



SECOND ITEM ON THE AGENDA

**(a) Proposals for the agenda of the 92nd
Session (2004) of the International
Labour Conference****Contents**

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Introduction

1. In accordance with its regular practice, the Governing Body holds in November each year a first discussion on items that are proposed to be placed on the agenda of the International Labour Conference which takes place two and a half years later. The purpose of this discussion is to select a shortlist of items for closer scrutiny in March the following year. The general practice has been that at that time the agenda of the International Labour Conference which will be held two years later is fixed.
2. The present document, submitted for consideration by the Governing Body at its 282nd Session (November 2001), contains, in the first part, proposals for items which could be placed on the agenda of the 92nd Session (2004) of the International Labour Conference. The Office is also proposing to place the question of the withdrawal of 16 outdated Recommendations on the agenda of the 92nd Session (2004) of the International Labour Conference. This proposal is examined in a separate document.¹
3. Since 1997, the Governing Body has extended the scope of the November discussion to include also an examination of items that could be considered for inclusion in the agenda of future Conferences. These are items which do not appear to be at a sufficiently developed stage to be acted upon immediately, but which could be considered for Conferences held after 2004. Such other proposals are contained in the second part of this document. The Governing Body could, on this occasion, indicate which other proposals should be taken as priority for research work and consultations by the Office in order to advance their level of preparation, taking into account the resources and time necessary for this to be done.
4. The present document is a follow-up to the decision by the Governing Body at its 279th Session (November 2000), to adopt a new approach to ILO standard setting and other standards-related activities and to place items on the agenda of the International Labour Conference for general discussions based on an integrated approach.² As a result of this decision, this document not only contains, in accordance with established practice, proposals to place on the agenda of the International Labour Conference items either for standard setting or for general discussion, but also proposals for general discussions based on an integrated approach. However, this decision does not affect the practice to place items on the agenda of the International Labour Conference on subjects which appear to require specific normative action.
5. Before presenting the proposals in detail, the present document will briefly recall the purpose and nature of the general discussions based on an integrated approach.

General discussions based on an integrated approach

6. *The purpose* of general discussions based on an integrated approach is to increase the coherence, relevance and impact of ILO standards-related activities in the light of the objectives of the Organization as restated in the Decent Work Agenda.

¹ [GB.282/2/2](#).

² See [GB.279/4](#) and [GB.279/5/2](#); see also [GB.280/2](#).

7. *The basic premises* of this approach rest on the view that “the best guarantee of the viability and relevance of standards-related activities lies in *more in-depth preparatory work* and to seek the *broadest possible consensus* among the ILO constituents concerning the utility of the proposed activities”.³ Tripartite discussions based on in-depth preparatory work would “enable the Governing Body to include an item on the agenda once its object, the need to which it responds and the added value which the proposed instrument would bring to existing standards, have been as clearly defined and generally agreed as possible”.⁴
8. The term “integrated” is meant to refer to the fact that standards should be “better integrated with one another and better integrated with other means of action”. This should ensure the “greatest possible efficiency in standards-related activities for the attainment of the ILO’s constitutional objectives” and “ensure a greater impact on reality”.⁵
9. In terms of process, the proposed general discussion represents *a preparatory stage* in the development of items for the agenda of the International Labour Conference and involves an in-depth examination of the ILO’s standards-related activities in a selected subject area covered by a report. The specific purpose of this general discussion is to develop a consensus on *a plan of action* that would set directions to guide future standards-related activities in the subject area in question. After adoption by the Conference, the Governing Body would draw the appropriate conclusions from this plan of action.⁶ When such a plan of action comprises proposals for standard-setting action in terms of revisions (taking into account the possible revisions envisaged by the Governing Body), new standards, etc., the details of such proposals would be developed and submitted to the Governing Body for consideration in accordance with regular practice.
10. The preparatory *in-depth examination* will comprise, on the one hand, a review of the standards in a selected subject area and, on the other, the ILO’s standards-related activities designed to respond to problems, challenges and needs in that subject area. This review will include, but not be limited to, an examination of the substance, application and impact of relevant international labour standards. The review would, inter alia, aim at establishing whether and to what extent the existing standards, in the area examined, leave gaps in coverage that need to be filled and, where applicable, the extent to which the examined standards might overlap, possibly giving, as appropriate, rise to a need for consolidation. The examination will extend to a review of related activities including the development and dissemination of other instruments such as codes of practice, where relevant. It would also extend to measures to promote these standards, including technical assistance and cooperation. Information on the impact of the ILO’s standards-related activities on the law and practice in ILO member States as well as in addressing the problems, challenges and needs in the selected area of activities would be collected, as appropriate, through a survey among ILO constituents.
11. The purpose of such a *survey* would be to seek additional information directly from all ILO member States on: (a) whether and to what extent existing standards on the subject matter under examination are reflected in national law and practice; (b) whether and to what extent these standards can further contribute to achieve ILO objectives taking into account

³ GB.279/4, paras. 9 and 11 [emphasis added].

⁴ GB.279/4, para. 9.

⁵ GB.279/4, para. 10(c).

⁶ GB.279/4, *ibid.*

national needs and concerns; and (c) whether and to what extent there would be a need for new or continued technical cooperation with the ILO in order to assist in realizing the objectives in the subject area in question.⁷

12. Preparations are under way for a first application of this approach in 2003 with respect to ILO standards-related activities in the area of occupational safety and health. It is also relevant, however, to refer to the developments in the maritime sector in order to clarify their relationship with the proposed general discussions based on an integrated approach.
13. In the maritime sector, discussions between the Office and the social partners have been ongoing since 1996, including in the context of the work of the Working Party on Policy regarding the Revision of Standards. Major structural changes, which the maritime industry was experiencing including the impact of globalization, enabled the social partners to consider the wider and more fundamental concerns about the system of regulation of labour standards in the maritime sector. When they met at the 29th Session of the Joint Maritime Commission (JMC)⁸ in January 2001, they recommended to the Governing Body that it convene a Maritime Session of the International Labour Conference in 2005 to adopt a single instrument consolidating as much as possible of the more than 40 up-to-date ILO maritime standards.⁹ To assist with the work of developing such an instrument, the JMC also recommended the establishment of a High-Level Tripartite Working Group on Maritime Labour Standards to meet in 2001, 2002 and 2003. The Governing Body decided accordingly and the first session of this Working Group will be held 17-21 December 2001. As indicated above, the recommendation adopted by the JMC in January 2001 and the decision to develop a single instrument consolidating as much as possible of ILO maritime standards is a strategic decision which rests upon a consensus among the social partners in this sector following several years of discussions. The maritime sector is unique. Shipping is and has always been a global industry. The approach followed in this case is not easily replicated in other subject areas and the extent to which it is relevant in the context of other subject areas of ILO activities needs further consideration on a case-by-case basis. Such consideration would, naturally, be tripartite and carried out in the first instance in a general discussion at the International Labour Conference.
14. *To sum up:* The proposed general discussion based on an integrated approach would enable the constituents to hold a preparatory discussion on the problems, challenges and needs that the ILO is called upon to address and the options available to the ILO to achieve its objectives in a specific subject area through standard setting and other standards-related activities. Such general discussions aim at enabling the constituents to develop a shared commitment on the choices to be made and the directions the ILO should take in order to increase the impact of its standards-related activities in each subject area.

⁷ Such a survey is in preparation in the context of ILO standards-related activities in the area of occupational safety and health and will be communicated in January 2002.

⁸ The JMC advises the Governing Body on issues related to seafarers' working and living conditions suitable for standard setting.

⁹ See Final report, [JMC/29/2001/14](#).

Proposals for the agenda of the 92nd Session (2004) of the International Labour Conference

15. The proposals submitted for consideration by the Governing Body for the 92nd Session (2004) of the International Labour Conference reflect, in terms of substance, new and further developments in all sectors of the ILO's activities including the cross-cutting subject of gender equality. The different options for action at the Conference include one proposal for standard setting, five proposals for general discussion and two proposals for general discussions based on an integrated approach.

- *One proposal for standard setting:* In the area of fundamental principles and rights at work, the Office resubmits for consideration the proposal for the **possible extension of the grounds on which discrimination is prohibited in Article 1 of Convention No. 111.**¹⁰
- *Five proposals for general discussion:* The two proposals in the employment sector on the subjects of **employment of women** and **decent jobs and productivity** have been submitted previously for consideration by the Governing Body. However, the proposals presented below reflect further developments and research in this area. As regards proposals in the social protection sector, it should be recalled that a detailed proposal to hold a general discussion – including a discussion on possible standard setting – on the subject matter of **migrant workers** was discussed by the Governing Body in March 2001. This proposal elicited a certain interest in the context of the 91st Session (2003) of the International Labour Conference and several members expressed their interest in reconsidering this proposal in the context of the agenda of the International Labour Conference for 2004.¹¹ The proposal to examine **work and family in the twenty-first century** has been further developed since it was first examined by the Governing Body in November 2000. Finally, in the social dialogue sector, the Office is submitting a new proposal for a broad discussion on **social dialogue** aimed at providing the constituents with an opportunity to give the ILO guidance on how to address social dialogue, and to determine priority areas for action.
- *Two new proposals for a general discussion based on an integrated approach:* In the area of fundamental principles and rights at work it is proposed to hold a discussion on the subject of **child labour and protection of children and young persons** with a wide and comprehensive approach to the question of child labour. This discussion would be aimed at setting further directions for how standards, promotion, advocacy and technical cooperation activities can be combined to increase the protection of children and young persons. The second proposal for an integrated approach is entitled **gender equality in the world of work**. A broad, comprehensive discussion could be held on the ILO's response to the significant changes that have taken place in this area since the discussion held at the 71st Session (1985) of the International Labour Conference. This would give the constituents the opportunity to appraise and assess the results of the Office's strategy to mainstream gender in all its activities. This list is however not exhaustive as some of the subjects referred to in the above list for general discussion could also be suitable for an integrated approach.

¹⁰ The substance of this proposal remains the same as the detailed proposal examined by the Governing Body at its 280th Session (March 2001) but, for the sake of convenience, it is included in a slightly abbreviated form in the present document.

¹¹ The substance of this proposal remains the same as the detailed proposal examined by the Governing Body at its 280th Session (March 2001) but, for the sake of convenience, it is included in a slightly abbreviated form in the present document.

16. It should be noted that due to research that is being undertaken by the Working Party on the Social Dimension of Globalization,¹² the Office has not submitted a proposal on the previously examined topic of **investment and employment**.

