



International Organisation of Employers
Organisation Internationale des Employeurs
Organización Internacional de Empleadores
The Global Voice of Business

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**Committee of Experts on the Application
of Conventions and Recommendations (CEACR)**

International Labour Office (ILO)
4, Route de Morillons
1211 Geneva 22

Article 23.2 of the ILO Constitutions.

IOE comments with regards to the application of Convention 87 in Angola, Anguilla, Argentina, Bangladesh, Belarus, Bermuda, British Virgin Islands, Burundi, Cambodia, Cameroon, Comoros, Congo, Croatia, Dominica, Ecuador, El Salvador, Equatorial Guinea, Falkland Islands (Malvinas), Fiji, French Southern and Antarctic Territories, Gabon, Gambia, Ghana, Gibraltar, Grenada, Guatemala, Guernsey, Guinea, Guyana, Haiti, Hungary, Ireland, Isle of Man, Jamaica, Jersey, Kiribati, Liberia, Luxemburg, Madagascar, Maldives, Malta, Mauritania, Mexico, Mongolia, Montserrat, Niger, Nigeria, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Senegal, Serbia, Seychelles, Sierra Leone, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, Sri Lanka, St Helena, Suriname, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Tanzania, The former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Kingdom, Uruguay, Vanuatu, Venezuela, Yemen, Zambia, Zimbabwe.

Introduction

The International Organisation of Employers (IOE) would like to start this submission by thanking the CEACR for the clarification of its “Mandate” which is contained in para. 29 of the 2015 Report.

The IOE would like to take the opportunity of the upcoming meeting of the Committee of Experts on the Application of Conventions and Recommendations (CEACR) to alert the CEACR to a number of very important developments. These have arisen from the discussions that took place in November 2014, and February, March and June 2015 among the ILO Governing Body (GB) tripartite constituents on Convention No. 87 in relation to the right to strike.

This submission aims to assist the CEACR in better understanding the current status of the constituents’ discussion on Convention 87 in relation to the right to strike and in facilitating the Standards Initiative process, given the technical support the CEACR is called to provide in the regular supervision of ILO standards. Also this submission is important for the following Governments that are called to send reports in 2015 on Convention 87: Angola, Anguilla,

Argentina, Bangladesh, Belarus, Bermuda, British Virgin Islands, Burundi, Cambodia, Cameroon, Comoros, Congo, Croatia, Dominica, Ecuador, El Salvador, Equatorial Guinea, Falkland Islands (Malvinas), Fiji, French Southern and Antarctic Territories, Gabon, Gambia, Ghana, Gibraltar, Grenada, Guatemala, Guernsey, Guinea, Guyana, Haiti, Hungary, Ireland, Isle of Man, Jamaica, Jersey, Kiribati, Liberia, Luxemburg, Madagascar, Maldives, Malta, Mauritania, Mexico, Mongolia, Montserrat, Niger, Nigeria, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal, Romania, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Senegal, Serbia, Seychelles, Sierra Leone, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, Sri Lanka, St Helena, Suriname, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Tanzania, The former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Kingdom, Uruguay, Vanuatu, Venezuela, Yemen, Zambia, Zimbabwe.

RECENT IMPORTANT DEVELOPMENTS ON CONVENTION NO.87 IN RELATION TO THE RIGHT TO STRIKE

a. The Governing Body discussion in November 2014

It is important to recall that in the 2013 Committee on the Application of Standards (CAS), the following sentence was inserted into the conclusions of all (discussed) cases in which the right to strike was commented by the CEACR (Bangladesh, Canada, Egypt, Fiji, Guatemala and Swaziland): ***“The Committee did not address the right to strike in this case as the Employers do not agree that there is a right to strike recognised in Convention 87”.***

In June 2014, the CAS, disappointingly, could not adopt conclusions for 19 cases discussed, as the above sentence was no longer accepted by the Workers. At that time the non-recognition of a right to strike in Convention 87 and the extensive CEACR interpretation of this issue had remained unresolved in the ILO Governing Body.

