some 140 countries had ratified both the Covenant and Convention No. 87. The right to strike was thus a corollary of freedom of association, even though it was not mentioned explicitly in Convention No. 87. However it was not an absolute right, but could be governed by national law and practice. The Tripartite Meeting could be useful in achieving a better understanding of the right to strike in order to ensure a positive outcome at the 323rd Session of the Governing Body.
14. *Speaking on behalf of the Asia and Pacific group (ASPAG)*, a Government representative of China believed that the dispute regarding the interpretation of Convention No. 87 in relation to the right to strike could be resolved through tripartite consultation. ASPAG welcomed the joint statement by the Employers' and Workers' groups. Strike action was a last resort once all other means had been exhausted. The right to strike was not however an absolute right. It was recognized in the national law of 150 countries, and was regulated according to national laws.
15. *Speaking on behalf of the Nordic countries (Denmark, Finland, Iceland, Norway and Sweden)*, a Government representative of Norway supported the EU statement. The right to strike could be derived from Convention No. 87. However, the ILO and its supervisory

bodies did not exist in isolation from the rest of the world. An international instrument had to be interpreted and applied within the framework of the entire legal system prevailing at the time of interpretation. The International Covenant on Economic, Social and Cultural Rights obliged its parties to respect the right to strike in accordance with national law. Some 141 of the 153 countries party to Convention No. 87 had ratified the Covenant. A general ban on strike action would considerably restrict trade unions from defending the interests of their members. In many countries employers could take action through lockouts. Based on a reading of previous statements up to 2012, the Nordic countries noted that almost all member States had recognized a right to strike. Similarly, the Employers seemed to have recognized that there was a general right to strike that could be derived from Convention No. 87, and their objections appeared to be related to the restrictions on this right. The CEACR's interpretation of Convention No. 87 was in accordance with Article 31 of the Vienna Convention. Strike action was a means whereby workers could apply pressure in defence of their interests; the meaning of the word "programmes" therefore naturally included such action. As the CEACR was permitted to interpret a general right to strike under Convention No. 87, so it should also be entitled to place restrictions on this right. The longer the time before a State actively objected to the CEACR's jurisprudence, the greater the weight of its interpretations. It appeared that most governments accepted the CEACR's recommendations and adopted measures accordingly. Several international treaties regulated the right to strike. It would be paradoxical if the International Labour Organization did not recognize the right to strike within its own Conventions. The CEACR should continue to evaluate its interpretation and application of instruments against a background of society and legislation in evolution. If an agreement regarding Convention No. 87 and the right to strike could not be reached during the Meeting, referral to the ICJ would be necessary.

16. *A Government representative of the United States* regretted that the CEACR's function had been called into question as it was an essential part of the ILO and had been supported by every United States Administration over the past 60 years. It was vital to address this issue in a way that would strengthen the ILO supervisory system. In the decades since the adoption of Convention No. 87, the CEACR and the CFA had provided observations and recommendations with regard to the right to strike. Convention No. 87 was meant to protect freedom of association rights of workers and employers, and the right to organize activities and formulate programmes. Working within their mandates through the examination of specific cases they had observed that freedom of association and particularly the right of workers to organize their activities for the purpose of promoting and protecting their interests could not be fully realized without protecting the right to strike. The same logic had prevailed in the United States, where the National Labor Relations Act protected workers' rights, and the Supreme Court of the United States had deemed strikes to be a protected activity. The CFA had confirmed and applied the relationship between the right to strike and the right to freedom of association in almost 3,000 cases without dissent. The United States concurred that the right to strike was protected under Convention No. 87, even though the right was not explicitly mentioned in the Convention. It lent its full support to the dedicated work of the CEACR and the CFA, which for more than 60 years had provided non-binding observations and recommendations addressing the protection, scope and parameters of the right to strike. The United States also welcomed the opportunity to discuss how countries could promote this right and hoped that interference with ILO supervisory organs would not continue.
17. *A Government representative of Germany* said that the right to strike was an essential part of Convention No. 87, and was reflected in his country's national legislation. It was an essential tool to establishing and maintaining negotiations, but was not an absolute right. It should be exercised in accordance with national circumstances, law and practice. The CEACR had upheld the right to strike over many years and calling into question this

interpretation would result in a challenge to the entire system of standards supervision and its impact in other jurisdictions.