Proposals for the agenda of future Conferences

17. The **second part** of this document contains proposals suggested for consideration in the context of Conferences later than 2004. At present they reflect proposals in the social protection sector and in the context of other categories of workers. Future proposals, for consideration at the earliest as of 2005, including possible proposals for general discussions based on an integrated approach, are under consideration in the employment sector, as part of the implementation of the Global Employment Agenda that is on the agenda of the Employment and Social Policy Committee in this session of the Governing Body. The proposals presented are as follows.
18. *Two further developed proposals:* Two of the proposals concern subject matters for which several members of the Governing Body have expressed an interest to consider, namely the questions of **working time** and of **prevention of sexual harassment in the workplace**. The Office has carried out extensive research with a view to developing an appropriate framework for a future Conference discussion on each these subjects. In both cases it is proposed to pursue these efforts.
19. *Two proposals for integrated approaches:* The Governing Body is also invited to consider two proposals in the area of special categories of workers relating to **port work** and **fishing**. In both cases it is proposed to hold general discussions on the basis of an integrated approach with a view to developing a plan of action for future ILO directions in these areas. In both cases, such discussion would enable the constituents to consider an appropriate follow-up to decisions by the Governing Body, based on the work of the Working Party on Policy regarding the Revision of Standards, to revise several instruments in each of these areas. Depending on the developments in the maritime sector, these proposals could be considered for the Conferences of 2006 or 2007.
20. *Remaining proposals from the 1999 portfolio:* It should be recalled that further action on certain proposals and suggestions brought up in the context of the portfolio consultations remains to be taken. These remaining proposals constitute a pool of suggestions which will be taken up, as appropriate, in the context of developing proposals for standard setting, “traditional” general discussions, or in the context of general discussions based on an integrated approach.

Agenda of the 92nd Session (2004) of the International Labour Conference

21. At its 92nd Session (2004), the Conference will have before it the following standing agenda items:
- reports of the Chairperson of the Governing Body and of the Director-General including the Global Report on the freedom of association and the right to collective bargaining under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work;

¹² See [GB.282/WP/SDG/2\(Corr.\)](#), para. 4.

- information and reports on the application of Conventions and Recommendations.
22. Furthermore, the agenda of the 91st Session (2003) of the International Labour Conference, as drawn up at the 280th Session of the Governing Body includes the following items: (1) Human resources training and development – Revision of the Human Resources Development Recommendation, 1975 (No. 150) (*first discussion*); (2) The employment relationship (scope) (*general discussion*); and (3) ILO standards-related activities in the area of occupational safety and health: An in-depth study for discussion with a view to the adoption of a plan of action for such activities (*general discussion based on an integrated approach*). At the Conference in 2004, a second discussion would therefore take place on the question of human resources training and development.

Purpose of the first discussion

23. The Governing Body is invited to hold a first discussion on the proposals contained in the [first part](#) of the present document in the framework of the provisions of article 10, paragraph 1, of its Standing Orders with a view to selecting a number of items for closer scrutiny at its 283rd Session (March 2002). For that session, and based on this selection, concise statements of law and practice stipulated in article 10, paragraph 2, of the Standing Orders of the Governing Body will be prepared, as appropriate. In March 2002 the Governing Body will then determine which items will be selected to complete the agenda of the 92nd Session (2004) of the International Labour Conference.
24. As noted above, in addition to selecting the items for closer scrutiny at its 283rd Session (March 2002), on the basis of the proposals submitted,¹³ the Governing Body is also invited to give indications concerning other proposals which could take priority for research work and consultations by the Office. Their level of preparation could thus be advanced, taking into account the resources and time necessary for this to be done.
25. *In order to draw up the agenda of the 92nd Session (2004) of the International Labour Conference and to develop items for the agenda of future Conferences, the Governing Body is invited –*
- (a) *to examine the proposals for the agenda of the International Labour Conference contained in the present document; and*
 - (b) *to select the proposals to be examined in greater depth at its 283rd Session (March 2002), when it will finalize the agenda of the 92nd Session (2004) of the International Labour Conference and to indicate the proposals for which research work and consultation might be accelerated.*

¹³ See also GB.280/2/2.

Part I. Proposals for the agenda of the 92nd Session (2004) of the International Labour Conference

Fundamental principles and rights at work

1. ***New measures concerning discrimination in employment and occupation – Extension of the grounds on which discrimination is prohibited in Article 1 of [Convention No. 111](#)***¹⁴
(standard setting)

Summary

In its 1966 Special Survey on the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Committee of Experts found that a number of grounds on which discrimination is prohibited in other ILO standards, in other international standards, and above all in national legislation, are not specifically targeted by this Convention. [Convention No. 111](#) is, however, the ILO's principal instrument against discrimination. It is therefore recommended that the Governing Body consider the adoption of a Protocol, which would not revise the Convention as such, but which would allow countries ratifying it to accept formally additional grounds on which discrimination would be prohibited. This would consolidate the ILO's protection against discrimination and bring the ILO into closer harmony with more recent international human rights instruments adopted by other organizations and with developing national practice.

Introduction

26. In its 1996 Special Survey on the Discrimination (Employment and Occupation) Convention, 1958 ([No. 111](#)), the Committee of Experts on the Application of Conventions and Recommendations recommended that consideration be given to adopting a Protocol to the Convention that would specifically target additional grounds on which discrimination would be prohibited under the Convention, taking account of changes which have taken place in this field and are reflected in national law, as well as incorporating prohibited grounds of discrimination already covered in other ILO Conventions.¹⁵
27. The Committee of Experts did not propose revising the Convention, but rather suggested adding a Protocol that could be ratified in addition to the Convention, either by countries that had already ratified it or at the time of ratification of the Convention. [Convention No. 111](#), one of the ILO's fundamental Conventions, would remain unmodified. There appears to be general agreement that the approach to consolidate and extend the grounds on which discrimination should be prohibited in employment and occupation would be the preferred one should the subject be dealt with.

¹⁴ This is an abbreviated version of a proposal that was submitted to the Governing Body in November 2000, [GB.279/3](#), paras. 21-34.

¹⁵ The Committee of Experts suggested that a Protocol might also be adopted to allow countries to undertake to reverse the burden of proof, under some circumstances, in cases of alleged discrimination. As this proposal was not favourably received in discussions in the Governing Body, it is not taken up.

The situation in national law and practice

- 28.** [Convention No. 111](#) requires ratifying States to take action against discrimination in employment and occupation on the basis of race, colour, sex, religion, political opinion, national extraction and social origin. The Committee found, however, that there was sufficient indication in national laws on discrimination, or in other ILO Conventions, to merit the adoption of a Protocol whose ratification would entail additional obligations in respect of some or all of the following criteria: age, disability, family responsibilities, language, matrimonial status, nationality, property, sexual orientation and state of health.¹⁶
- 29.** The Committee of Experts has pointed out that a provision already exists in [Convention No. 111](#) allowing governments to undertake obligations in regard to grounds other than those detailed in the Convention. Article 1(1)(b) states that the definition of discrimination can be modified to include any other distinction, exclusion or preference which may be determined by the government of the ratifying country after consultation with representative employers' and workers' organizations. While some stated in previous consultations that this route should be pursued, the Committee of Experts suggested the Protocol as a better way of allowing States to extend the grounds covered by the Convention. It may also be noted that suggestions by the Committee of Experts to governments that they have recourse to Article 1(1)(b) have very rarely met with a positive response.

Coverage in other standards

- 30.** With regard to the possible new grounds for discrimination to be targeted, the Committee of Experts devoted considerable attention in the Special Survey to the additional grounds of discrimination that are covered in other ILO standards. Even though [Convention No. 111](#) is the ILO's principal instrument on the prevention of discrimination, it does not specifically cover many of the areas on which ILO standards offer the strongest – and often the only – protection in international law. This includes age, nationality, trade union membership, disability and family responsibilities.¹⁷ The adoption of a Protocol could allow the consolidation of protection, and added coherence in the ILO's advisory and supervisory efforts on the subject.
- 31.** Secondly, human rights standards adopted by other international organizations since the 1958 ILO Convention have further expanded the protection offered in international law against discrimination without all these grounds being covered in the ILO's most important Convention on this subject.¹⁸ The Committee of Experts stated that “with a view to the coherence of international human rights laws, it would be desirable to take these into account in considering the present Convention”. Of these other instruments, the International Covenant on Economic, Social and Cultural Rights, and the International

¹⁶ For more details, see [GB.279/3](#), paras. 24-27.

¹⁷ For more details, see [GB.279/3](#), para. 28 (including footnotes). For example, the Termination of Employment Convention, 1982 ([No. 158](#)), adopted after [Convention No. 111](#), prohibits termination on grounds, inter alia, of race, colour, sex, marital status, family responsibilities, pregnancy, religion, political opinion, national extraction, social origin or absence from work during maternity leave. The Workers with Family Responsibilities Convention, 1981 ([No. 156](#)), calls for persons to be protected against discrimination, as defined in [Convention No. 111](#), on the basis of their family responsibilities.

¹⁸ See [GB.279/3](#), para. 30.

Covenant on Civil and Political Rights, both adopted in 1966 and now widely ratified, both contain the following passage:

The States parties to the present Covenant undertake to guarantee that the rights enunciated in the present Covenant will be exercised without discrimination of any kind as to race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

On the regional level, the Committee of Experts noted also the European Convention on Human Rights, adopted in 1950, which in its Article 14 prohibits discrimination on the basis of “sex, race, colour, language, religion, political or other opinion, association with a national minority, property, birth or other status”.¹⁹

Conclusions

- 32.** The Governing Body is therefore invited to give further consideration to the proposal by the Committee of Experts to examine a Protocol to [Convention No. 111](#) on possible additional grounds of discrimination. The Committee recommended that the Governing Body and the Conference consider two alternative solutions in this respect. The first would be to allow States to ratify the Protocol and to choose which of the additional grounds listed in it they would wish to accept as additional obligations under the Convention. The second possibility would be to adopt a list of “core” grounds that would have to be accepted when ratifying the Protocol, and allowing States to decide to accept others from the list as well, and this solution has been favoured by most of those who have referred to it in previous consultations. The Committee considered that this should be done with no modification to the existing instrument, but simply by the adoption of a Protocol that could be ratified on a voluntary basis.
- 33.** It may be expected that this Protocol would have several important differences from Article 1(1)(b) referred to above. It should be noted that the text of the Convention provides no very clear indication of how such a determination should be made or communicated to the Committee of Experts, unlike a Protocol, which is clearly open to explicit ratification. Upon adoption, a Protocol would have to be submitted to the competent authorities of all member States in the same manner as Conventions and Recommendations, and would therefore have to be considered formally by governments. There is no obligation on governments which have ratified the Convention to undertake any formal consultation on the grounds of discrimination under [Convention No. 111](#), and they do not appear in fact to carry out consultations in this regard.
- 34.** Ratification of the Protocol would constitute an international obligation, as well as a public commitment to the grounds specified by the government ratifying it, providing a rallying point for action concerning the prevention of discrimination in employment and occupation. Depending on national legal systems, it would embed the grounds selected in national law as well as in international commitments, in a way that a voluntary declaration under Article 1 of the Convention would not. Finally, there is no contradiction between the approach of ratifying an additional Protocol and that of making additional declarations under Article 1 of the Convention – they would be compatible and could be complementary if governments were to begin using the procedure allowed for in the Convention.

