

105th Session of the International Labour Conference

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IOE REPORT

International Organisation of Employers

INTRODUCTION

The two-week format for the Conference was again successful and constructive. Despite some evening sessions in two Committees all the discussions finished on time with relevant outcomes. As last year, **the success** was down to many factors, but especially more disciplined time-keeping across the Committees. Early consultation with IOE members will explore possible further improvements.

The 2016 CAS operated, as last year, in a collaborative spirit, with additional improvements and important outcomes. The **General Survey** related to the labour migration instruments was especially relevant given the current migration challenges around the world and the **discussion of the 24 individual cases** was conducted constructively. This was the result of several developments including growing ownership in the way conclusions are drafted and allowing the Constituents to freely express their different views. Improvements towards the better running of this crucial Committee cannot be viewed in isolation as they are linked to efforts that need to be made to improve the functioning of the ILO standards supervisory system.

This ILC evaluated the impact of the **2008 Social Justice Declaration**. The Employers consider this Declaration to be a governance instrument, aimed at bringing the ILO closer to the needs of the Constituents. In this sense, the outcome of the discussion was positive. There was agreement on the Employers' proposal to improve the recurrent discussions to better understand and respond to the needs of ILO member States. This more practical approach will take into account aligning ILO action with the 2030 Agenda. The End to Poverty Initiative, presented in a specific report of the Director-General to the ILC, also presents an opportunity for the ILO to demonstrate more practical action in line with the needs of the Constituents.

The Conference also had on its agenda a discussion on **Employment and Decent Work for Peace and Resilience**. This Committee started work to revise Recommendation No. 71 on Employment (Transition from war to peace). The ILO will need to show how relevant its development cooperation is in countries requiring more immediate and effective action and to define more concretely its mandate as distinct from other UN agencies. Advocating for the "sustainable enterprise approach" to attract investment was one of the main, and most successful, contributions of the Employers to this discussion which will be concluded at next year's ILC with the revision of this Recommendation.

One of the most difficult discussions was on **decent work in global supply chains (GSCs)**. The Workers, supported by many governments, strongly defended the argument that GSCs resulted in and caused decent work deficits. They also claimed that there was a governance gap in their regulation at international level. The outcome of the discussion was more balanced and reflective of the reality, acknowledging that failures do at times occur and can lead to decent work deficits. A future ILO Tripartite Technical Meeting, or a Meeting of Experts, to be defined by the ILO Governing Body, will need to develop a plan to assess possible failures, identify the main challenges for governments in achieving decent work in GSCs and to consider possible solutions (guidance, programmes, measures, initiatives or standards) to reduce decent work deficits in GSCs.

THE COMMITTEE ON THE APPLICATION OF STANDARDS (CAS)

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' Group highlighted a number of positive elements in the 2016 CEACR Report and suggested further improvements for the work of the Experts and the regular supervision. For instance, they proposed that the CEACR report present the observations by country and not by Convention, and that the submissions made by employers' and workers' organisations be made available electronically.

Despite these very positive elements, the Employers continued object to the Experts' interpretations of the "right to strike" in the context of C. 87. They stressed their concern that 40 out of the 56 observations in the 2016 Experts report referred to "right to strike" issues. The Group expressed the view that matters related to the "right to strike" were outside the scope of C. 87 and outside the scope of the mandate of both the CEACR and the CAS. Therefore, the Governments **do not have a duty** to provide in their national reports on the application of C. 87 any information on changes to their law and practice related to the CEACR observations on the "right to strike". The same is valid for the CAS conclusions on cases concerning C. 87, which 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 into 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. However, the Employers deeply regretted that no case of progress was included in the 24-country list. During the discussion, the Employers' spokespersons reiterated that their views on the right strike and C. 87 had not changed.

The following cases which were 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 employers' organisation and workers' organisations.

El Salvador Convention 87 on 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 had not been able to meet for the last three years. This case was inserted in a special paragraph and the Government was requested to accept a high-level ILO mission.

Mauritius Convention 98 on the Government's undue interference in private sector collective bargaining that is damaging the employers' and workers' ability to negotiate in good faith.