18. *A Government representative of France* said that the debate regarding the interpretation of standards needed to be concluded so that the ILO could focus on its mandate of promoting decent work and establishing and monitoring international labour standards. The ILO should be equipped with instruments, accepted by all parties, which would settle any differences of interpretation that might arise. France considered strike action an essential part of fundamental freedoms, which was reflected in its Constitution. It welcomed signs of consensus, namely the recognition of the universal right to strike derived from Convention No. 87 and the implementation of a tripartite process for examining the modalities for the exercise of the right to strike.
19. *A Government representative of India* believed that the supervisory system was an integral part of the ILO, and that the ILO Constitution should govern every decision related to the functioning of the Organization. The International Labour Conference was the supreme forum for deciding the course of action for world of work matters. The right to strike was essential, and should be guided by national laws. It was not an absolute right, but restrictions and limitations should be kept to a minimum.
20. *A Government representative of Jordan* said that the present conflict should be resolved through dialogue among the social partners. Jordan was encouraged by the joint statement. It was convinced that tripartite constituents could resolve the problem without reverting to external bodies.
21. *A Government representative of Japan* said that this issue should be resolved through tripartite consultations. It was of utmost importance that the ILO supervisory organs resumed their normal functioning as soon as possible and examined individual cases with regard to the right to strike with due respect to tripartism and national laws and practices in each country, and therefore he welcomed the fact that the Employers and Workers had reached consensus.
22. *A Government representative of Mexico* said that Mexico placed great importance on freedom of association and the right to strike, which were protected under its Constitution since 1917. While the right to strike was not explicitly mentioned in Convention No. 87, it was protected under international law and should therefore be protected under the Convention. It was however a fundamental right, not an absolute right. The supervisory bodies of the ILO should have a solid legal basis on which to base their examination of cases concerning this right. The joint statement of the Employers and Workers was therefore welcome. The principles established by the CEACR and the CFA aided in attaining better protection of freedom of association rights, among others. The clarity, impartiality and transparency of the mandate of the CEACR and the way in which the supervisory procedures functioned were of particular importance to Mexico. By recognizing the right to strike as a right inherent to freedom of association, and achieving consensus on the legal framework protecting it and on the principles guiding the Standards Review Mechanism, the Organization could move forward with the improvement of its supervisory system.
23. *A Government representative of Italy* considered the right to strike as a fundamental labour right, as reflected in Italy's Constitution. Without it, freedom of association could not be recognized. Italy agreed with the ILO supervisory bodies' interpretation of Convention No. 87. As the ILO was the UN specialized agency devoted to promoting human and labour rights, the right to strike should have a place in the Organization. The Tripartite Meeting should expressly recognize that strike action was already protected under

Convention No. 87, and that member States were bound to respecting it as a fundamental principle and right at work.

24. *A Government representative of the Islamic Republic of Iran* said that it was imperative to remove any ambiguity by defining the scope of the right to strike. The consolidation of the related terms, concepts and definitions would also contribute to the reliability and international comparability of statistics on strike action over time and across countries. The right to strike had been considered on three occasions by the International Conference of Labour Statisticians. The last discussion yielded a resolution concerning strikes, lockouts and other actions related to labour disputes, which should be taken into consideration. The current issue concerned the whole standards system and the Office should therefore amplify its work on the design of a Standards Review Mechanism and set the stage for its implementation.

25. *A Government representative of Panama* said that the right to strike was upheld by public international law. Although not actually cited in Convention No. 87, it was protected thereunder. Panama agreed with the view of the CFA that the right to strike was an intrinsic corollary of freedom of association. It was also enshrined in other international instruments including the International Covenant on Economic, Social and Cultural Rights, the European Social Charter, the Inter-American Charter of Social Guarantees of 1948 and the Protocol of San Salvador of 1988. Under those instruments, States parties should guarantee the right to strike within their national legislations, or expressly recognize the right to strike in cases of conflict of interest, without prejudice to the conditions of relevant collective agreements. Panama had recognized the right to strike under section 69 of the national Constitution, and its legislation guaranteed its exercise. Any restrictions of the right to strike in the public service were consistent with ILO provisions in that regard.

26. *A Government representative of Argentina* said that the provisions of Convention No. 87 and the right to strike were enshrined in section 14bis of the national Constitution. The right to strike was not absolute but it was a human right and should only be restricted in the case of essential services or special conditions, which should be regulated by the proper independent commission. Furthermore, States were also bound by the limitation set out in Article 53 of the Vienna Convention. As the right to strike was a human right within Convention No. 87, this limitation was applicable to it as well.

27. *A Government representative of China* welcomed the joint statement by the social partners. China had ratified the International Covenant on Economic, Social and Cultural Rights and hoped that the current issue could be resolved through tripartite consultation.