¹⁹ Many analogous provisions exist, e.g. in the inter-American human rights provisions (OAS Charter and Protocol of Buenos Aires, Convention on Human Rights and Protocol of San Salvador); European Convention on Human Rights and various protocols, European Social Charter and the African Charter on Human and Peoples’ Rights.

2. **Child labour and protection of children and young persons** (general discussion based on an integrated approach)

Summary

The main pillars in the area of child labour are the fundamental [Conventions Nos. 138](#) and [182](#) and their supplementing [Recommendations Nos. 146](#) and [190](#). Based on these instruments, the InFocus Programme on Child Labour (IPEC) pursues an “integrated” approach combining various activities from promotion of standards to technical cooperation. The recent and ongoing actions in this area have focused on the elimination of child labour, especially in its worst forms. It is now considered timely to propose a general discussion with a wider and more comprehensive approach. This would include a consideration of: (1) necessary measures to ensure the effective abolition of child labour in general, not limited only to its worst forms; and (2) action related to the protection of children and young persons in general including a discussion on existing instruments regulating night work of young persons and medical examination. These two are closely linked because, where there is not sufficient protection, work or employment may become hazardous and should be **eliminated** as child labour even where the general minimum age is reached. It is proposed to hold a general discussion at the Conference based on an integrated approach, which would enable the Conference to examine and set further directions for how standards, promotion, advocacy and technical cooperation activities can be combined to achieve the effective abolition of child labour and to increase the protection of children and young persons.

The background

- 35.** The main pillars of the ILO’s efforts to eliminate child labour, especially its worst forms, are the two up-to-date Conventions (the Minimum Age Convention, 1973 ([No. 138](#)), and the Worst Forms of Child Labour Convention, 1999 ([No. 182](#))), as accompanied by their supplementing Recommendations (the Minimum Age Recommendation, 1973 ([No. 146](#)), and the Worst Forms of Child Labour Recommendation, 1999 ([No. 190](#)), respectively). These instruments, which figure among the fundamental Conventions, are receiving overwhelming support from member States as highlighted by the surge of ratifications.²⁰
- 36.** As recognized by the ILO and the international community, child labour is not a subject that can be dealt with only by achieving legislative conformity with international standards. It demands comprehensive and integrated measures so as to break the vicious cycle of poverty, social inequality and child labour. This characteristic of the child labour issue is demonstrated in the transformation of the International Programme on the Elimination of Child Labour into an InFocus Programme on Child Labour (IPEC). IPEC takes a kind of “integrated” approach combining standards, promotion, advocacy, knowledge enhancement and technical cooperation activities. In fact, all IPEC activities take [Conventions Nos. 138](#) and [182](#) as key instruments guiding action towards the effective abolition of child labour. In particular the Time-Bound Programmes, which IPEC is promoting to help countries eliminate the worst forms of child labour within a defined period of time, emphasize the need to complement the prohibition by policies and measures to address the root causes of child labour, e.g. to combat poverty and to promote universal education and social mobilization.
- 37.** It should also be recalled that these actions are undertaken in the framework of [Conventions Nos. 138](#) and [182](#) and are complemented by the 1998 Declaration on Fundamental Principles and Rights at Work and its Follow-up. The effective abolition of child labour is one of the four fundamental principles in the Declaration. In the context of

²⁰ See [appendix](#).

its follow-up, the International Labour Conference will, for the first time in 2002 and the next time in 2006, examine a Global Report on child labour.

A wider approach

- 38.** The recent actions in this area have focused on the elimination of child labour, especially in its worst forms. It is now timely to propose a general discussion with a wider and more comprehensive approach. The scope of such a discussion could focus on directions to take with respect to two aspects relevant for the protection of children and young persons: (1) how to ensure the effective abolition of child labour in general, including child labour which is not in its worst forms, but which needs to be eliminated according to [Convention No. 138](#); and (2) how to ensure an effective protection of children and young persons in general including a discussion on existing instruments regulating night work of young persons and medical examination.

Elimination of child labour

- 39.** Given the recent standard-setting activity in this area, this subject would appear to be covered by up-to-date standards. Thus, a discussion on these aspects of child labour at the Conference would be essentially on how to promote and accelerate further the ratification of these Conventions and assist the constituents in effectively implementing these instruments.
- 40.** It should also be recalled that there are a number of earlier sectoral Conventions which have already been revised by [Convention No. 138](#).²¹ Thus further ratification of [Convention No. 138](#) should lead to their denunciation by the countries concerned and help streamline this group of standards. However, flexibility is built into Article 10 of [Convention No. 138](#) and contains detailed conditions for the *ipso jure* denunciation of most of those earlier Conventions. As a consequence, a ratification of [Convention No. 138](#) does not always automatically result in denunciations of all the revised Conventions ratified by the same country. For example, a State that ratified [Convention No. 59](#) (which sets the minimum age of 15 years in industry) and subsequently ratified [Convention No. 138](#) declaring a general minimum age of 14 years continues to be bound by [Convention No. 59](#) unless it declares the minimum age in industry to be 15 years. This situation confuses the level of the national commitment, and slows down the replacement of instruments by the up-to-date ones. The required remedy appears to be a more systematic and tailor-made assistance to member States in addition to the promotion of the ratification of [Convention No. 138](#). The aim would be to move remaining obligations under older Conventions towards obligations under [Convention No. 138](#) and have the older Conventions denounced and/or abrogated at a later stage as appropriate.
- 41.** In this context it should be noted that some demands from constituents for IPEC's technical cooperation are particularly standards-related, for example, when assistance and guidance are requested to help them make the national determination of hazardous work. This is one of the first requirements in tackling child labour in its hazardous forms, both under [Convention No. 138](#) and [Convention No. 182](#). This type of technical assistance will

²¹ See Article 10 of [Convention No. 138](#). These include, in addition to those listed in the appendix, the Minimum Age (Sea) Convention, 1920 ([No. 7](#)), the Minimum Age (Trimmers and Stokers) Convention, 1921 ([No. 15](#)), the Minimum Age (Sea) Convention (Revised), 1936 ([No. 58](#)), and the Minimum Age (Fishermen) Convention, 1959 ([No. 112](#)). The promotion of [Convention No. 138](#) as well as [Convention No. 182](#) in the maritime and fishing sectors should also be seen in the light of the review of the standards-related activities in the maritime and fishing sectors which is under way (see [GB.280/5](#)) or which is being proposed (see [Part II](#)).

continue to be provided and may well result in proposals to develop codes of practice or guidelines. A Conference discussion would add further impetus to this kind of assistance and mainstream it in the ILO's regular activities with a clear connection to the promotion of the relevant standards. More generally, a Conference discussion may also help further clarify the practical applications of the notions of "child labour", including its "worst forms".

42. One dimension which [Convention No. 182](#) has added to the fight against child labour is the explicit reference to operational measures required to eliminate its worst forms (e.g. monitoring mechanisms, programmes of action, time-bound measures, international cooperation) in addition to the definition of what needs to be tackled as the worst forms. Extra light is shed by [Recommendation No. 190](#) which suggests many possible actions to be taken by many actors. A Conference discussion may also deepen a consideration for necessary measures to ensure the effective abolition of child labour in general, including child labour which is not in its worst forms but needs to be eliminated in terms of [Convention No. 138](#).

Other instruments relating to children and young persons

43. In its efforts to protect children and young persons, the ILO has also taken action by adopting standards with a specific focus on night work and on medical examination of children and young persons.²²
44. As regards the instruments concerning night work, the Governing Body has already decided, as a result of the work of the Working Party on Policy regarding the Revision of Standards, that [Conventions Nos. 6, 79 and 90](#), as well as [Recommendations Nos. 14 and 80](#), should be revised. The most recent General Survey by the Committee of Experts on night work of women in industry²³ concluded that "member States are much less inclined to abolish, modify, or otherwise relax the prohibition on night work of young persons than the prohibition, if any, applicable to adult women workers" (paragraph 111 *in fine*). One of the issues to consider is whether the abovementioned revision should be done independently or considered in a wider context in direct relation with the objective of the effective abolition of child labour.
45. [Convention No. 182](#) forged a global consensus that hazardous work by all girls and boys under 18 years of age must be tackled urgently as one of the worst forms of child labour. This reconfirms the minimum age of 18 for hazardous work under [Convention No. 138](#). Hazardous work is defined as "work which, by its nature or *the circumstances in which it is carried out*, is likely to harm/jeopardize the health, safety or morals of children". However, [Convention No. 182](#), as well as [Convention No. 138](#), leave the determination of hazardous work to national decisions. It should be recalled that [Recommendation No. 190](#) explicitly includes "work during the night" as one of the criteria of hazards to be considered in such determination. Therefore, it may well be argued that the revision of standards concerning night work of those under 18 years should be discussed within this general context in relation to the fundamental Conventions.

²² See [appendix](#).

²³ General Survey of the reports concerning the Night Work (Women) Convention, 1919 ([No. 4](#)), the Night Work (Women) Convention (Revised), 1934 ([No. 41](#)), the Night Work (Women) Convention (Revised), 1948 ([No. 89](#)), and the Protocol of 1990 to the Night Work (Women) Convention (Revised), 1948, ILC, 89th Session, 2001.