This led to the discussion at the GB session in November 2014 on the appropriateness to go to the International Court of Justice (ICJ) to resolve the dispute around Convention 87 in relation to the right to strike. From the beginning, opinions were divided on this question: While the EU, GRULAC and the Workers’ Group favoured immediate recourse to the ICJ; the USA, Canada, African and Asia Pacific Governments, and the Employers’ Group did not, and highlighted the need to give social dialogue within ILO bodies and procedures a chance before resorting to the ICJ. The GB agreed to convene a three-day tripartite meeting in February 2015, with a view to reporting to the March 2015 GB on the question of Convention 87 in relation to the right to strike, and the modalities and practices of strike action at national level.

b. The February 2015 Tripartite Meeting

The February 2015 tripartite meeting for the first time brought significant progress towards resolving the crisis surrounding Convention 87 in relation to the right to strike. The Workers’ and Employers’ Groups agreed on a Joint Statement on the “ILO Standards Initiative”, which was complemented by two statements of the Government Group.

The Joint Statement notes, among others, that “*the right to take industrial action by workers and employers in support of their legitimate industrial interests is recognised by the constituents of the International Labour Organisation*” and that this recognition required the Workers’ and Employers’ Groups to address a series of issues concerning the ILO Supervisory System. However, the Joint Statement did not recognize that a right to strike is within the scope of ILO Convention 87.

The Government Group statement set out, among others, that “*the right to strike, albeit part of the fundamental principles and rights at work of the ILO, is not an absolute right. The scope and conditions of this right are regulated at the national level*”.

The discussion at the tripartite meeting also showed very clearly that there exists a wide variety of diverging rules, practices and perceptions regarding industrial action in ILO Member States, which often conflict with the CEACR’s views and non-binding guidance.

c. The Governing Body discussion in March 2015

The March 2015 GB endorsed the Joint Statement by Employers and Workers, as well as the Government Group statements. It was decided for the time being not to pursue any action in accordance with Article 37 of the ILO Constitution (referral to the ICJ or establishment of an internal tribunal) to address the CEACR’s interpretation of Convention No. 87 in relation to the right to strike. In addition, a package of measures was proposed to improve the whole supervisory system.

d. The CAS in June 2015

30 of the CEACR’s 45 observations and almost all of the CEACR’s 45 direct requests under C. 87 in 2015 deal partly or wholly with the “right to strike”. The Employers made it clear in the CAS that the CEACR’s non-binding views on the “right to strike” in the context of Convention 87 requesting governments to bring their law and practice in line with these views continues to be of fundamental concern. Furthermore, as Governments also underlined in their February and March statements, the scope and conditions of the right to strike are regulated at national level (only) and not in Convention 87. Therefore the Governments concerned can legitimately determine a different approach regarding the right to strike at the national level.

Within the framework of the Joint Statement and the Government Group statement, the work of the CAS proceeded smoothly in June 2015. Perhaps one of the most important and positive steps taken in the CAS was the way in which conclusions were drafted. In line with the February agreement, Workers and Employers played an active role. The CAS experienced genuine tripartite ownership of its conclusions, which exclusively reflected consensus recommendations. This has now been made clear with the insertion of a new paragraph at the beginning of the section on individual cases which states: “the Committee on Application of Standards (CAS) has adopted short, clear and straightforward conclusions. Conclusions identify what is expected from governments to apply ratified Conventions in a clear and unambiguous way. Conclusions reflect concrete steps to address compliance issues. The CAS has adopted conclusions on the basis of consensus. The CAS has only reached conclusions that fall within the scope of the Convention being examined. If the workers, employers and/or governments had divergent views, this has been reflected in the CAS record of proceedings, not in the conclusions.”

Controversial issues or fundamental disagreements, such as the one on whether Convention 87 contains a right to strike, were not reflected in the conclusions. Thus no respective requests to Governments to change their law and practice on the right to strike were contained in the conclusions. The divergent views on this issue in the CAS are set out in the CAS record of proceedings, both in Part One, the General Report, as well as in Part Two, the Report on the discussion of individual cases. In their operational part, the conclusions adopted are short, clear and straightforward - requesting Governments to take concrete measures.

e. The Committee on Freedom of Association (CFA)

When reflecting upon this submission, we kindly ask the CEACR to respectfully consider the key differences in their mandate and the mandate of the CFA. The CFA's mandate consists in determining whether any given legislation or practice complies with the principles of freedom of association and collective bargaining. The work of the CFA, when considering violations of the principles of freedom of association and collective bargaining, is therefore broader in scope than the examination of ratified Conventions at the national level.

