

106th Session of the International Labour Conference

5 - 16 June 2017



IOE REPORT

International Organisation of Employers

INTRODUCTION

For the third year, and despite all the difficulties, the two-week format is now consolidated, thanks to, among other elements, better time management of the different discussions. Employers have also expressed their satisfaction regarding the outcomes achieved during this Conference.

First, the discussions of the Committee on the Application of Standards – the CAS – have served to strengthen its value. Employers and Workers have acted with a sense of commitment and responsibility to achieve a timely agreement on the list of cases, there is a growing ownership in the way conclusions are drafted, and they have improved the clarity on what the areas of consensus are. Constituents remain free to express and reflect their different views while simultaneously keeping an eye on the guidance of the Committee of Experts (for instance on the Expert's guidance on the Right to Strike).

The general discussion on migration was not an easy one but the final outcome should serve to improve ILO support for the sound and effective governance of migration, especially in the context of the upcoming Global Compact for Safe, Orderly and Regular Migration. From an Employers' perspective no red lines were crossed. The ILO already has at its disposal a wide array of means to support its Constituents, in particular, the 2016 ILO Fair Recruitment General Principles and Operational Guidelines. But the ILO would now need to focus in a more active and effective manner on skills for migrants through the development of a specific programme on this area.

The recurrent discussion on Fundamental Principles and Rights at Work was also difficult but in the end, the Employers' leadership managed to obtain a much more balanced outcome which builds upon last year's evaluation of the Social Justice Declaration. Employers will now need to closely follow the ILO Office's action so that it plugs the "implementation gaps" in a practical manner, rather than bringing about new non-consensual items.

The discussions to update the important Recommendation 205 on Employment and Decent Work for Peace and Resilience were not easy, neither last year, nor during this ILC session, but they have also been fruitful and with a constructive outcome. Constituents have made a good effort to overcome contentious points which put at risk the achievement of a consensual and practical outcome in such an important topic. It is now time to improve ILO action in countries which need this more urgently, using the approach agreed on in the Recommendation

The Director-General also provided input to the plenary discussion on the ILO Green Initiative, aiming at better positioning the ILO in relation to international initiatives for a more sustainable environment. The discussions were of interest and Employers added elements which did not appear to a sufficient extent in the DG's report, among others, the importance of the role of social partners in transforming behaviors in the workplace and the need for the ILO to become much more relevant and known in the area of future skill requirements for greener economies.

To sum up, expectations have been met due to great teamwork and collaboration. To continue being successful, Employers will need to be committed to properly following up the outcomes.

THE COMMITTEE ON THE APPLICATION OF STANDARDS (CAS)

Spokesperson: Sonia Regenbogen (Canada)

IOE: Maria Paz Anzorreguy, Alessandra Assenza, Ecem Pirlir

The CAS completed the two-week work programme in a constructive and open atmosphere. While divergences of views among the tripartite constituents on substantial issues remain, these were voiced in a spirit of mutual respect and understanding.

The CAS thus reaffirmed its role as the cornerstone of the ILS supervisory system, based on the preparatory technical non-binding work of the Committee of Experts on the Application of Conventions and Recommendations (CEACR).

During the **General Discussion**, the Employers took the discussion of the general part of the Experts' report to highlight a number of positive elements in the 2017 CEACR Report and to suggest further improvements in the work of the Experts, the Office and the regular supervision system.

Despite these very positive elements, the Employers continued to express their objection at the Experts' interpretations of the "right to strike" in the context of C. 87. Employers stressed their concern that in the 2017 Experts' report, out of the 64 observations on Convention 87, 45 deal in one way or another with the "right to strike"; out of the 62 direct requests on Convention 87, 51 deal in one way or another with the "right to strike" and 22 deal exclusively with the right to strike. The "right to strike" has thus remained a major, if not the main, issue of the Experts' supervision of C87 despite a profound disagreement between tripartite constituents. The Group expressed that matters related to the "right to strike" were outside the scope of C87 and outside the scope of the CEACR and the CAS mandate.

Therefore, from the Employers' view, the governments do not have a duty to provide information on the changes to their law and practice related to the CEACR observations on the "right to strike", in their national reports on the application of C87. The same applies to the CAS, which in its conclusions on cases concerning C87, will continue not to make any request to governments for information or for changes of law and practice regarding the right to strike.

Indeed, again this year, a clarifying paragraph was inserted in the CAS report on the status of CAS conclusions: *"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. Conclusions will no longer repeat elements of the discussion or reiterate Governments' declarations which can be found in the opening and closing of the discussion set out in the Records of Proceedings. CAS has adopted conclusions on the basis of consensus. CAS has only reached conclusions that fall within the scope of the convention being examined. If the employers, workers and/or governments have divergent views, this has been reflected in the CAS record of proceedings, not in the conclusions"*.