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

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

The **General Survey** related to the labour migration instruments (Conventions Nos. 97 and 143 and Recommendations Nos. 86 and 151). The Employers underlined the benefits of migration for business, as a vehicle for balancing labour supply and demand, for sparking innovation, providing entrepreneurial opportunities and for transferring and spreading skills. However, businesses' and workers' involvement in managing migration is, and always has been, neglected.

Following a detailed submission, the primary conclusion reached by the Employers' Group on this year's General Survey was that Conventions 97 and 143 no longer appeared to provide adequate responses to the increasingly complex present and future migration challenges and need to be updated.

The Employers trusted that the opportunities provided by ILO tripartite discussions in various ILO forums, and especially in the Standards Review Mechanism (SRM), will be seized to ensure the continued relevance of the instruments to the world of work. The General Discussion on labour migration at next year's ILC will be a good opportunity to clarify the possible need for a review or consolidation of Conventions 97 and 143.

Useful links:

[CAS report Part I](#)

[CAS report Part II](#)

[Employers' plenary speech](#)

[Employers' speech for General Discussion](#)

[Employers' speech for General Survey](#)

THE COMMITTEE ON SOCIAL JUSTICE DECLARATION

This year's Committee of the Whole on the evaluation of the Social Justice Declaration highlighted the role of the Declaration as a governance tool and identified gaps in ILO's action in implementing the Declaration in order to achieve its four strategic objectives, namely employment protection, social protection (social security and labour protection), social

dialogue and fundamental principles and rights at work, with gender equality and non-discrimination being cross-cutting issues).

The evaluation of the Social Justice Declaration demonstrated that while the objectives of the Declaration are as valid today as they were when the Declaration was adopted, **its implementation has yet not adapted to the changes in the world of work**. Thus, achieving all the objectives of the Declaration requires continuous review and adaptation of its implementation measures so that they remain grounded in reality.

An important part of the outcome resolution focuses **on improving the recurrent discussions**. The Employers' plea that recurrent discussions be improved in order to meet the intended purpose of the Declaration, which is to better understand and respond to the needs of ILO Members, was well received and echoed by many. The resolution thus provides the Governing Body with guidelines to improve the modalities of the recurrent discussions such that they differ from general discussions (i.e. policy discussions) and meet their intended purpose. The November 2016 session of the Governing Body will receive detailed proposals on this.

Overall, the Employers' Group was pleased with the resolution which reaffirms the importance of the Declaration as a governance tool, and acknowledges the reinforcement of the **bottom-up approach**, whereby the work of the ILO should be informed by the needs and priorities of its Constituents. Another positive point is that the ILO is reminded to use all of its means of action, not only international labour standards, to respond more effectively to these needs and priorities. Thus, the Employers believe that the resolution will serve as a good reference point for Members to give further effect to its follow-up.

The 2030 Agenda presents an excellent opportunity for the ILO to play a full and active role in the implementation of decent work by supporting its Constituents to properly participate in national strategies for sustainable development. Of particular importance was the ILO's contribution towards measuring progress by Members towards decent work via the decent work indicators. Employers strongly objected to the use of the decent work indicators for two main reasons: they have never been endorsed nor discussed by the Governing Body; and certain indicators (notably workers' rights) are misleading and do not accurately capture what they are intended to capture. This point was raised at the Conference and decent work indicators will be discussed at the November 2016 Governing Body, which will then be able to better guide the ILO in contributing to the UN process on the Sustainable Development Goals.

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

The Committee on Employment and Decent Work for Peace and Resilience met to review and revise Recommendation No. 71 on Employment (Transition from war to peace) adopted in 1944. When taking a decision to put this item on the agenda for standard setting under the double discussion procedure, the Governing Body was of the view that it was critical to build on the ILO's experience on the role of employment and decent work in situations of crisis arising from conflict or disaster.

The only other recent document addressing this issue was the 2009 United Nations policy document for post-conflict employment creation, income generation and reintegration, which emphasised the role employment plays in peace building, recovery, reconstruction and resilience.