28. *A Government representative of the Bolivarian Republic of Venezuela* thanked the Workers' and Employers' groups for their statement. He hoped that the Meeting would achieve tripartite consensus in line with the principles of the Governing Body. His Government continued to believe that the current problem should be addressed in accordance with article 37(1) of the ILO Constitution, referring the matter to the ICJ. That course of action would have avoided the high costs of the Tripartite Meeting. The Bolivarian Republic of Venezuela had ratified ILO Convention No. 87 and the right to strike was protected under the Constitution and legislation of the Bolivarian Republic of Venezuela. His Government identified with workers and was committed to workers' rights, in particular the right to strike. The crisis in the ILO since 2012 was greatly damaging to the Organization and its credibility in the world of work.

(The Meeting adjourned, to reconvene on the afternoon of Tuesday, 24 February.)

29. *Speaking on behalf of the Government group*, a Government representative of Italy delivered a second statement agreed by the group.⁴ She acknowledged the joint statement by the social partners and their efforts to reach a common position. It was important that her group's two statements should be reflected in the outcome and/or report of the Meeting and taken into consideration in the tripartite development of a durable solution in the Governing Body. The issues raised by the social partners mainly pertained to the competence of the Governing Body and exceeded the Meeting's mandate. Comprehensive tripartite discussions should therefore be held at the next session of the Governing Body and ways to advance the discussion should be explored prior to that session. Under the ILO Constitution, member States were responsible for the effective implementation and observance of labour standards and therefore also had responsibility for the proper functioning of the supervisory system. The group looked forward to establishing long-lasting cooperation and to contributing in a tripartite manner to a durable and effective solution for the supervisory system.
30. *Speaking on behalf of GRULAC*, a Government representative of the Bolivarian Republic of Venezuela said that the Meeting should not stray from its original mandate as decided by the Governing Body at its 322nd Session (November 2014). GRULAC would react to the matters raised in the joint Employers' and Workers' statement at the Governing Body session in March 2015.
31. *Speaking on behalf of ASPAG*, a Government representative of China welcomed the joint statement by the social partners which indicated the renewal of social dialogue and consensus through consultation. The interpretation of Convention No. 87 should be addressed through in-house social dialogue and tripartite consultation.
32. *Speaking on behalf of the Africa group*, a Government representative of Zimbabwe observed that the dynamics had changed and that the joint statement provided a basis for resolving issues. His group wished to be part of an agreement, in the spirit of tripartism.
33. *Speaking on behalf of the group of industrialized market economy countries (IMEC)*, a Government representative of the United States said that the strength and authority of the ILO supervisory system was of fundamental importance for the Organization as a whole and in ensuring labour standards throughout the world. An effective and lasting solution was needed and it was hoped that the social partners' joint statement was a step in the right direction. It contained matters that required discussion in the Governing Body, and governments wished to be part of such a discussion.
34. *Speaking on behalf of the EU and its Member States*, a Government representative of Latvia noted that the joint statement was related mainly to issues of concern to all constituents that would be discussed at the next session of the Governing Body. He stressed that the Government group's first statement had recognized that the right to strike was linked to freedom of association, and that without protecting the 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. It had noted, however, that the right to strike was not an absolute right and that the scope and conditions of that right were regulated at the national level. That consensus should be reflected in the outcome and report of the Meeting. States were responsible for implementation and application of Conventions and, in the event of dispute, solutions could be found under article 37 of the ILO's Constitution. The EU and its Member States attached great importance to the ILO's role in defending human rights and to its supervisory system.

⁴ This statement is reproduced in full in document GB.323/INS/5/Appendix I, Annex III.