46. More generally speaking, the conditions in which work is carried out constitute the crucial criteria for the definition of hazardous child labour to be eliminated. Thus, it can be argued that, where the safety and health at work of those under 18 is not adequately protected, employment or work falls into the notion of hazardous child labour to be eliminated even if the person has reached the general minimum age for work. From this standpoint, international labour standards relating to the protection of children and young persons, such as night work and medical examination of young persons, are inseparably linked to the issue of child labour and constitute one group of standards which should be discussed as a whole in the context of an integrated approach.
47. In the context of the work of the Working Party on Policy regarding the Revision of Standards, requests for information were adopted by the Governing Body concerning a series of Conventions and Recommendations on the subject of medical examination of young persons.²⁴ The Governing Body invited member States to inform the Office of any obstacles or difficulties encountered that might prevent or delay the ratification of [Conventions Nos. 77, 78 and 124](#), and to contemplate the need for a full or partial revision of these Conventions including their possible consolidation. Moreover, the Governing Body invited member States to inform the Office of any obstacles or difficulties encountered in the implementation of the related [Recommendations Nos. 79 and 125](#). A discussion of the directions to take on the subject matter of these instruments could effectively take place in the framework of an integrated approach.
48. Among various possible issues relative to the protection of children and young persons, the discussion could start by indicating the areas where further standard setting, as well as other means of action, including promotion and assistance, would be required.
49. This line of thought could lead further to broaden the youth employment issue. The term “youth” usually covers those whose age ranges from about 15 to 24 years old. Such a definition would clearly overlap with the definition of “child” found in [Convention No. 182](#). The worst forms of child labour in the case of adolescents above the general minimum age and the deficit of decent work for youth may in fact be two sides of the same coin. In the implementation of [Convention No. 182](#), when an adolescent is withdrawn from one of the worst forms of child labour, a sustainable solution for their social integration should be found.

Proposal

50. Against this background, the Governing Body might wish to retain for further examination an item for a general discussion based on an integrated approach at the 92nd Session (2004) of the International Labour Conference on child labour and the protection of children and young workers. On the one hand, such a discussion would seek to identify the directions to take to ensure the effective abolition of child labour in general, as provided not only in [Convention No. 182](#) but also in [Convention No. 138](#), on the other, possible action related to employment and work of children and young persons. This would allow the Conference to examine the protection of children and young persons in a wider perspective in the context of a comprehensive approach to eliminate child labour. It would also link it to several important questions including night work of children and young persons, hazardous labour and medical examinations of young persons.

²⁴ See [appendix](#). Of relevance in this context is also the Medical Examination of Young Persons (Sea) Convention, 1921 ([No. 16](#)). The Governing Body decision to revise this Convention should be seen in the light of the review of the standards-related activities in the maritime sector which is under way (see footnote 21).

Appendix

Protection of children and young persons

1. Elimination of child labour

Instruments	Number of ratifications (as at 1/10/01)	Status
Up-to-date instruments (Conventions whose ratification is encouraged and Recommendations to which member States are invited to give effect)		
Minimum Age Convention, 1973 (No. 138)	112	Fundamental Convention.
Minimum Age Recommendation, 1973 (No. 146)	–	This Recommendation is related to a fundamental Convention and is considered up to date.
Worst Forms of Child Labour Convention, 1999 (No. 182)	100	Fundamental Convention.
Worst Forms of Child Labour Recommendation, 1999 (No. 190)	–	This Recommendation is related to a fundamental Convention and is considered up to date.
Other instruments (This category comprises instruments which are no longer fully up to date but remain relevant in certain aspects.)		
Minimum Age (Non-Industrial Employment) Recommendation, 1932 (No. 41)	–	The Governing Body decided the maintenance of the status quo with regard to Recommendations Nos. 41 and 52.
Minimum Age (Family Undertakings) Recommendation, 1937 (No. 52)	–	

Outdated instruments (Instruments which are no longer up to date; this category includes the Conventions that member States are no longer invited to ratify and the Recommendations whose implementation is no longer encouraged.)		
Instruments	Number of ratifications (as at 1/10/01)	Status
Minimum Age (Industry) Convention, 1919 (No. 5)	24	The Governing Body invited the States parties to Convention No. 5 to contemplate ratifying the Minimum Age Convention, 1973 (No. 138), and denouncing Convention No. 5 at the same time, with a recourse to technical assistance as required.
Minimum Age (Agriculture) Convention, 1921 (No. 10)	14	The Governing Body invited States parties to Convention No. 10 to contemplate ratifying the Minimum Age Convention, 1973 (No. 138), the ratification of which would involve the denunciation of Convention No. 10 on the condition stated in Article 10(5)(b) of Convention No. 138, with a recourse to technical assistance as required.
Minimum Age (Non-Industrial Employment) Convention, 1932 (No. 33)	9	The Governing Body invited States parties to Convention No. 33 to contemplate ratifying the Minimum Age Convention, 1973 (No. 138), the ratification of which would <i>ipso jure</i> , involve the immediate denunciation of Convention No. 33 on the condition stated in Article 10(4)(b) of Convention No. 138, with a recourse to technical assistance as required.

Outdated instruments (Instruments which are no longer up to date; this category includes the Conventions that member States are no longer invited to ratify and the Recommendations whose implementation is no longer encouraged.)		
Instruments	Number of ratifications (as at 1/10/01)	Status
Minimum Age (Industry) Convention (Revised), 1937 (No. 59)	15	The Governing Body invited States parties to Convention No. 59 to contemplate ratifying the Minimum Age Convention, 1973 (No. 138), the ratification of which would <i>ipso jure</i> , involve the immediate denunciation of Convention No. 59 on the condition stated in Article 10(4)(a) of Convention No. 138, with a recourse to technical assistance as required.
Minimum Age (Non-Industrial Employment) Convention (Revised), 1937 (No. 60)	1	The Governing Body shelved Convention No. 60 with immediate effect. It also invited the State party to Convention No. 60 to contemplate ratifying the Minimum Age Convention, 1973 (No. 138), and denouncing at the same time Convention No. 60. Finally, the Governing Body decided that the status of Convention No. 60 would be re-examined in due course with a view to its possible abrogation by the Conference.
Minimum Age (Underground Work) Convention, 1965 (No. 123)	25	The Governing Body invited States parties to Convention No. 123 to contemplate ratifying the Minimum Age Convention, 1973 (No. 138), the ratification of which would <i>ipso jure</i> , involve the immediate denunciation of Convention No. 123 on the condition stated in Article 10(4)(f) of Convention No. 138, with a recourse to technical assistance as required.
Minimum Age (Underground Work) Recommendation, 1965 (No. 124)	–	The Governing Body noted that Recommendation No. 124 was obsolete and that this Recommendation should be withdrawn, while deferring the proposal to withdraw this instrument to the Conference until the situation had been re-examined at a later date.
Minimum Age (Coal Mines) Recommendation, 1953 (No. 96)	–	The Governing Body noted that Recommendation No. 96 was obsolete and decided to propose to the Conference the withdrawal of this Recommendation in due course.

2. Employment of children and young persons

Instruments	Number of ratifications (as at 1/10/01)	Status
Up-to-date instruments (Conventions whose ratification is encouraged and Recommendations to which member States are invited to give effect)		
Medical Examination of Young Persons (Industry) Convention, 1946 (No. 77)	43	The Governing Body invited member States to contemplate: (i) ratifying Conventions Nos. 77, 78 and 124 and to inform the Office of any obstacles or difficulties encountered that might prevent or delay the ratification of these Conventions; and (ii) the need for a full or partial revision of these Conventions, including their possible consolidation.
Medical Examination of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 78)	39	
Medical Examination of Young Persons (Underground Work) Convention, 1965 (No. 124)	41	

Instruments	Number of ratifications (as at 1/10/01)	Status
Medical Examination of Young Persons Recommendation, 1946 (No. 79)	–	The Governing Body invited member States to give effect to Recommendations Nos. 79 and 125 and to inform the Office of any obstacles or difficulties encountered in the implementation of these Recommendations.
Conditions of Employment of Young Persons (Underground Work) Recommendation, 1965 (No. 125)	–	
Instruments to be revised (Instruments whose revision was decided by the Governing Body.)		
Night Work of Young Persons (Industry) Convention, 1919 (No. 6)	51	The Governing Body decided the revision of Conventions Nos. 6, 79 and 90 and Recommendations Nos. 14 and 80.
Night Work of Young Persons (Non-Industrial Occupations) Convention, 1946 (No. 79)	20	
Night Work of Young Persons (Industry) Convention (Revised), 1948 (No. 90)	50	
Night Work of Children and Young Persons (Agriculture) Recommendation, 1921 (No. 14)	–	
Night Work of Young Persons (Non-Industrial Occupations) Recommendation, 1946 (No. 80)	–	

Outdated instruments	(Instruments which are no longer up to date; this category includes the Conventions that member States are no longer invited to ratify and the Recommendations whose implementation is no longer encouraged.)
In the area of conditions of employment and work, no instrument has been considered as outdated by the Governing Body.	

Employment

3. *Employment of women (general discussion)*

Summary

As we approach Beijing +10 and Copenhagen +10, it is opportune to review the progress made in promoting gender equality in decent work in the context of a general discussion at the International Labour Conference. Since 1995, the increasing participation of women in paid work has been driving employment trends, the gender gaps in labour force participation rates have been shrinking and women's entrepreneurship development has been impressive. But significant obstacles and challenges remain to fully utilize the female human potential and promote decent employment. More jobs have not meant better jobs for most women. Conventional statistics do not adequately capture the qualitative downside of women's jobs; they also obscure women's role in both the informal economy and unpaid care economy. The issues the Conference may wish to discuss include: how to ensure that macroeconomic and social policies are employment centred and "engendered"; how to improve data collection so that there is more comprehensive measurement of all forms of work of women and men including unpaid care work; how to use good practices and lessons learned to develop holistic and comprehensive policies and programmes for enhancing the quantity and quality of women's employment; how to ensure that employment strategies are combined with the promotion of rights, social protection and strengthened representation and voice to truly empower women; how to break the link between a vicious cycle of poverty and gender discrimination that starts from the earliest stages of life within families against the girl child and that continues through to older women; and how to promote true equality by assisting men and boys to deal with changing gender relations within the home and in the labour market.