One of the most important challenges that the committee faced was whether some of the issues addressed were within the ILO mandate. This was because the Committee had to find convergence between humanitarian assistance, peace building and development. **Controversy among Governments** on some important issues forced the **social partners to intervene bilaterally and help to build consensus**. A number of points of divergence touched on minorities, indigenous and tribal peoples, and other vulnerable or disadvantaged groups.

Employment and income generation are fundamental elements of the post-conflict solution. For communities and individuals, job creation and regular income can provide the means for survival and recovery.

The Employers' Group took the view that the private sector is the creator of **jobs and wealth and thus the ILO's response should be focused on an enabling environment for sustainable enterprise creation and development**. This is why the Group called for reference to the 2007 ILC Conclusions on Sustainable Enterprises, both in the preamble and in the body of the text. The Group also pushed for an important amendment in the Annex calling for inclusion of the conclusions on sustainable enterprises as one of the key reference documents when implementing the Recommendation. Issues were highlighted such as political stability, economic predictability, boosting entrepreneurship, access to finance particularly for micro-, small and medium-sized enterprises, promoting education, training and lifelong learning, and boosting employment as part of reconstruction of infrastructure.

The Employers' Group was disappointed that **a number of issues remained unresolved**. The most difficult is the re-integration of refugees, internally displaced persons and returnees. The Committee decided to "square bracket" the section concerned until next year's discussion. Hopefully, the ILO tripartite committee of experts scheduled for July 2016 will reach consensus on the way forward.

THE COMMITTEE ON DECENT WORK IN GLOBAL SUPPLY CHAINS

As this was a General Discussion, the ILC had no mandate to develop a new ILO standard on global supply chains (GSCs), but rather to develop conclusions that will shape the ILO's vision, strategy and action plan on GSCs for the next 3-5 years.

Key questions in the discussion concerned whether GSCs resulted in and caused decent work deficits, as suggested by the Workers' Group; whether there is a governance gap at international level to regulate global supply chains and whether therefore ILO standard setting on GSCs would be necessary.

The Employers stressed at the outset that the discussion must not be based on anecdotal evidence or isolated examples, but must be fact-based. The Employers' Group provided a

wealth of evidence and results from studies by international institutions and independent academia for all its main theses. A key point of the Employers was that GSCs have stimulated growth, created jobs and contributed to productive employment and decent work. The Employers recognised that there are decent work deficits in some GSCs, but showed that these deficits are not a result of GSCs *per se*, but reflect the challenges in the general economy in which these supply chains operate. The Employers' Group stressed that there was no governance gap at international level, but rather an implementation and enforcement gap at national level.

The discussion was extremely difficult because the Employers and Workers approached the issue from very different angles. **In the end, the Conference adopted an action plan for the ILO with regard to GSCs**, key elements of which include: providing companies with the information they need for mapping risk; supporting companies through guidance and advice on labour rights due diligence; improving understanding of supply chains through more and better data; driving policy coherence at international level with other international organisations; strengthening capacity building and promoting national and cross-border social dialogue. In particular, the action item that calls on the ILO to support companies with relevant and up-to-date information on the application of labour standards and to make information available on specific country situations, laws and regulations, is highly relevant as companies need such information to conduct due diligence, as well as to enhance their efforts to ensure compliance in their supply chains.

The conclusions call on the ILO to convene, as soon as appropriate, and by decision of the Governing Body, an ILO Tripartite Technical Meeting or a Meeting of Experts to assess the failures which lead to **decent work deficits in global supply chains**; identify the salient challenges of governance to achieving decent work in global supply chains; consider what guidance, programmes, measures, initiatives or standards are needed to promote decent work and/or facilitate reducing decent work deficits in global supply chains.

As the timing for the tripartite meeting is for the decision of the ILO Governing Body (GB), it is open as to when such a meeting will take place. The Employers' Group in the GB will be fully involved in the decision making process. It is also relevant that in September 2016 the review of the ILO MNE Declaration will begin and will deal with many of the issues that were discussed in the General Discussion on decent work in global supply chains.