35. *A Government representative of Australia* welcomed the social partners' joint statement. The tripartite nature of the ILO continued to serve it well. His Government actively supported the CEACR and the CAS in their normal operations. In that respect, the joint statement cleared the way for the CAS to work effectively. His Government acknowledged the agreement on the mandate of the CEACR, namely that their opinions and recommendations were persuasive but non-binding, and considered that the joint statement should be discussed at the Governing Body session in March 2015. His Government was committed to collaborating with all parties to achieve an outcome which supported and strengthened the ILO supervisory system.
36. *A Government representative of Germany* welcomed the social partners' joint statement, considering it an important first step towards ensuring the effectiveness of the supervisory system. He also highlighted the importance of the consensus reached in the Government group and would be interested to hear the social partners' views on the Governments' statement that "the right to strike is linked to freedom of association" and that "without protecting the right to strike, freedom of association, in particular the right to organize activities for the purpose of promoting and protecting workers' interests, cannot be fully realized". In view of the tripartite structure of the ILO, government contributions to the discussions at the Governing Body in March 2015 were of great importance. Such contributions would help promote the social partners' temporary agreement to bring a durable solution with regard to Convention No. 87.
37. *A Government representative of Japan* said that his Government welcomed the efforts made by the social partners in reaching the joint statement. The package was a good starting point to improve the functioning of the ILO supervisory mechanisms, but many points remained to be discussed in order to make the package feasible. Discussions should continue at the next session of the Governing Body. The participation of governments in that discussion was of great importance as they were responsible for the effective implementation and observance of labour standards.
38. *The Employer spokesperson* agreed that all interventions should be reflected and taken into account in the Meeting outcome and report. His group also agreed that many of the subjects dealt with should be discussed by the Governing Body. He wished to clarify that the fundamental difference between the Employers and Workers concerning the interpretation of Convention No. 87 in relation to the right to strike remained unresolved, but that this should not prevent the re-establishment of a functioning ILO supervisory system to protect workers' rights. The groups had agreed on a way of deciding on a list of cases for 2015 and 2016, which could be revised in the event of its breakdown. However, they were committed to achieving a workable solution, as with regard to the conclusions and discussions of the CAS. The joint statement provided for tripartite participation to produce short and clear conclusions directed at governments. Furthermore, they expected the CFA to meet before the Governing Body to discuss cases. A discussion would later take place on the possibility of amending certain provisions relating to article 24 and 26 procedures and on establishing the Standards Review Mechanism. No guidelines or instructions had been mentioned for the CFA, considering that it was a matter for that Committee to deal with and report back to the Governing Body. If necessary, the Employers' group would be happy to engage with governments and regional groups to discuss the joint statement.
39. *The Worker spokesperson* apologized for the fact that the Governments had not had the time to respond properly to all the elements included in the Workers' and Employers' groups' joint statement; the statement was not intended as a proposal for conclusions, but set out joint priorities and demonstrated the social partners' commitment to moving out of the impasse. The Workers noted that the Governments' statement recognized the right to strike and its link to freedom of association; the Governments' position was not far distant

from that of the social partners. The functioning of the supervisory system that the Workers and Employers sought implied that the CEACR would continue to interpret Convention No. 87, as it had up to the present. It was true that the Workers and Employers had combined issues relating to the standards initiative with the right to strike in their joint statement; they believed that such an approach would provide useful building blocks for the upcoming Governing Body discussion, help the Office to prepare a document for presentation to the Governing Body and provide the groundwork for successful discussions of the CAS at the June 2015 International Labour Conference.

The modalities and practices of strike action at national level

40. *A Government representative of India* highlighted that political parties, trade unions, social and other organizations were essential to the democratic functioning of a society and the government. The national Constitution, adopted in 1950, guaranteed the fundamental rights to form and join associations or unions, freedom of speech and expression, as well as freedom of movement throughout the territory. While some restrictions might be imposed on these freedoms, they should be of a reasonable nature, meaning not arbitrary or beyond what was required in the interest of the public. The Trade Unions Act, 1926, and the Industrial Disputes Act, 1947, were the two main pieces of legislation in relation to the freedom of association and collective bargaining rights of workers in India. The Industrial Disputes Act provided for the protection of trade union leaders and members against acts of anti-union discrimination. It also provided that interference in union activities and victimization of workers participating in trade union activities and legal strikes would amount to unfair labour practices. While the law in India neither restricted nor promoted strikes, the provisions of the Industrial Disputes Act provided for a regulatory mechanism in the interest of industrial relations and public interest.
41. *Speaking on behalf of the Africa group*, a Government representative of Zimbabwe thanked the Office for the comprehensive and informative background document. The factual information contained therein had helped participants understand and appreciate the linkage between the right to strike and freedom of association and would provide a useful background for the discussions at the next session of the Governing Body. While the extent to which it was legislated differed from one country to another, the right to strike was enshrined in constitutions and/or labour legislation of a number of the African countries. Governments of other African countries, together with their social partners, were in the process of reviewing their labour legislation and, thus, addressing the right to strike.
42. *A Government representative of Panama* highlighted that, in his country, the right to strike was recognized by law and confirmed by case law. The 1941 Constitution recognized the right to strike, although prohibiting solidarity strikes and strikes in public services. Unlike the earlier Constitution, the Constitution of 1946 only limited the exercise of the right to strike for public services, as determined by law, thus allowing solidarity strikes. He added that, by judgment of 7 March 1950, section 321 of the Labour Code which prohibited strikes in public services was declared unconstitutional by the Supreme Court of Justice. The Court's reasoning was based on the fact that the legislator's office had exceeded its powers by developing provisions of the Constitution which did not prohibit the right to strike; rather it provided that the exercise of such right might be limited by law for the public services. Limitations to the right to strike did not annul the exercise of such right. These limitations only concerned public services established by law. The above considerations (legal framework) did not apply to the exercise of the right to strike by public employees of the Panama Canal Authority which had a special constitutional mandate to ensure the efficient and uninterrupted transit of vessels of all nations, pursuant to Title XIV of the Constitution. A judgment of 27 April of 2009 found that the provisions