The **discussion of the 24 individual cases** was conducted successfully.

The following cases discussed are of great concern for the Employers

Venezuela Convention 122 on the lack of an active policy designed to promote full, productive and freely chosen employment in consultations with the most representative Employer organisation and worker organisations.

El Salvador Convention 144. The case concerns the lack of autonomy of workers' and Employers' organisations to select their representatives on tripartite bodies, where, due to the interference of the government, the Higher Labour Council could not meet for the last four years. This Government was requested to accept a direct contact mission.

Kazakhstan Convention 87. The case concerns, among others, serious infringements of the Employers' freedom of association as a result of the adoption in July 2013 of the Law on Entrepreneurs.

The cases of **Afghanistan, Libya and the Democratic Republic of Congo on C 182**, Worst Forms of Child Labour were an opportunity to shed light on the use of children in armed conflict by armed groups and armed forces and the need for the international community to mobilize resources and assist the governments concerned in taking control, and to enact and enforce laws to protect children.

As was the case last year, Workers and Employers played an active role and demonstrated real ownership in the drafting of the conclusions for individual cases.

The **General Survey** discussion was the opportunity to highlight that OSH is a priority for ILO constituents and should be also given clear priority in ILO's activities, including standards-related activities; The ILO should step up its technical assistance to Member States on OSH, in particular on collecting OSH data, on making risk assessments and on focusing (limited) labour inspection resources on high-risk sectors; A preventative approach on OSH, involving awareness-raising, information, advice, and incentives should always be given priority over penalties and other repressive approaches; and the ILO should also help build the capacity of Employers' and workers' organisations on OSH; these organisations play an indispensable role in the promotion of an OSH culture, and the implementation of OSH systems and OSH programmes. It was also highlighted that for effective OSH management in the workplace, it is important that not only Employers, but also Workers, live up to their OSH responsibilities and duties. Other elements which were highlighted were the need for efficient cooperation between Employers and Workers, mechanisms adapted to the specific needs of SMEs and simple and clear regulations and institutions, avoiding undue bureaucracy. Employers consider C. 187 as a modern and flexible ILO Convention, whereas C. 167, 176 and 184 do not seem to have been met with much acceptance by constituents. Reporting on and the supervision of ILO OSH Conventions should be focused on a few crucial provisions.

Annexes:

2017 CAS report, part [one](#) and [two](#)

The following speeches are available on <http://www.ioe-ilc.org/>. Please log in and click on CAS.

[Employers' plenary speech](#)

[Employers' speech for General Discussion](#)

[Employers' speech for General Survey on OSH instruments](#)

THE COMMITTEE ON LABOUR MIGRATION

Spokesperson: Scott Barklamb (Australia)

IOE: Thannaletchimy Housset, Stéphanie Winet

This year's Committee on Labour Migration highlighted that there are clear benefits that can and do flow from soundly and effectively governed labour migration. *“Well governed labour migration can contribute to sustainable development for countries of origin, transit and destination, and can provide benefits and opportunities for the migrant workers and their families. It can balance labour supply and demand, help develop and transfer skills at all levels, contribute to social protection systems, foster innovation and enrich communities both culturally and socially. Poorly governed labour migration can bring risks and challenges”* (Para 3). The discussion provided an opportunity to have the ILO support sound and effective governance that can maximize the benefits of labour migration while minimizing the risks.

An important part of the conclusion focuses on future action for the ILO, especially in the context of upcoming Global Compact for Safe, Orderly and Regular Migration. The ILO already has at its disposal a wide array of means to support its Constituents in implementing coherent and comprehensive responses to guide sound and effective labour migration governance. **Rather than coming up with new tools, the Conclusions reiterated the need to promote and make better use of existing tools.**

In particular, the Conclusions stressed the utility of the 2016 ILO Fair Recruitment General Principles and Operational Guidelines, which represent the up-to-date thinking of the ILO and its best input into meeting fair recruitment challenges. Rather than focus on coming up with new tools to address irregular labour migration, the Conclusions emphasised the need to make better use of its existing tools. In addition, a follow-up assessment of the impact and effectiveness of the work on fair recruitment is encouraged, subject to the decision of the Governing Body on the modality and the appropriate time-frame.

Another focus of the Conclusions was on the importance of skills development, mobility and recognition and the ILO's role in providing active and effective support for a skills development programme to its Constituents.

Overall, the Employers' group was pleased with the Conclusions, which recognised the need to avoid misguided misperceptions on labour migration and to help ground national discussions, policies and governance in facts, rather than prejudice or supposition.