THE CREDENTIALS COMMITTEE

The Committee had before it from the Employers' Group two objections and one complaint.

Objections

Guinea

The Employers' Organisation of Guinea (CNP Guinée), which traditionally leads the country's employers' delegation to the Conference and is recognised as the most representative, not only at national level, but also by the IOE, the Federation of Employers' Organisations of West Africa (FOPAO) and by BUSINESSAFRICA, had designated 12 representatives to the

employers' delegation, but the government had limited both the employers' and workers' delegations to 11 (one delegate and ten technical advisers), designating nine delegates from two organisations that are not recognised as representatives of employers in Guinea and only two representatives from CNP-Guinée. Of the two, the government had designated the former acting President of the organisation, Mr Sékou Cissé, who had actually been removed from office.

The Government argued that its evaluation of the representativity of the country's three employers' organisations justified the composition of the Employers' Delegation.

It was however clear that the so-called evaluation had been undertaken in consultation, not with CNP-Guinée, but, notably, with the aforementioned Mr Sékou Cissé. The Committee reminded the Government that when governments have knowledge of leadership problems within professional organisations, they must not get mixed up in the internal affairs of the organisation. The Committee went on to express doubts as to the conformity of the designation of the employer delegates in line with Article 3, Para. 5 of the ILO Constitution and raised the point that the evaluation of representativity of employers' organisations and the consultation procedure for the designation of the delegation of this session of the Conference had included a **former** leader of CNP-Guinée.

The Committee invited the Government to ensure, next year, that the designation of a delegation of employers is undertaken without interference and with the agreement of the representative organisations, and founded on indisputable criteria as to their relative importance.

Peru

The Committee also had before it an objection alleging that the designation of the Employers' Delegation of Peru had not been made in agreement with the most representative organisation of employers, i.e. the National Confederation of Private Business Organisations (CONFIEP).

The Committee noted that CONFIEP had led the employers' delegation of Peru for many years and that the Government had no grounds for questioning its status as the most representative employers' organisation. It also recalled that when there are several representative employers' organisations in a country, the duty to consult goes beyond simply sending a letter to each one inviting the proposal of names, as the Government had done, and that such consultation also entailed seeking agreement between the organisations. When such an agreement is not possible, the government must secure the agreement of the most representative organisation.

The Committee concluded that the agreement of CONFIEP as to the designation of the employers' delegate and of his three technical advisers constituted (cf Article 3, Para 5, of the ILO Constitution) a condition of the validity of the designation of the Employers' Delegation.

The Committee expects that in future the Government proceed to the designation of the Employers' Delegation in a manner that fully conforms with the provisions of the ILO Constitution.

Complaint

Democratic Republic of Congo

This complaint related to the serious and manifest imbalance between the number of employers' technical advisers and those of the Government, whose expenses had been covered by the latter. This Employer complaint was issued by Mr Marc Atibu Saleh Mweke, Secretary-General of the Employers' Federation of the Congo (FEC), technical adviser and substitute delegate.

The complaint's authors alleged that the Government had failed in its obligations as set out in Article 13, Para. 2 a) of the ILO Constitution by covering the travel and subsistence expenses of 14 government representatives and only two employers' representatives and four workers'. Furthermore, the Government had only covered the expenses of two employer members for a period of eight days and not for the duration of the Conference, claiming budgetary constraints.

The Committee noted that it had before it for the second year running a complaint on the same subject and recalled Article 13, Para. 2 a) of the ILO Constitution requiring member States to cover the travel and subsistence expenses of delegates and the technical advisers of a full tripartite delegation.

Given that the Government acknowledged that it had only covered the travel and subsistence expenses of three employer delegates, whilst covering the expenses of a number almost four times greater of technical advisers in its own delegation, the Committee considered that the conditions enjoyed by the Government Delegation compared with those of the Employers' Delegation were clearly unbalanced.

In conclusion, the Committee noted the promises of the Government to ensure a better balance in the distribution of resources between the three groups in the national delegation to future sessions of the Conference.

NOTE

IOE resources prepared in advance and during the 2016 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.

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