of Act No. 19 of 1997 prohibiting strikes in the Authority of the Panama Canal were not unconstitutional. Moreover, the abovementioned Act had not been an impediment to the exercise of the right to strike in accordance with the legal standards regulating private employment relationships in the context of the Canal's extension. Case law had found that the protection of the right to strike was widespread, in so far as the Constitution did not provide for the prohibition of strikes in public services, but for its exercise under certain limits in public services fixed by law (judgment of the Supreme Court of 23 March 1999). The right to strike was linked to freedom of association and collective bargaining, as repeatedly found by case law. In its judgment of 2 October 2006, the Supreme Court of Justice, when examining the constitutionality of provisions of Decree Law No. 8 of 1998 regulating maritime labour, highlighted that collective agreements were tightly linked to freedom of association and the right to strike. Such a link had also been emphasized by the Supreme Court of Justice on other occasions (e.g. judgments of 22 July 1998 and 21 July 2009). Moreover, section 401 of the Labour Code stated that the employer should negotiate a collective agreement when so requested by a trade union. Finally, the right to strike could not be considered outside the context of labour relations; it was a fundamental right, although not an end in itself.

43. *A Government representative of Algeria* indicated that, in Algeria, the right to organize and the right to strike were fundamental rights granted to all workers and were protected by the Constitution. In this regard, article 56 of the Constitution stated that the right to organize was recognized for all citizens and article 57 provided that the right to strike was exercised within the framework of the law. These rights were reflected in national labour legislation through Act No. 90-02 of 6 February 1990 on the prevention and settlement of collective labour disputes and the exercise of the right to strike, and Act No. 90-14 of 2 June 1990 concerning the exercise of the right to organize. The provisions of these laws applied to all workers and employers, individuals or legal entities, excluding civilian and military personnel of the national defence services.
44. Strike action, however, was considered as a last resort after all channels of dialogue had been exhausted. As such, Act No. 90-02 of 6 February 1990, referred to above, had introduced the modalities and preventive measures aimed at avoiding, as much as possible, strike action and to promote consultation and dialogue between the social partners to resolve labour disputes. Conciliation mechanisms to try to resolve disputes without recourse to strike action were provided by the legislation. In the absence of conventional conciliation procedures, or in cases where the latter failed, the territorially competent labour inspection services were seized of the collective labour dispute by the employer or by the workers' representatives. In case of failure of the conciliation procedures on all or part of the issues relating to the collective labour dispute, the labour inspector established a report recording the failure to achieve conciliation. In this case, the parties could agree to use mediation or arbitration, as provided by legislation.
45. In the absence of issues being resolved, the higher authority convened a conciliation meeting with the parties to the collective labour dispute with representatives of the territorially competent authority responsible for the public service and labour inspection. During the conciliation meeting of the collective labour dispute, if it was found that the dispute touched upon the interpretation of laws or regulations, the public service authorities would then submit those issues to the joint council of the public service. If the dispute persisted after the exhaustion of conciliation and, secondarily, mediation procedures provided by legislation, and failing the resolution of other channels provided by agreement or agreement of the parties, the right of workers to resort to strike action could then be exercised in accordance with the conditions and modalities covered by the provisions of Act No. 90-02 of 6 February 1990. In this case, the workers' organization concerned would be convened (the employer would be informed) to a general meeting to be held at the usual places of work in order to provide information on the persistent issues

of disagreement and to decide on the possibility of a concerted and collective work stoppage. The workers' organization would then hear, at their request, representatives of the employer or the administrative authority concerned.