Progress and gaps since Beijing

51. Since the Fourth World Conference on Women in Beijing in 1995,

... there is increased participation of women in the labour market and subsequent gain in economic autonomy. Some governments have introduced a variety of measures that address women's economic and social rights, equal access to and control over economic resources and equality in employment. Other measures include the ratification of international labour Conventions as well as enacting or strengthening legislation to make it compatible with these Conventions.²⁵

52. At the same time, however, significant obstacles impede the achievement of gender equality in employment:

The importance of a gender perspective in the development of macroeconomic policy is still not widely recognized. Many women still work in rural areas and the informal economy as subsistence producers, and in the service sector with low levels of income and little job and social security. Many women with comparable skills and experience are confronted with a gender wage gap and lag behind men in income and career mobility in the formal sector. Equal pay for women and men for equal work, or work of equal value, has not yet been fully realized. Gender discrimination in hiring and promotion related to pregnancy (including through pregnancy testing) and sexual harassment in the workplace persist. In some countries, women's full and equal rights to own land and other property, including through the right to inheritance, is not recognized yet in national legislation. Progression in the professions, in

²⁵ United Nations, resolution adopted by the General Assembly, Further actions and initiatives to implement the Beijing Declaration and the Platform for Action, Twenty-third Special Session, 2000, A/RES/S-23/3, para. 20.

most cases, is still more difficult for women, due to the lack of structures and measures that take into account maternity and family responsibilities.²⁶

53. Some figures will help to illustrate why decent work for women is still far from being achieved:

- with only 54 per cent of working age women in the labour force as compared to over 80 per cent male participation, the world is not making the most of its female talents and potential;
- worldwide, women hold only 1 per cent of chief executive positions. About half the world's labour remains in gender-stereotyped occupations, with women dominating in clerical and secretarial jobs and low-end service occupations;
- although the share of women in administration and middle management has increased, there is still much to learn and to achieve in terms of harnessing “feminine characteristics”, such as women's communication skills and management styles, to contribute to productivity and competitiveness for companies adopting high-road strategies;
- more jobs for women have not meant better jobs for most. In occupations where many women but few men work, pay levels remain low. Despite the increasing adoption of equal pay legislation, women continue to earn 20-30 per cent less than men;
- in paid employment, men are normally in core or regular and better remunerated positions, while women are in peripheral, insecure, less valued jobs as homeworkers, casual workers and temporary workers. Close to two-thirds of all part-time workers are female and part-time work for women is increasingly involuntary;
- in self-employment, men are much more likely to be employers and women to be own-account workers and in the informal economy. In the category of unpaid family work, women predominate;²⁷
- where data is available, it indicates that, in practically all Asian and African countries, the urban informal economy is a larger source of employment for women than for men;²⁸
- open unemployment rates are almost always higher for women than for men. Young women in particular have the greatest difficulty entering the labour market and retaining their jobs in periods of economic downturn;²⁹

²⁶ *ibid.*, para. 21.

²⁷ Contributing family workers among economically active women is over 77 per cent in Bangladesh, 54 per cent in Pakistan, 44 per cent in Indonesia and Thailand, 65 per cent in Ethiopia and 54 per cent in Uganda.

²⁸ In India and Indonesia, the informal economy accounts for nine out of every ten working outside agriculture, while in Benin, Chad and Mali more than 95 per cent of the female non-agricultural labour force is in the informal economy. Even then, there is likely to be underestimation of the gender bias, since women are more likely to be in those informal economy activities that are invisible or undercounted.

- women are also much more likely than men to be underemployed or unemployed;³⁰ and
- women spend less time on paid work but considerably more time on unpaid work than men.³¹

54. Beijing +5 also identified new areas which have gained importance since 1995, among them the persistent and increasing burden of poverty on women, the vulnerability of migrant women, including exploitation and trafficking, the formulation of strategies to enable women and men to reconcile and share equally work and family responsibilities, and the HIV/AIDS pandemic. Many of the actions identified specific groups of women as their primary target, including older women, young women, migrant women, entrepreneurs/self-employed, rural women and female household heads.

The global context

- 55.** These developments in the employment situation of women have to be seen in the context of global trends. The years since Beijing and Copenhagen have been marked by *growing unemployment and poverty*.³² If past recessions and financial crises are anything to judge by, the current downturn in the global economy will affect women more adversely than men.
- 56.** Post-Beijing, there has also been growing concern with the concentration of women in the *informal economy*. The feminization of informal work requires special attention. The concentration of women in the informal economy is linked to the wider issues of the discrimination and exploitation they face in society and the economy.
- 57.** International trade, investments and migration continue, but what is new is the accelerating speed and scope of these *globalization processes* due mostly to the rapid development of new information and communication technologies. Globalization creates an environment that allows many women to achieve greater personal autonomy, but allocates them a lowly place in an increasingly unequal global hierarchy. It intensifies some of the existing

²⁹ Youth unemployment rates for both sexes are more than twice the corresponding rates for the economically active adult population in all regions of the world and among youth the rate is considerably higher for females.

³⁰ The proportion of the female labour force underemployed was at least treble the proportion of the male labour force in Belgium, Denmark, France, Germany, Italy, Norway, Spain, Sweden, Israel.

³¹ Recent time-use surveys show that women's total time worked exceeded men's by two hours or more in Australia, France, Japan, Latvia and the Republic of Korea; and that women spend 50 to 70 per cent of the time men spend on paid work, but almost twice as much or more time as men on unpaid work.

³² Some 1 billion workers or one-third of the world's labour force are either unemployed or underemployed. The global economy has been creating about 40 million jobs a year compared to about 48 million new jobseekers. Of the 40 million new jobs, as many as 10 million are in the ranks of the working poor or otherwise underemployed. The widely quoted estimate is that women constitute 70 per cent of the world's 1.3 billion poor living on less than US\$1 per day.

inequalities and insecurities to which poor women are subject while opening up opportunities especially for educated, professional women.³³

58. *New information and communication technologies* are reshaping the world of work. But “an ICT [information and communication technology] ‘gender divide’ exists and could widen in the labour market unless actively addressed through better access, education and working conditions”.³⁴ The digital divide is not only between women and men but also between educated and uneducated women and younger and older women. Overall, women are still very much in the minority among Internet users, and women still face huge imbalances in ownership, control and regulation of the new ICT.
59. For increasing numbers of women globalization has come to mean *international labour migration*. Post-Beijing, the feminization of international migration is certainly one area where the problems have assumed larger and more serious dimensions and where much stronger and effective measures are needed. More and more women are moving as autonomous economic migrants, mainly as domestic maids, manual workers in agriculture or manufacturing, entertainers and prostitutes. There can be little argument that these women are among the most vulnerable to exploitation and abuse.
60. *Trafficking* especially for prostitution and forced labour is one of the fastest growing areas of international criminal activities; it is now considered the third largest source of profits of organized crime, behind only drugs and guns.³⁵
61. Demographic and labour market trends indicate that greater attention needs to be given to *older women workers*. On the one hand, discrimination against “older” women workers appears to be occurring at earlier chronological ages (in a growing number of countries, women over 35 years of age are finding it increasingly difficult to get jobs or be rehired). On the other hand, women live longer than men³⁶ and account for the majority of single person households, unsupported by formal social protection. Due to a reversal of intergenerational care, older women who have already spent a lifetime looking after other people increasingly cannot expect to be cared for in their twilight years. In many least developed countries, the impact of the HIV/AIDS pandemic has left older women caring for their infected children and, later on, their children’s children.

³³ The Beijing Platform for Action and the Copenhagen Programme of Action addressed some of the problems of globalization; “however, the solutions proposed for women in these documents were largely microeconomic, with a particular focus on enabling poor women to obtain access to credit ... if a wider range of women are to gain, globalization must be reshaped so that it is people-centred instead of profit-centred and made more accountable to women ... there are new opportunities for women to intervene and renegotiate globalization in order to enable information and communication technology to be used in equitable ways and markets to be used to serve human ends”, United Nations Development Fund for Women: Progress of the World’s Women 2000, UNIFEM Biennial Report, New York, 2000, p. 130.

³⁴ ILO, *World Employment Report 2001*, p. 319.

³⁵ “In the past decade, the international trade in human beings, particularly women and children, has reached epidemic proportions ... Each year, an estimated 700,000 to 1 million women and children are shipped across national boundaries and sold into modern day slavery”, in *International Herald Tribune*, “The trade in human beings is a worldwide scourge”, 1 June 2000.

³⁶ At 60 years and above, there are 99 males to every 100 females. At the age of 80, there are just 69 males to every 100 females.

Promoting decent work for women: The challenges and suggested issues for a general discussion at the Conference

62. As we approach Beijing +10 and Copenhagen +10, it would be very opportune for the International Labour Conference to review the employment situation of women. A general discussion would assess the ILO's follow-up activities to implement the Beijing Platform for Action and the Copenhagen Programme of Action and, of course, the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work. It would also reaffirm the ILO's commitment to the promotion of gender equality as being at the core of the Decent Work Agenda.
63. It is clear from the descriptions above that, while women have come a long way in the labour market, the challenges for promoting opportunities for women and men to obtain decent and productive work in conditions of freedom, equity, security and human dignity remain large. The Conference may wish to discuss what these challenges are and how the ILO can assist its tripartite members to meet the challenges in coherent and integrated ways. The emphasis is on holistic approaches because decent work for women involves not just employment but also basic rights at work, social protection, representation and voice.
64. Perhaps the most basic challenge is to *ensure not only that productive employment is placed at the centre stage of macroeconomic and social policies but also that these policies are "engendered"*. In this regard, the Conference may wish to focus especially on how the ILO's Global Agenda for Employment is helping to promote productive, inclusive and equitable change so that women's work is fully acknowledged and rewarded and economic efficiency is balanced with gender justice. Gender-aware policies are also important due to the agreements at Beijing and Copenhagen. On the one hand, they "reflect an expectation that governments are responsible for implementing policies to improve the well-being of women, especially poor women, but they do not effectively address the ways in which market liberalization and privatization may undermine the capacity of governments to discharge these responsibilities". On the other hand, they called on business corporations to support women in a number of ways "but no mechanisms for corporate social accountability were identified".³⁷
65. Since there can be no meaningful discussion without proper statistics, the Conference may also wish to focus on *improving data collection*. This will provide a more comprehensive measurement of all forms of "work" including unpaid care work (without better accounting of the care economy, women's contributions and burdens will continue to remain invisible or underestimated and there cannot be equality in paid work). Improved data collection would also mean better delineation of the types of labour market work and detailed description of the characteristics of such work (including in the informal economy) and other relevant information such as on family composition and the division of labour and decision-making within households (which would be helpful for identifying the factors behind gender inequalities in the labour market).
66. *More and better jobs* for women is still *the* challenge. An ILO proposal to accelerate the implementation of the Beijing Platform for Action³⁸ emphasized that the qualitative approach to employment must be at the heart of decent work for women and highlighted

³⁷ United Nations Development Fund for Women, Progress of the World's Women 2000, UNIFEM Biennial Report, New York, 2000, p. 9.