[Link to the Conclusions](#)

THE COMMITTEE ON DECENT WORK FOR PEACE, SECURITY AND DISASTER RESILIENCE

Spokesperson: Lindiwe Sephomolo (Lesotho)

IOE: Frederick Muia

The March 2014 session of the ILO Governing Body decided to place the topic of Employment and Decent Work for Peace and Resilience on the agenda of the session of the conference: Revision of the Employment (transition from war to peace) Recommendation (n°71) adopted in 1944 with a view to the adoption of a Recommendation under a double discussion procedure. The first discussion took place in June 2016. In both discussions, the Employers' group was led by Ms. Lindiwe Sephomolo from Lesotho.

The mandate of the committee was to review the 1944 Employment Recommendation (Transition from War to peace) in order to broaden its scope and provide up to date guidance on the role of employment and decent work in prevention, recovery, peace and resilience with respect to crisis situations arising from conflicts and disasters.

The first discussion was a very arduous process with a number of challenges touching on the mandate of the committee. Crisis response touches on humanitarian, employment and developmental approaches and the question was whether some of these issues were within the ILO's mandate. The first discussion ended with a number of key issues remaining unresolved such as the plight of refugees and returnees, definitions of disaster and resilience, and vulnerable groups. This prompted the ILO to call for a tripartite meeting of experts on refugees to try and bridge the gap and also to hold informal consultations on the draft Recommendation. It is these efforts that have led not only to consensus on the most difficult issues but also the successful adoption of Recommendation 205 with 378 votes for, 5 against and 8 abstentions.

The Employers' group fully embraced this revision exercise as they saw it as an opportunity to help create or restore an enabling environment for sustainable enterprises considering the resolution and conclusions concerning the promotion of sustainable enterprises adopted by the International Labour Conference at its 97th session.

This is why the **Employers' group attaches particular importance** to specific paragraphs of the instrument which state that "in taking measures on employment and decent work in response to crisis situations arising from conflicts and disasters, and with a view to prevention, Members should take into account the **promotion of full, freely chosen employment and**

decent work which are vital to promoting peace, preventing crises, enabling recovery and building resilience. The Employers' group succeeded in inserting paragraph 8 C which focuses on the need to promote sustainable employment and decent work, **the creation of sustainable enterprises, small and medium sized enterprises and the transition from the informal to the formal economy.**

Moreover, the Employers' group fully supported the emphasis in the instrument on the importance of social dialogue and the need for active participation of Employer's and workers' organizations in the planning, implementing and monitoring measures for recovery and resilience.

Finally, it is also important to stress that **the Employers' Group succeeded in having the annex on relevant ILO Instruments deleted.** Some instruments such as the Employment relationship Recommendation, Maternity Protection Convention and the Human Resource Development Recommendation were adopted without Employer support and the Employers' group argued successfully that it could not vote for the Recommendation if these instruments were included. The Chair brokered an agreement following which the annex was deleted.

[Link to the new Recommendation 204](#)

THE COMMITTEE ON FUNDAMENTAL PRINCIPLES AND RIGHTS AT WORK

Spokesperson: Renate Hornung-Draus (Germany)

IOE: Peter Hall, Pierre Vincensini

The Employers commend the satisfying ILC conclusions on the important topic of the Fundamental Principles and Rights at Work (FPRW). The Employers made a significant effort, despite unbalanced work from the Office, to ensure that this committee's work complemented and built upon last year's evaluation of the Social Justice Declaration.

Part of the challenge was that the preconference report and the tentative conclusions prepared by the Office were not balanced. There were considerably more references to freedom of association and collective bargaining (Convention 87 and 98) compared to the other three FPRW in the initial text. In addition, many of the spokespersons interventions had been overlooked and therefore Employers were compelled to fight hard to redress the unbalance and inaccurate assertions. **Despite this, Employers managed to avoid the inclusion of controversial references** (public procurement as a tool to preserve FPRW, and also avoided enlarging fundamental principles and rights to the area of OSH, among others);

Employers also succeeded to significantly dilute references to Non-Standard Forms of Employment and Global Supply Chains. The Group was also effective in inserting a specific paragraph strengthening the important role of business activity, the creation of an enabling environment for sustainable enterprise, mentioning productivity, growth and job creation.

The committee has steered the ILO's ongoing work on fundamental principles and rights at work so that **it is based on a more practical action** that better understands and responds

effectively to the diverse realities and needs of its Members with careful application of technical assistance, capacity-building, research and standards-related action across all four categories of rights.

Finally, Employers urged the ILO to improve its efforts in responding to the needs and diverse realities of the Members, focusing more on plugging the "implementation gaps" – and taking a "bottom-up" approach – in order to realize Fundamental Principles and Rights at Work on the ground. Employers will need to closely follow up the action plan of the ILO Office in this field to ensure that this practical perspective is guaranteed.