46. Strike action was approved by secret ballot by a majority of the workers in a general assembly, which should gather at least half of the workers of the group concerned. Once the strike was approved in accordance with the law, it took effect at the end of a notice period which ran from the date of its filing before the employer; the relevant labour inspection was also informed. The duration of the notice period was fixed by negotiation and could not be less than eight days from the date of its filing. The parties to the collective labour conflict were required during the notice period and after the outbreak of the strike, to continue their negotiations for the settlement of their disagreement, which was the subject of the conflict. Thus, the right to strike exercised in the prescribed manner was protected by law and strike action that took place under these conditions did not break the employment relationship. It suspended its effects for the duration of the collective work stoppage, except with respect to what the parties to the dispute had agreed through Conventions or agreements. No sanctions could be imposed against workers because of their participation in a strike that had been regularly triggered in accordance with the conditions set forth in the law. However, when the strike concerned activities whose complete interruption was likely to affect the continuity of essential public services, vital economic activities, supply of the population or the safeguarding of existing goods and facilities, the continuation of indispensable activities was organized in the form of a mandatory minimum service or resulting from negotiations, Conventions or agreements in accordance with the law. The mandatory minimum service was organized in a number of services, inter alia: hospital services for custody, emergencies and drug distribution; services related to the operation of the national telecommunications network, radio/television and radio broadcasting; services related to the production, transportation and distribution of electricity, gas, oil products and water, etc.
47. A Government representative of Argentina stated that the right to strike was fully effective in his country, in accordance with article 14bis of the national Constitution, and that the said right was recognized for both workers and their organizations. The regulation of strikes was only limited to essential services by virtue of Act No. 25877 which had been drafted following ILO principles. Exceptionally, if there was a need to qualify a new service as essential, in some activities or situations an independent committee of jurists would be established to do so. Regarding collective disputes, Act No. 14786 provided for two time-bound conciliation interventions with a view to ensuring the collaboration of the parties for the purposes of dispute resolution. Upon expiry of the time period, the administrative authority would allow the parties to resume in their conflict resolution capacity. Concerning collective bargaining in the private sector, parties were able to regulate their own disputes, including resorting to the right to strike. The speaker added that his country had ratified the two most important international treaties on the matter: the United Nations International Covenant on Economic, Social and Cultural Rights and the Protocol of San Salvador. Furthermore, article 11 of the Common Market of the Southern Cone (MERCOSUR)'s Social and Labour Declaration established that no national provision or regulation should impede the exercise of the right to strike.
48. A Government representative of Germany indicated that the right to strike was not explicitly mentioned in the German Constitution. In his country, the right to strike was derived from the jurisprudence of the courts in Germany, which recognized that for collective bargaining purposes, the right to strike was essential for workers as it placed them on an equal footing with employers.

49. *Speaking on behalf of the Nordic countries*, a Government representative of Norway indicated that, in the Nordic countries, the right to strike had been formalized through laws and collective agreements. In some Nordic countries, the right to take industrial action was protected constitutionally. The right to industrial action, including both the right to strike and the right to lockout, was a corollary of freedom of association and the right to collective bargaining. Strike was the ultimate tool that could be used after having exhausted all other available procedures. As long as a collective agreement remained in force, no industrial action could be undertaken to amend it. In the Nordic countries, sympathy action was permitted when it supported a lawful industrial action.
50. Referring to the situation in Norway, she explained that the focus on international law and the right to strike had been raised due to the individual complaints brought by the social partners to the CFA and the comments of the CEACR. She recalled that before the late 1980s, Norway prohibited strikes on a larger scale on the assumption that they were harmful to society. Following the reasoning of the CEACR according to which the consequences and damaging effects of a strike had to be clear and imminent, the Government had revised its practice. A bill to prohibit a strike could be submitted to Parliament only when it had been proven that the damaging effects of a conflict would be of such a nature so as to endanger the life, personal safety or health of the population. While Norway did not disagree with the interpretation of the CFA and the CEACR, sometimes it had a differing assessment of the damaging effects of a strike and situations where the prohibition of a strike or lockout was justifiable. For example, when strikes widened to a full hold in all oil and gas production, the consequences were of such dimensions that the authorities had considered it necessary to intervene. Nevertheless, the Government intended to study recent observations of the CEACR and recommendations of the CFA with a view to possible further adjustments.
51. Nordic countries respected their international obligations and the developments in jurisprudence in accordance with the Vienna Convention. There were no strong objections from the Governments to the interpretation made by the CEACR and CFA. She considered that the interpretation of international instruments had to be a living process. Since the situation concerning the right to strike varied, there would always be discussions on its limits and restrictions. Those limits and restrictions could not be written in stone and should remain flexible.
52. *A Government representative of the Bolivarian Republic of Venezuela* indicated that the right to strike was protected and guaranteed under article 97 of the national Constitution and that it was developed at great length by the Organic Labour Act. A definition of “strike” was provided for under section 486 of the said Act; it was worthy of mention that such provision had been omitted from the relevant footnote in Part II of the background document (footnote No. 12). The Bolivarian Republic of Venezuela had ratified the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). In accordance with national legislation, strikes were conceived as part of the right of workers and of trade union organizations for the best defence of their rights and interests, within the framework of the law. He reiterated that his Government had identified with the workers and was committed to trade union rights, particularly the right to strike. He added that his country had not been indifferent to workers’ right to strike, in relation to Convention No. 87. His country’s attentiveness was reflected in the background document, notwithstanding the fact that the references made came short of portraying the breadth of his country’s legislation on the matter. He highlighted that the right to strike had existed in the Bolivarian Republic of Venezuela well before 1948, the year in which Convention No. 87 was adopted. Venezuelan freedom of association and right to strike were linked to the respect and observance of both national legislation and Convention No. 87.