³⁸ ILO, *Decent work for women: An ILO proposal to accelerate the implementation of the Beijing Platform for Action*, Geneva, Bureau for Gender Equality, 2000.

the following main areas for action: widening occupational choices, developing skill acquisition and training, enhancing the demand for female labour, improving women's awareness of employment opportunities and promoting enterprise development. The Conference may wish to discuss the most appropriate strategies for action in each of these areas.

- 67.** Much has been learned in the years since Beijing. There has been significant progress in developing strategies for more effective gender mainstreaming, the use of gender-sensitive targets and indicators, gender budgeting and gender audits. Women's organizations have been among the most dynamic elements of recent civil movements. In both the formal and informal economies, at grass-roots, national and international levels, women have organized not only to deal with their economic and social problems (for example, many local women's groups have been very successful in establishing workers' or credit cooperatives and arranging their own social protection) but also to strengthen their voice in different forums. The ILO has also built up a wealth of multidisciplinary experiences in promoting gender equality in decent work. The Conference may wish to take note of the *good practices and lessons learned and assess the potential for replication/adaptation/expansion*.
- 68.** The Conference may wish to adopt a *life-cycle approach*, recognizing that the disadvantages and discrimination faced by the female half of the population tend to persist from cradle to grave. Today's girl child is tomorrow's older woman worker and it is her opportunities and experiences now which will shape her ability to access and maintain decent work throughout her adult life and enjoy security and protection in her old age.
- 69.** Since employment creation is but one of the four strategic and interrelated objectives of the Decent Work Agenda, the Conference may also wish to discuss:
- how to translate the greater political will and commitment into more effective and sustainable *promotion and realization of the human rights of women and girls* as an integral part of basic human rights. There has certainly been an increase in signatures and ratifications of the human rights instruments since 1995 but implementation in terms of effective policies and programmes is still a challenge;
 - how to ensure *secure and safe work for women*. Even in the formal economy, women's lower earnings and irregular employment patterns undermine their capacity to participate in and benefit from contributory social insurance schemes. For the vast majority of women in the informal economy, innovative schemes for shared support services and safety nets would improve their protection;
 - how to *strengthen the representation and voice of women in social dialogue structures*. There cannot be gender equality at work without freedom of association and it is only through freedom of association that advocacy, voice and partnerships can promote gender equality. The Conference may wish to review especially the experiences of the social partners in reaching out to unorganized women and improving the representation of women at all levels of decision-making. Also on how they have been forging alliances and partnerships with new social actors – importantly, women's organizations – in the common cause of promoting gender equality.

4. **Decent jobs and productivity** (general discussion)

Summary

The forces fuelling globalization, such as rapid advance in information and communication technology, are transforming production systems, work organization and labour markets. At the same time, with the increasing liberalization of domestic and international markets, enterprises are faced with increased competition. Already there are fears expressed that these changes could lead to degradation of quality of jobs. In light of this, there is a need to re-examine the notion of productivity and its link to decent jobs. The ILO, with its tripartite structure, instruments and means of action, could play a very important role in ensuring that strategies and approaches adopted by member countries and by enterprises meet the goals of productivity improvement and the promotion of decent jobs. Many of the existing international labour standards and the Declaration of Fundamental Principles and Rights at Work have direct bearing and relevance to pursuing the "high road" to productivity and competitiveness. However, there is a need to make explicit the guiding principles and basic approaches that would guide the ILO and the social partners in pursuing productivity strategies leading to enterprise viability and decent jobs.

The problem

- 70.** With the rapid pace of economic globalization and the increasing liberalization of domestic and international markets, enterprises are faced with increased competition. This pressure of heightened competition, brought about by the increased market liberalization in a globalized economy, could easily lead to enterprises trying to achieve short-term competitiveness through low wages, poor working conditions, precarious employment conditions and employment of child labour. While not yet widespread, this "race to the bottom" competitive strategy can be a looming reality. The potential high social cost of this heightened competition is already becoming a major concern of the social partners.
- 71.** The forces fuelling globalization, such as the rapid advance in information and production technologies, are transforming production systems and labour markets. The need for flexibility, speed and adaptability is resulting in new forms of production structures and work organization based on networks, globalized manufacturing and on value chains that transcend enterprise and national boundaries. Unless firms and workers are able to adapt and acquire new capabilities and develop new approaches towards achieving the goal of productive work, the new production structure could create conditions detrimental to the achievement of decent work for all.
- 72.** Decent work is productive and remunerative work done in conditions of freedom, equity, security and human dignity. Productivity improvement when pursued through participation and consultation, development of the national and enterprises' human and social capital, innovation and better work organization, and sharing of productivity gains among others, is a powerful means for creating and sustaining decent work. Through these "high road" approaches involving consultation and participation of the social partners through tripartite and bipartite productivity improvement institutions at national and enterprise levels, social dialogue is strengthened and freedom of association reinforced. Productivity improvement, through better work design and improved working conditions, leads to better workers' safety and health. Improved productivity means viable enterprises that create and sustain job opportunities for women and men as, well as being more able to contribute to social security schemes.

Proposed solution

- 73.** In the face of increased competitive pressures and of the changing nature of production, there is a need to develop new concepts and modalities consistent with the principles of the *Philadelphia Declaration* calling for the cooperation of management and labour in the

continuous improvement of productive efficiency and the collaboration of workers and employers in the preparation of social and economic measures. Competitiveness, when achieved through approaches that meet both economic and social objectives, would enable countries and enterprises to take advantage of opportunities arising from globalization while minimizing the potential negative social impacts.

74. Studies have shown that long-term competitiveness can only be achieved through continuous total productivity improvement. Sustainable and long-term real productivity gains in turn are achieved through so-called “high road” approaches which emphasize good human resources management and development, enterprise and industry upgrading, labour-management cooperation and consultation, and equitable sharing of productivity gains among stakeholders. These approaches build the human and social capital of the enterprise which are the key factors for long-term productivity, competitiveness and viability.
75. While the benefits of such “high road” approaches to productivity and competitiveness have been achieved by many enlightened and progressive enterprises, both domestic and multinational alike, there is a need to encourage further the spread of such practices and to propagate “best practices” that highlight the complementarity of economic and social objectives. A general discussion in the International Labour Conference on the subject of “Decent jobs and productivity” could also look at widening the framework of the notion of productivity beyond economics to examine such emerging concepts as social productivity and the integration of productivity with the notion of social stability and equity. Such general discussion would further the aims of the *ILO Declaration on Fundamental Principles and Rights at Work* to ensure that social progress goes hand in hand with economic progress.
76. The general discussion could take note of and put into current context the various Conventions and Recommendations that bear on the promotion of productive, remunerative and quality jobs. It could clarify the meaning of productivity, particularly in the context of the new production structure, new forms of work organization, changing nature of work and employment and increased competition brought about by rapid globalization. Finally, it could highlight the key factors that are now critical to improving productivity for sustainable economic and social development and identify key roles for the social partners in creating the necessary conditions at enterprise, national, regional and international level for continuous improvement of efficiency and effectiveness of work with the recognition of the fundamental workers’ rights and responsibilities.
77. The general discussion could also review the appropriateness of adopting an instrument, most likely a Recommendation, which could provide guidance to constituents on policy and practice in the area of productivity upgrading.

Relation to existing instruments

78. The proposal is linked to a number of existing documents. It will put in the context of modern economic realities the pursuit of the underlying principles and goals of the *Philadelphia Declaration* and will provide further guidance on the application of the *Declaration of Fundamental Principles and Rights at Work*. Other instruments that are closely linked to this proposal are the Co-operation at the Level of the Undertaking Recommendation, 1952 (No. 94), the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113), and the Communications within the Undertaking Recommendation, 1967 (No. 129), which call for cooperation, consultation and communication at the national, industrial and undertaking levels, the Collective Bargaining Convention, 1981 (No. 154), the Collective Bargaining Recommendation, 1981 (No. 163), the Human Resources Development Convention, 1975 (No. 142), the Human Resources

Development Recommendation, 1975 (No. 150), the Occupational Safety and Health Convention, 1981 (No. 155), the Prevention of Major Industrial Accidents Convention, 1993 (No. 174), the Occupational Safety and Health Recommendation, 1981 (No. 164) and the Job Creation in Small and Medium-Sized Enterprises Recommendation, 1988 (No. 189), as well as the Conventions and Recommendations relating to the employment of minors and child labour. The resolution (1984) concerning the contribution of the ILO to production and productivity improvement noted the necessity of productivity improvement in order to assure economic growth, and underlined the close interrelationship between quantity and quality of employment and other labour issues and productivity improvement. While these instruments provide valuable guidance and reference points, there is a need to organize and synthesize these in a coherent and explicit set of principles and recommended basic approaches that would guide the social partners in pursuing the productivity improvement strategies that meet enterprise viability and decent work objectives.

Progress made in preparatory work

- 79.** Productivity improvement, competitiveness and quality jobs are the subject of an action programme implemented in the biennium 1998-99. Studies undertaken under this action programme have underlined the changing nature of competition under changed market conditions brought about by globalization and trade liberalization. Guides and manuals on how to improve productivity and competitiveness at national and enterprise levels following the “high road” achieving both economic and social goals have been developed. Current work includes the development of socially responsible approaches when undertaking enterprise restructuring. This is aimed at improving productivity and competitiveness. It also includes expanding the notion of human resource management and development in the context of the changing nature of the structure of production, work organization and the increasing knowledge content of work.
- 80.** Research on the links between international labour standards and productivity and competitiveness are ongoing. Sectoral studies are being undertaken on how social performance is managed across global supply chains and on how enterprises manage the various aspects of their corporate social responsibility. Case studies are being compiled showing the positive links between good management practices reflecting the fundamental principles underlying international labour standards and the enterprise’s triple bottom lines. Modular training packages are being developed on integrating the fundamental principles and rights at work in enterprises’ values, systems and processes.
- 81.** In addition, collaboration with the global network of national productivity centres is being maintained.