Like the CEACR, the CFA does not have a judicial mandate and it follows that it also does not create legal jurisprudence rather it also creates non-binding guidance. Moreover, the CFA's decisions and principles set out in Chapter 10 of the Digest concerning the right to strike cannot be derived from Convention 87. It logically follows that when a CFA case involving ratification of Convention 87 is entrusted to the CEACR for examination of the action recommended by the CFA, and approved by the Governing Body, the CFA's conclusions and recommendations concerning a violation arising from a strike at the national level do not confirm that a right to strike lies within Convention 87 itself.

The CFA works confidentially and by consensus. The CFA's work does not currently provide the ability for the participants to express divergent views. Furthermore, the Digest of Decisions and Principles of the CFA is a guidance tool to help the CFA consider making consistent conclusions and recommendations in individual cases. The CFA itself is mindful that those Decisions and Principles are derived by consensus in individual cases, which may have included divergent views.

CONCLUDING REMARKS

In light of these developments and clarifications, the IOE kindly calls upon the CEACR to constructively facilitate the "Standards Initiative " process by reconsidering and suspending its non-binding interpretations on the "right to strike" vis-à-vis Convention 87, whether in observations, direct requests or other CEACR documents.

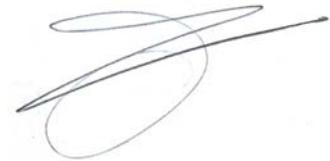
In particular, the Employers respectfully call on the CEACR to suspend at its forthcoming meeting all references and concrete requests in observations and direct requests on Convention 87 for amendments of law and practice with regard to strike action concerning Angola, Anguilla, Argentina, Bangladesh, Belarus, Bermuda, British Virgin Islands, Burundi, Cambodia, Cameroon, Comoros, Congo, Croatia, Dominica, Ecuador, El Salvador, Equatorial Guinea, Falkland Islands (Malvinas), Fiji, French Southern and Antarctic Territories, Gabon, Gambia, Ghana, Gibraltar, Grenada, Guatemala, Guernsey, Guinea, Guyana, Haiti, Hungary, Ireland, Isle of Man, Jamaica, Jersey, Kiribati, Liberia, Luxemburg, Madagascar, Maldives, Malta, Mauritania, Mexico, Mongolia, Montserrat, Niger, Nigeria, Pakistan, Panama, Papua New Guinea, Paraguay, Peru, Philippines, Poland, Portugal,

Romania, Russian Federation, Rwanda, Saint Kitts and Nevis, Saint Lucia, Saint Vincent and the Grenadines, Samoa, San Marino, Sao Tome and Principe, Senegal, Serbia, Seychelles, Sierra Leone, Slovakia, Slovenia, Solomon Islands, South Africa, Spain, Sri Lanka, St Helena, Suriname, Swaziland, Sweden, Switzerland, Syrian Arab Republic, Tajikistan, Tanzania, The former Yugoslav Republic of Macedonia, Timor-Leste, Togo, Trinidad and Tobago, Tunisia, Turkey, Turkmenistan, Uganda, Ukraine, United Kingdom, Uruguay, Vanuatu, Venezuela, Yemen, Zambia, Zimbabwe and any other Member States that have ratified Convention 87. The IOE kindly request to send the present comments to the abovementioned Governments.

In this context, the IOE wishes to point out the increasingly isolated position of the CEACR on the right to strike which has become even more obvious in recent discussions at the Governing Body and, if maintained by the CEACR, is bound to compromise the credibility and authority of the whole ILO supervisory system.

The IOE kindly requests the CEACR to be receptive and take into consideration the above mentioned clarifications and recent developments on Convention 87 in relation to the right to strike. The IOE calls upon the CEACR to facilitate the Standard Initiative process mindful of the agreed Joint Statement by the Workers and Employers and the Governments' statements all of which were endorsed by the March 2015 GB.

Yours sincerely,



Linda Kromjong

Secretary General

The International Organisation of Employers (IOE) is the largest network of the private sector in the world, with more than 150 business and employer organisation members. In social and labour policy debate taking place in the International Labour Organization, across the UN and multilateral system, and in the G20 and other emerging processes, the IOE is the recognized voice of business. The IOE seeks to influence the environment for doing business, including by advocating for regulatory frameworks at the international level that favour entrepreneurship, private sector development, and sustainable job creation. The IOE supports national business organisations in guiding corporate members in matters of international labour standards, business and human rights, CSR, occupational health and safety, and international industrial relations. For more information visit www.ioe-emp.org