53. The speaker, also speaking on behalf of the Cuban Government delegation which was an observer at the Meeting, added that both governments would reserve the opportunity to comment on all the questions concerning the standards initiative during the next Governing Body session. In his view, this was not the forum to address subject matters of such relevance to the Organization, nor should such matters be addressed in a bipartite manner with governments being excluded. The Governments of Cuba and of the Bolivarian Republic of Venezuela were cognizant of the fact that the ILO's essence was tripartism, with a view to reaching the agreements that might ensue in the context of consensus; only then would the world of work be able to reach real solutions that did not obey vested interests and, more importantly, did not constitute precarious solutions but lasting ones, under a tripartite approach.
54. *A Government representative of Angola* welcomed the background document, which clearly and objectively addressed the items on the agenda, and enabled a better understanding thereof. The modalities and practices of strike action at the national level were unquestionably linked to the recognition of the right to strike. The Republic of Angola considered that the right to strike was a fundamental right protected by article 51 of the Constitution. However, the right to strike was not absolute as it was regulated by laws which determined its regular exercise and its limits, in the framework of consultation and social dialogue. The right to strike was correlated to freedom of association and was one of the fundamental pillars of the ILO. The principle of this right was included in the legislation of a number of member States for the defence of workers' rights, while guaranteeing the right to freedom of enterprise in accordance with national laws and practices. The Republic of Angola considered that the right to strike was a legitimate right and promoted social dialogue with a view to ensuring social peace.
55. *A Government representative of Colombia* stated that, for her Government, the right to strike was inherent to the rights to freedom of association and collective bargaining and that these rights could not be separated from the exercise of the right to strike. The right to strike had been legally recognized and regulated in Colombia since 1919 and it was today enshrined in the national Constitution. This right was closely linked to the constitutional principles of solidarity, dignity and participation, as well as the realization of an equitable social order. The Constitutional Court of Colombia considered that the right to strike benefited from a double constitutional protection, both through its direct recognition by article 56 of the national Constitution and through its close relationship with freedom of association. The right to strike was comprehensively regulated by several provisions of the Labour Code that had given rise to jurisprudential developments. Strike action complying with the legal requirements was one of the most valuable rights enabling workers to settle collective labour disputes with their employer. Yet being a fundamental right, the right to strike was not absolute. According to national legislation, strike actions were only restricted in essential public services. Even though the right to strike could be limited in some situations in order to protect other fundamental rights, it was clear that workers' prerogatives could not be undermined. Following the guidance provided by ILO supervisory bodies, especially the CFA and the CEACR, Law 1210 of 2008 now granted to the courts the competence to declare the legality or illegality of strike actions.
56. *A Government representative of Uruguay*, referring to the statement made earlier by GRULAC, indicated that he shared the group's views on the absence of reference to Latin American regional studies.⁵ The region's contribution consisted of important legal developments on freedom of association and the right to strike. Collective labour law had been conceived by a Latin American labour law scholar based on three essential and interdependent pillars: the right of association; the right to strike; and the right to collective

⁵ See para. 11 above.

bargaining. The absence or weakening of one of these pillars would impede the functioning of the legal system. Similarly, the ILO, through the CEACR, the CAS and the CFA, had considered for many years that the right to strike was a part of trade union activities, as a component of their strategy to better defend the interests of workers. To understand freedom of association solely as the right to associate and to establish workers' and employers' organizations would not fully reflect its scope as a civil and political freedom. Freedom of association was more than the right to associate; it was the right to organize trade union activities, including strikes.