Future prospects

- 82.** The opportunities offered by globalization and the negative social impacts experienced so far have been the subject of deep scrutiny by the social partners and have been the subject of major international meetings. There is a growing awareness of and pressure for policies and programmes that achieve in a balanced manner both economic, social and ecological objectives. Nations, enterprises and the social partners are constantly in search of new approaches and strategies towards attaining economic growth and stability through social justice and equality. Interest in corporate social responsibility (CSR) is becoming globally widespread. Total productivity enhancement that takes account of the complementarity and symbiosis between economic and social development is central to such strategies.
- 83.** It is therefore essential that, with the deepening of globalization, the ILO examines the heightened importance of productivity, understands the state of the law and practice and explores the usefulness of a Recommendation. A Recommendation could help member

countries and the social partners pursue productivity and competitiveness through the high road of good human resource management and development, enterprise and industry upgrading, labour-management cooperation and consultation, and fair sharing of productivity gains among stakeholders. The discussion could also look at widening the notion of productivity beyond economics, look at the concept of social productivity and emphasize the integration of productivity with social stability.

Suggested issues for a general discussion at the Conference

84. Should the Governing Body decide to include such an item on the agenda, the Conference may wish to address the following issues:

- *Productivity in the era of globalization.* What would be the relevant concept of productivity in an era of globalization? How could the concept of productivity be expanded to encompass issues related to decent work? How compatible are the notions of productivity and decent work?
- *Best practices in productivity improvement.* What strategies and approaches, consistent with ILO principles and fundamental rights at work and reflecting the principles behind core labour standards and other related international labour standards, would be likely to achieve both the goals of productivity improvement and the creation and sustenance of decent jobs, in an era of rapidly changing structure of production and distribution, new forms of work organization and rapid technological advance? How could the benefits and gains from productivity improvement be fairly shared among the stakeholders?
- *Skills and competencies required.* What new skills and competencies will be required of workers and managers for continuing productivity improvement?
- *Enabling environment and institutional framework.* What policy and legal environment will be supportive of the achievement of the productivity and decent jobs objectives? How could labour laws and investment laws encourage approaches aimed at achieving the two objectives? What support institutions must be strengthened or established to support national, sectoral- and enterprise-level productivity improvement efforts? What are the roles of tripartite machineries and institutions, e.g. tripartite productivity councils?
- *Roles of the social partners.* How could the social partners assist in ensuring that strategies and approaches aimed at achieving both productivity improvement and decent jobs are pursued at national, sectoral and enterprise levels?
- *Role of the ILO.* How could the ILO promote policies, strategies and approaches that will achieve both productivity improvement and decent job objectives? What kind of instruments and means of action will be appropriate? What programmes could the Office pursue?

Social protection

5. *Work and family in the twenty-first century* (general discussion)

Summary

Developments in the world of work, linked especially to globalization, new technology, changes in work organization, increases in women's employment and other changes in the structure of the labour market, have combined with rapid changes in the definition and composition of the family, and with changes in the allocation of family tasks, to offer both new challenges and new solutions to the work/family dilemma. Addressing the implications of these changes will require moving the focus of attention beyond the impact that family demands have on work, to consider also the impact that work has on family and personal life, on men as well as women. The Conference might consider in this context a wide range of interrelated items, including: conflicts between work and family responsibilities; childcare; care of the elderly and care for family members with disabilities; flexible working time arrangements; leave provisions and security of employment and income; poverty, families and coping strategies in times of crisis; and the ageing of the workforce.

- 85.** In recent years globalization, new technology, changes in work organization and changes in the structure of the labour market have affected both the world of work and the family, as well as other non-work needs. These have brought to the fore new forms of work, new kinds of work/family needs and various solutions to the work/family dilemma.
- 86.** Changes are also occurring in the notion of the family. The rise in single parent families and dual-income families, the increase in migration for work – especially among women – as well as demographic changes such as the rise in the proportion of the elderly, complicate the challenges workers face in reconciling work and family needs. The issue of care for the elderly is becoming as important as that of childcare in some societies, while the care of family members with disabilities is also an increasingly important issue. Moreover, in many countries work/family issues are closely linked to the promotion of gender equality at work and at home. Work and family in the twenty-first century is thus not only a social protection issue, but is also crucially concerned with equality and employment questions that require social dialogue.
- 87.** The poverty of families is a core concern. This is inextricably linked to employment, opportunities for entrepreneurship, protection for atypical workers, including homeworkers, and especially the economic empowerment of women. The growth of female-headed households is of special concern, as the insecurity faced by women workers, particularly those employed in low-wage or atypical forms of work, also affects children and other dependants. While women's economic activity rates have risen dramatically in recent years, women remain highly vulnerable to economic and social insecurity as they find themselves concentrated in the least protected sectors of the economy. Many workers resort to home work and to work in the informal sector in order to augment family income while maximizing their flexibility to balance work and family needs, especially in the absence of affordable childcare. Creating opportunities for micro-entrepreneurship and improving job quality in micro-enterprises therefore has important implications for workers with family responsibilities. Encouraging flexible but secure labour policies, which provide better integration of women into the workforce and men into the lives of families, would promote greater gender equity and support for inter-generational care.
- 88.** Migration for work also has an important impact on families. While in the past women used to migrate principally to join their husbands, the autonomous migration of women workers has been rising in many parts of the world. As men and women decide to seek employment outside their home countries, the children left behind can face other problems.

- 89.** With globalization, more flexible labour markets and an increasing informal sector, growing numbers of men and women are left unsupported by formal social protection, particularly in old age and in times of adversity. Because women are more likely than men to move in and out of the labour force at different stages of family formation, the interruptions in their working lives mean that women accumulate less social security for their old age. Women account for the bulk of the over-60 population in almost every country in the world but, as a consequence of a lifetime of direct or indirect discrimination and in the absence of an old-age pension system, many women must face old age without the most basic economic security. In some countries, their economic hardship has grown as the HIV/AIDS epidemic has left older women with the responsibility for caring for their infected children and, later on, their children's children.
- 90.** The length of working time and, most importantly, the arrangement of working time and the design of jobs are important factors for workers in balancing work and family responsibilities. While working time has been falling in many countries, there have been moves in others towards longer working hours. Developments in flexible working time and leave arrangements, including in particular the extent to which there is flexibility in schedules at the initiative of workers, are crucial in this regard. The rapid increase in the use of part-time work and telework, for example, offers new possibilities for workers trying to balance work and family. There are also new opportunities to redesign jobs that have previously been seen as inherently family-unfriendly. On the other hand, greater use and variety of shift and night work arrangements and on-call arrangements introduce new challenges. Addressing the implications of these changes will require moving the focus of attention beyond the impact that family demands have on work and to consider also the impact that work has on family and personal life.
- 91.** The tremendous increase in women's employment has been accompanied by gradual acceptance of the relevance of work and family issues to men as well as women. Nonetheless, tackling the work/family dilemma is closely linked to the promotion of gender equality at work and at home, particularly since women still bear the main burden of caring for children, the elderly, the sick and the disabled within the family and the close community, as well as for household chores. Encouraging men to take on more of the family work and to take advantage of workplace-provided work/family policies has often proved to be very difficult, even in households where men and women work similar hours for similar pay.

Proposed solution

- 92.** The Governing Body could decide to include the subject of work and family in the twenty-first century on the agenda of a future session of the International Labour Conference for a general discussion. As suggested in 1999, this would allow for a wide-ranging examination of interrelated items, including: conflicts between work and family responsibilities; childcare; care of the elderly and care for family members with disabilities; flexible working time arrangements; leave provisions and security of employment and income; poverty, families and coping strategies in times of crisis; and the ageing of the workforce. The discussion could also provide an opportunity to review the experience of the ILO and its constituents in this sphere, including an assessment of the practical implementation of the Workers with Family Responsibilities Convention, 1981 (No. 156).

Origin of the proposal

- 93.** A brief proposal was submitted to the Governing Body at its 270th Session (November 1997) in the section including "other proposals", with the title "Flexible working/family-friendly policies", based on a suggestion by the United Kingdom Government. The issue of work and family was again submitted to the Governing Body at

its 276th Session (November 1999), again among the “other proposals”. On the basis of support³⁹ in the Governing Body it was developed and presented for discussion by the Governing Body at its 279th Session (November 2000).

94. During discussions on the Maternity Protection Convention, 2000 (No. 183), a range of issues were raised concerning parental leave, paternity leave, protection for adoptive parents and other concerns of workers with family responsibilities. Many of these were considered to fall beyond the proper scope of the new maternity protection Convention, but it was recognized that the issues should be dealt with in the context of a discussion on work and family.

Relation to existing instruments

95. The Workers with Family Responsibilities Convention, (No. 156), and Recommendation (No. 165), 1981, is the main international labour standard in this field. It is a promotional Convention that has been ratified by 33 member States. Several other ILO instruments are relevant, including the Maternity Protection Convention, 2000 (No. 183), the Home Work Convention, 1996 (No. 177), the Part-Time Work Convention, 1994 (No. 175), the range of other standards on working time (hours of work, weekly rest, holidays with pay, night work) and others, as well as the standards concerning child labour and equality of opportunity and treatment and the Older Workers’ Recommendation, 1980 (No. 162).
96. A General Survey was conducted on the Workers with Family Responsibilities Convention, 1981 (No. 156) in 1993.⁴⁰

Progress made in research and preparatory work

97. The ILO has conducted considerable research on the issues of work and family since the 1980s. *A conditions of work digest on work and family: The childcare challenge* was published in 1988, followed by an annotated bibliography on childcare in 1990. A publication on *combining work and elder care* was issued in 1996.
98. Recognizing that most of the available information concerns modern enterprises in industrialized countries but that the issues are universal, a series of studies is being undertaken in 2000-01 on work/family issues, with a particular focus on extending the knowledge base in developing and transition countries. These studies will examine the harmonization of work and family concerns, their influence on satisfaction and performance at work and the costs and benefits of measures to link work and family. They will also highlight the similarities and differences in the work/family theme among countries with different economic and social needs. Finally, much of the ILO’s other work, notably its programmes concerning equality of opportunity and treatment, including the More and Better Jobs for Women Programme, have important implications for work and family concerns. Achieving equal pay for work of equal value and promoting equal access to employment will change the factors affecting decisions when families have to decide how to allocate their total working time in order to meet family responsibilities. Furthermore, the ILO programmes concerning child labour, including the International Programme on the Elimination of Child Labour, have implications not only for the rights of children, but also for the roles of families in protecting children from the worst forms of

³⁹ For details, see GB.279/5/1, para. 59.

