



European Union

Statement

**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**

(23-25 February 2015)

Geneva, 23 February 2015

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Opening EU Statement

Thank you, Chair.

I am speaking on behalf of the European Union and its Member States.

We support the statements delivered by the Government Group and IMEC.

First of all let me thank the Office for the comprehensive document prepared.

All of twenty-eight EU Member States have ratified ILO Convention 87 on Freedom of Association and Collective Bargaining. As EU Member States, we are also all bound by the Charter of Fundamental Rights of the European Union, which recognizes the right to collective bargaining and strike action.

The European Court of Justice has stated that the right to take collective action, including the right to strike, is a fundamental right that forms an integral part of the general principles of Union law. However, the Court added that the exercise of that right may nonetheless be subject to certain restrictions. As is reaffirmed by Article 28 of the Charter of Fundamental Rights of the European Union, those rights are to be protected in accordance with Union law and national law and practices.

Let me briefly recall why we are here today. Since 2012 there is a dispute on the interpretation of Convention 87. According to Article 37 of the ILO Constitution, a dispute on the interpretation of a Convention can be resolved by referring the matter to the International Court of Justice or by appointing a tribunal "for the expeditious determination of any dispute or question". At the Governing Body in November 2014 we were ready to accept the referral to the ICJ as part of a six-point package, though, we still hope this meeting means that referral is not required.

However, we are here to discuss the question of Convention 87 in relation to the right to strike.

Convention 87, like all ILO Conventions, is a peculiar international treaty: because they are elaborated in the ILO tripartite system; because they are voted by a two third majority including the social partners; and because reservations are not allowed. It is nevertheless an international treaty at all effects: it is addressed to Members of the ILO, which are "States" according to the ILO Constitution, and States are responsible for its implementation and application.

Since its entry into force in July 1950, Convention 87 has been supervised by the Committee of Experts on the Application of Conventions and Recommendations, by the Conference Committee on Application of Standards, and its principles by the Committee on Freedom of

Association. The work of these bodies has not encountered persistent objections from Governments, but some disagreement on specific findings.

In article 19 of the ILO Constitution there is a provision prescribing that ratified conventions shall not be deemed to affect any law, award, custom or agreement which ensures more favourable conditions to the workers concerned than those provided for in ILO Conventions. This is what we usually call a minimum standards provision. As already stated, in the Member States of the EU we recognize the freedom to associate and the right to strike: this enables all Member States to deal with this issue in accordance with their national legislation and practice.

The Right to Strike is also contained in article 8 paragraph d) of the 1966 International Covenant on Economic Social and Cultural Rights that has to be taken into account interpreting Convention 87. We would like to recall that around 140 countries have ratified both treaties: Convention 87 and the UN Covenant.

In light of all this, we consider that from the perspective of States the right to strike is a corollary of freedom of association. We share the view that the right to strike, even if not explicitly mentioned in Convention 87, constitutes an essential means for trade union organisations to defend and further the interests of workers.

However, the right to strike is not absolute and applies within the framework of national legislation and practice. The second part of the document is a clear evidence of the different forms that States have used to give effect to Convention 87: from Constitutions to national laws, from jurisprudence to collective agreements.

We believe that our meeting can be useful in view of achieving a better and more precise understanding of the right to strike and the issues at stake. This could enable a positive outcome at the next Governing Body. We hope this meeting can be fruitful and lead to constructive progress on this issue, thus we encourage other groups and governments to join concrete proposals.

Thank you, Chair.