[Link to the Conclusions](#)

THE CREDENTIALS COMMITTEE

Spokesperson: Fernando Yllanes Martinez

IOE: Jean Dejardin

The primary mission of the credentials committee is to adjudicate on the objections and complaints filed by social partners for non-observance of articles 3 of the Constitution and 26 of the Rules of the Conference concerning the composition of delegations and the payment of costs for participating in the ILC¹.

The commission continues to deal with a number of important cases and to express its concerns with respect to the situation of certain **Member States having to frequently present themselves before it due to non-observance of these obligations** (payment of costs and ensuring a balance in the tripartite composition), leading to follow-up actions.

The commission has decided that its work deserves **more visibility**, considering the increasing number of cases it receives each year. In this sense, the commission has considered it useful for **more accessible information** to be provided to constituents with the aim of assisting them in fulfilling their constitutional obligations. Furthermore, the commission has recommended **increased distribution for its reports** and its reference documentation since that would contribute to the cohesiveness of the supervisory system.

The commission has also recalled that its mandate has been adapted over the last two decades, allowing it to receive objections concerning the absence of authorisations, complaints alleging a serious and evident lack of balance within its delegations, or even complaints when a delegate or an advisor is prevented from going to the Conference. For this purpose, the commission has noted that it had been considering an interesting case calling the insufficiency of the Rules of the Conference into question once again, in dealing with the tripartite imbalance in the delegations (see the case of El Salvador above). Although the commission has noted that the Governing Body already considered this question in the past and deferred it while awaiting future developments, it does however consider that it would be desirable to re-

¹ The cases concerning the Employers dealt with this year and the conclusions of the commission are stated in paragraphs 39 to 41, 76 to 80 and 170 to 172 and 180 to 182 of the Provisional Record 5C:
http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---relconf/documents/meetingdocument/wcms_558657.pdf

examine the issue in the near future. Additionally, as revealed in its First report, the commission has proposed that, as the intermediary of the Conference, the Governing Body should examine, within the context of its discussions on the issue, if the measures can be taken in order to achieve increased participation.

ABROGATION AND WITHDRAWAL OF INTERNATIONAL LABOUR CONVENTIONS

IOE: María Paz Anzorreguy, Alessandra Assenza

At its October–November 2015, the GB decided to place on the agenda of the 2017 ILC the question of the abrogation of the following six Conventions:

1. the Night Work (Women) Convention, 1919 (No. 4);
2. the Minimum Age (Trimmers and Stokers) Convention, 1921 (No. 15);
3. the Protection against Accidents (Dockers) Convention, 1929 (No. 28);
4. the Night Work (Women) Convention (Revised), 1934 (No. 41);
5. the Minimum Age (Non-Industrial Employment) Convention (Revised), 1937 (No. 60);
and
6. the Hours of Work and Rest Periods (Road Transport) Convention, 1939 (No. 67).

Following the entry into force on 8 October 2015 of the Constitution of the ILO Instrument of Amendment, 1997, the Conference is now empowered, by a two-thirds' majority and upon recommendation by the Governing Body, to abrogate a Convention in force if it appears that it has lost its purpose or that it no longer makes a useful contribution to attaining the objectives of the Organization. The ability to abrogate Conventions, along with the Standards Review Mechanism, is an important institutional milestone and a critical element of the process aimed at ensuring that the Organization has a robust and up-to-date body of labour standards serving as a global reference. Similarly to withdrawal, which relates to Conventions that have not entered into force or are no longer in force due to denunciations, the effect of the abrogation is to eliminate definitively all legal effects arising out of a Convention in force between the Organization and its Members. The procedural guarantees are identical in the case of abrogation and withdrawal.

On this basis, the Conference decided on 14 of June to:

Abrogate C 4 [[Text of the decision](#)]

Abrogate C15 [[Text of the decision](#)]

Withdraw C28 [[Text of the decision](#)]

Abrogate C41 [[Text of the decision](#)]

Withdraw C60 [[Text of the decision](#)]

Abrogate C67 [[Text of the decision](#)]

NOTE

The IOE resources prepared in advance and during the 2017 ILC: guidance notes, speaking notes, news on the progress in the discussions, etc. remain accessible on the IOE microsite for the Conference at www.ioe-ilc.org.

INTERNATIONAL ORGANISATION OF EMPLOYERS

Avenue Louis-Casaï, 71
1216 Cointrin/Geneva
Switzerland

Telephone: +4122 929 00 00
Fax: +4122 929 00 01
E-mail: ioe@ioe-emp.com

www.ioe-emp.org
2017 ILC Microsite: www.ioe-ilc.org
(*member login required*)