



Governing Body

322nd Session, Geneva, 30 October–13 November 2014

GB.322/INS/5(Add.)

Institutional Section

INS

Date: 8 November 2014

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FIFTH ITEM ON THE AGENDA

The standards initiative: Follow-up to the 2012 ILC Committee on the Application of Standards

Addendum

This Addendum provides revised versions of the draft decision in paragraph 125 of document GB.322/INS/5 and of the draft resolution contained in Appendix I of the same document.

Revised draft decision proposed by the Director-General following the Governing Body debate held on 7 November 2014

1. The Governing Body decides to:

- (1) request the International Court of Justice to urgently render an advisory opinion on the following question:*

“Is the right to strike of workers and their organizations protected under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No.87)?”

and to that effect adopt the appended resolution;

- (2) convene no later than April 2015 a four-day tripartite meeting of experts on forms and scope of strike action in member States and key issues arising therefrom. The meeting will be composed of 32 Governments, 16 Employers and 16 Workers Experts with an independent chairperson. To that effect the Office is to prepare a document on national law and practice on this matter. The outcome of this meeting will be submitted for consideration at a special sitting of the Committee on the Application of Standards at the 104th Session of the International Labour Conference;*
- (3) launch the Standards Review Mechanism (SRM), and to this effect establish a tripartite working party composed of 16 governments, 8 employers and 8 workers to make proposals to the 323rd Session of the Governing Body in March 2015 on the modalities, scope and timetable of the implementation of the SRM;*
- (4) take the necessary steps to ensure the effective functioning of the Committee on Application of Standards at the 104th Session of the International Labour Conference, and to this end reconvene the Working Group on the Working Methods of the Conference Committee on the Application of Standards to prepare recommendations to the 323rd Session of the Governing Body in March 2015, in particular with regard to the establishment of the list of cases and the adoption of conclusions;*
- (5) request the Chairperson of the Committee of Experts on the Application of Conventions and Recommendations (CEACR), Judge Abdul Koroma (Sierra Leone), and the Chairperson of the Committee on Freedom of Association (CFA), Professor Paul van der Heijden (Netherlands), to jointly prepare a report on the interrelationship, functioning and possible improvement of the various supervisory procedures related to articles 22, 23, 24 and 26 of the ILO Constitution and the complaints mechanism on freedom of association;*
- (6) defer at this stage any further consideration of the possible establishment of a tribunal in accordance with article 37 paragraph 2 of the Constitution.*

Appendix

Draft resolution of the ILO Governing Body

The Governing Body,

Conscious that the International Labour Organization is facing a serious institutional crisis that puts at risk the functioning of the Organization's supervisory system and has over the past three years twice prevented the Conference Committee on the Application of Standards from discharging its responsibilities,

Noting that at the heart of this crisis lies a dispute concerning the interpretation of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87) in relation to the exercise of the right to strike,

Mindful of the need for the ILO to continue to have a strong supervisory system enjoying the support of all parties, and aware that the absence of satisfactory responses to unresolved issues and persistent concerns would damage the functioning and strength of the system,

Recognizing the need to receive authoritative legal guidance from the International Court of Justice as the sole organ that may decide any question or dispute relating to the interpretation of the Constitution or of an international labour Convention under article 37, paragraph 1, of the ILO Constitution, and acknowledging the binding effect of any advisory opinion so obtained,

Expressing the hope that in view of the ILO's unique tripartite structure, not only governments but also international employers' and workers' organizations would be invited to participate directly and on an equal footing in any procedure aimed at clarifying the current situation,

1. *Decides*, in accordance with Article 96, paragraph 2, of the Charter of the United Nations, article 37, paragraph 1, of the ILO Constitution, Article IX, paragraph 2, of the Agreement between the United Nations and the ILO, approved by Resolution 50(I) of the General Assembly of the United Nations on 14 December 1946, and the Resolution concerning the Procedure for Requests to the International Court of Justice for Advisory Opinions, adopted by the International Labour Conference on 27 June 1949, to request the International Court of Justice to urgently render an advisory opinion on the following question:

Is the right to strike of workers and their organizations protected under the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)?

2. *Instructs* the Director-General to:

- (a) transmit this resolution to the International Court of Justice, accompanied by all documents likely to throw light upon the question, in accordance with Article 65, paragraph 2, of the Statute of the Court;
- (b) respectfully request the International Court of Justice to allow for the participation in the advisory proceedings of the employers' and workers' organizations enjoying general consultative status with the ILO;

- (c) respectfully request the International Court of Justice to consider possible steps to accelerate the procedure, in accordance with Article 103 of the Rules of the Court, so as to render an urgent answer to this request;
- (d) prepare, after the Court has given its opinion, concrete proposals to give effect to that opinion;
- (e) inform, as required under Article IX, paragraph 4, of the 1946 United Nations-ILO Agreement, the United Nations Economic and Social Council of this request.