57. The speaker highlighted that the Constitution of his country established the right to strike as a trade union right and the same provision provided that the law would promote the creation of trade unions. The constitutional framework had, since 1934, closely linked freedom of association and the right to strike. Labour administration also recognized the autonomy of organizations of workers and employers to interact without restriction in exercising their freedom of association, except in the case of essential services or by reason of public policy provisions. The absence of definition and of legal regulation of strikes constituted one of the singularities within the Uruguayan labour relations system. The Government of Uruguay safeguarded the tradition of respect for the independence and autonomy of trade unions and employers' organizations to organize their activities and formulate their programmes in accordance with Convention No. 87, also promoting conciliation and mediation.
58. *A Government representative of Ghana* noted that the Meeting had been marked by the reprise of social dialogue which, as demonstrated by the social partners' joint statement, had already begun to yield dividends and would ensure that the Organization continued to exercise its standards supervisory mandate. Ghana was among the many ILO Members that recognised the right to strike in its national Constitution and that this right gave workers a means to defend their interests. Nevertheless, that right had to be exercised within the confines of national laws in accordance with national circumstances. The issue that the ILO had been facing over the previous three years was not about the legitimacy of the right to strike but rather whether that right was enshrined in Convention No. 87. Her delegation welcomed the proposal to initiate the standards review mechanism as an opportunity to address this concern. Her delegation also looked forward to the full functioning of the CAS during the 104th Session of the International Labour Conference (2015).

The way forward

59. The Office circulated a text presenting the outcome of the Meeting to participants, which read as follows:

The tripartite constituents met in Geneva from 23 to 25 February 2015. The Meeting was conducted in a very constructive atmosphere. In view of the positive progress made during the discussions, the Office was requested to prepare, in close consultation with the three groups, a document addressing all outstanding issues in the standards initiative for the 323rd Session of the Governing Body.

The joint statement from the Workers' and the Employers' groups and the two statements from the Government group are attached to this document. All statements made during the Tripartite Meeting will be included in the report of the Meeting.

60. *The Chairperson* explained that the text was intended to provide a short, factual introduction to the outcome document together with some indication of the preparations for the discussion at the March session of the Governing Body. The joint Employers' and Workers' statement and the two Government group statements would be annexed to the document.

61. *Speaking on behalf of the Government group*, a Government representative of Italy proposed some amendments to the text, agreed by the group, as follows:

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

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

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

These were reformulations of the elements that the text already contained, and she hoped that they would meet with the social partners' approval. The amendment to the first paragraph was intended to place the Meeting in the context of the other Governing Body procedures aimed at breaking the impasse. The amendment to the second paragraph was intended to give a factual account of what had happened over the course of the Meeting, for clarity and for the benefit of those who had not been present. The third paragraph was a rewording to deal with a procedural concern: the group did not feel that the present Meeting had a mandate to request the Office to prepare a document for the Governing Body. This request had already been covered by the Governing Body decision of November 2014.

62. *The Employer and Worker spokespersons* supported the text with the amendments proposed by the Government group.

(The outcome document was adopted.)

63. *Speaking on behalf of GRULAC*, a Government representative of the Bolivarian Republic of Venezuela thanked the governments that had shared their national experiences, in line with the mandate conferred on the Meeting by the Governing Body of November 2014. He welcomed the efforts made by the social partners on this issue of great importance to the ILO, and highlighted the importance of the consensus reached within the Government group on the link between freedom of association and the right to strike. He hoped that the outcome of the Meeting would provide a useful foundation for the work of the Governing Body.

64. *The Director-General* said that the current Meeting had been convened by the Governing Body in November 2014 in difficult circumstances and in the hope that it would break the impasse, which had been having negative consequences for the Organization's work in several ways. The Meeting had in fact exceeded the hopes vested in it by the Governing Body. The constructive working atmosphere, mentioned in the outcome document, had required participants to be flexible and accommodating, and to make real compromises in order to reach solutions. Coordination in and between groups had been remarkable. The immediate effect of the three days' work was to open up new positive perspectives for the upcoming Governing Body session, which would address issues related to all the interconnected elements of the standards initiative. The tripartite constituents could look forward to the next Governing Body session with confidence.

65. In its preparation of the documentation for the March 2015 Governing Body session, the Office would take full account of the outcome document and papers adopted at the present Meeting, and would work in close consultation with the three groups which had been involved. If the Organization was to reach solutions and move ahead it would be with full tripartite consensus. The Meeting had provided momentum for the next steps.
66. *The Chairperson* said that the Meeting had resulted in significant advances which should lead the Organization forward with newfound confidence in dialogue and tripartism, and he did not doubt that the same constructive attitude would characterize discussions on the CAS at the next Governing Body session.