⁴⁰ *Workers with family responsibilities*, General Survey of the reports on the Workers with Family Responsibilities Convention, (No. 156), and Recommendation (No. 165), 1981, Report III (Part 4B), ILC, 80th Session, Geneva, 1993.

child labour. The ILO's Global Programme on HIV/AIDS and the World of Work will also examine the impact of the pandemic on families.

Suggested issues for a general discussion at the Conference

99. Should the Governing Body decide to include this item on the agenda, the Conference may wish to address the following issues:

- *Implications at work of changes in “family”.* What are the implications for the workplace of changes in the family, such as the degree of prevalence of the nuclear family, the rise in dual-income and single parent families and delays in childbirth?
- *Feminization of the workforce.* How can work/family policies and programmes contribute to achieving equality at work for the growing number of women in the workforce? What can be done to assist men in assuming a more active role in family responsibilities?
- *Poverty and the family.* What could be done to strengthen or complement the capacity of the family to provide a “safety net” during times of economic downturn and family or societal crisis?
- *Work organization, job redesign, new technology and work/family.* How can the potential benefits for balancing work and family offered by flexible working time, part-time work, telework and other changes in work organization be maximized and the potential adverse effects minimized? How can family-unfriendly jobs be redesigned?
- *Best practice in work/family at the workplace.* What strategies and approaches are most effective in meeting the needs of workers to balance their work and family responsibilities and, at the same time, the concerns of employers in achieving corporate goals? How could approaches be developed to reach the workers often excluded by workplace work/family initiatives, such as low-skilled workers, workers in small and medium-sized enterprises, workers with disabled and elder care responsibilities, and male workers?
- *Enabling environment and institutional framework.* What policy and legal environment will be supportive of the objective of achieving a balance in work and family life? How can the different support institutions, such as those dealing with labour issues, family concerns, women's issues and others, be strengthened in working coherently to develop and support work/family initiatives? What are the roles of tripartite mechanisms and institutions?
- *Role of the social partners.* How could the social partners assist in ensuring that strategies and approaches to enable a work/family balance are pursued at national, sectoral and enterprise levels?
- *Role of the ILO.* How could the ILO promote policies, strategies and approaches aimed at ensuring a work/family balance? What kind of action will be appropriate? What measures should be taken to promote the Workers with Family Responsibilities Convention, 1981 (No. 156)?

6. *Migrant workers*⁴¹ (general discussion)

Summary

International labour migration has become more complex and diverse and involves a much larger number of countries than ever before. There are growing problems with irregular migration and much contemporary migration is organized by private intermediaries. The large majority of today's migrant workers are admitted only for temporary periods which in many instances makes them subject to unequal treatment. In response to the low and declining rate of the ILO's existing standards on this subject, the Committee of Experts on the Application of Conventions and Recommendations was requested by the Governing Body at its 267th Session to undertake a General Survey on the state of law and practice. The Committee of Experts clearly saw the need for a general discussion of the subject of migrant workers at a future session of the International Labour Conference, with a view to reviewing and possibly revising the instruments.

- 100.** Today, between 40 and 45 million persons are estimated to be economically active in a country other than their own, with or without authorization, and they are accompanied by at least as many dependants. This estimate does not include the millions of Russians, Kazakhs, Ukrainians and others scattered across the successor states of the USSR. More countries than ever before are now engaged in migration either as receiving countries or countries of origin, or both. The 64 countries that were major senders or receivers in 1970 had grown to 98, 20 years later. By the beginning of the 1990s nearly 100 countries were significantly involved in international economic migration.

Contemporary trends in international migration

- 101.** International labour migration has become more diverse and complex than in previous decades. Farmers or peasants with few skills to offer who leave their lands temporarily or permanently in search of wage-paid activities still represent an important component of cross-border migrants. Skilled industrial and construction workers⁴² who move individually or as part of an enterprise's labour force and who may be tied to a specific project or perform recurrent tasks for a contractor constitute an increasing proportion of present-day migrants, as do young women who undertake jobs as domestic helpers or caregivers for the aged in foreign countries. Highly qualified professionals, managers, technicians and service providers circulate across the globe to a much greater extent than previously, both within and outside transnational enterprises, but their movements are seldom recorded. Young persons admitted as trainees for the purpose of upgrading their skills in foreign enterprises, and who may perform regular work as a result of their assignment, are just as much part of contemporary economic migration as are entrepreneurs who are admitted with the promise of future citizenship if they bring along enough funds to create employment for themselves and for others. No classification can neatly and comprehensively capture the variety of today's international labour migrants. Even the distinctions between temporary migrants and permanent settlers have become blurred.
- 102.** Several factors are combining to drive this rising cross-border mobility of workers, including intensification of trade and investment, widening income differentials between the north and the south over the last three decades and the declining cost of transport. To

⁴¹ This is an abbreviated version of a proposal that was submitted to the Governing Body in Nov. 2000, excerpt from [GB.279/3](#), paras. 133-159.

⁴² See ILO, *Social and labour issues concerning migrant workers in the construction industry*, Tripartite Meeting on Social and Labour Issues concerning Migrant Workers in the Construction Industry, Geneva, Mar. 1996.

these may be added the political changes such as the collapse of the former USSR. Finally, there is some evidence that the growth of the informal sector is associated with greater absorption of foreign labour in the industrialized countries.⁴³

- 103.** Many new problems and policy dilemmas have surfaced with the growth and emergence of new forms of labour migration. The most significant include irregular migration and illegal employment of undocumented migrants, commercialization of migration processes, migrants in under-protected occupations, the growth of temporary migration for employment and high levels of unemployment among immigrant workers.

Towards a comprehensive ILO strategy

- 104.** The protection of workers employed in a country other than their country of origin has always had an important place among the activities of the ILO,⁴⁴ since more than any other workers they are vulnerable to exploitation, particularly if they are in an irregular situation or victims of manpower trafficking. Although all the ILO's instruments are of relevance to migrant workers, in so far as they are of general application to all workers, the ILO has adopted several standards of specific relevance to migrant workers: the Migration for Employment (Revised) Convention, (No. 97), and Recommendation (No. 86), 1949; and the Migrant Workers (Supplementary Provisions) Convention (No. 143), and Recommendation (No. 151), 1975.⁴⁵ Convention No. 97 has so far been ratified by 41 member States and Convention No. 143 by 18.

- 105.** The low number and declining rate of ratifications of the ILO's instruments on migrant workers were among the factors considered in the examination of these instruments by the Working Party on Policy regarding the Revision of Standards. This examination resulted in a decision by the Governing Body at its 267th Session (November 1996) to request the Committee of Experts on the Application of Conventions and Recommendations to undertake a General Survey⁴⁶ on the state of law and practice in member States in relation to [Conventions Nos. 97 and 143](#) and their related Recommendations. It may be noted that this was the first time that a General Survey was initiated with the specific aim of re-examining "the possibility of including the question of migrant workers on the agenda of a forthcoming session of the International Labour Conference for a general discussion and also in order to clarify the possible need for revision of Conventions Nos. 97 and 143".

⁴³ See P. Stalker, *Global nations: The impact of globalization on international migration*, International Migration Papers No. 17, ILO, Geneva, 1997.

⁴⁴ For more details, see para. 32 of *Migrant workers*, General Survey on the reports on the Migration for Employment Convention (Revised) (No. 97), and Recommendation (Revised) (No. 86), 1949; and the Migrant Workers (Supplementary Provisions) Convention (No. 143) and Recommendation (No. 151), 1975, ILO, Geneva, 1999.

⁴⁵ A number of ILO standards make specific reference to migrant workers and urge member States to take their provisions into account. These include the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), the Private Employment Agencies Convention, 1997 (No. 181), the Maintenance of Social Security Rights Convention, 1982 (No. 157), and the Indigenous and Tribal Peoples Convention, 1989 (No. 169). Although most ILO standards do not contain provisions dealing specifically with migrant workers, the Committee of Experts frequently refers to the situation of migrant workers in supervising their application. This includes the numerous comments formulated by the Committee during its supervision of the application of the maritime Conventions. See para. 38 of the General Survey for a *non-exhaustive* list of these instruments.

⁴⁶ See footnote 44.

⁴⁷ The General Survey was discussed at the 88th Session (June 1999) of the International Labour Conference.

106. It is instructive to outline some of the most prominent changes that the Committee of Experts found had occurred in international migration since the adoption of the instruments and their effect on how these instruments are applied:

- It noted that the *gender stereotypes* that held when the instruments were drafted were no longer valid and that women now form an increasingly significant proportion of persons migrating for employment. The Committee showed concern, in particular, over the lack of protection that the instruments offer to women trafficked for work in the sex sector.
- It observed that the *commercialization of recruitment* that had occurred in recent decades had led to a number of abusive practices, including the use of misleading propaganda, extraction of sometimes exorbitant fees from potential migrants, the withholding of information and the confiscation of travel documents – practices which may be insufficiently regulated by ILO instruments as well as by national law.
- It remarked that the recent *increase and diversification* of temporary migration had had important ramifications and the Committee questioned whether the instruments’ blanket coverage of permanent and temporary migrant workers reflected the contemporary diversity of their situations.
- It observed that the *effect of regional integration* on the movement of workers across borders has been significant and in particular the application of the provisions respecting equality of opportunity and treatment of workers from outside regional groupings raised, in the Committee’s opinion, questions of principle which needed to be addressed.
- It pointed to the fact that the *increase in irregular migration* had introduced difficulties in the interpretation of several of the provisions, in particular in relation to the lack of definition of the fundamental rights of migrant workers.
- It pointed out that the *growth of migration by air travel* had meant that some provisions of the instruments, such as Article 5 of [Convention No. 97](#) (which requires medical examination both prior to departure from the home country and upon arrival in the host country) might be outdated. The Committee concluded its analysis of this point by stating that “this question should be considered in the framework of a Conference discussion on migration for employment”.⁴⁸

107. In addition to the lacunae in [Conventions Nos. 97](#) and [143](#) due to changes in practice, a comparison between national legislation and international labour standards relating to migrant workers has made it clear that other lacunae exist in these instruments. For example, they do not deal with the elaboration or establishment of a national migration policy, in consultation with employers’ and workers’ organizations, within the framework of national employment policy. Questions relating to migrant workers’ contracts, which are of vital importance for protecting workers, are not addressed in existing instruments. The same can be said of questions touching certain aspects of the payment of migrant workers’ wages. In addition, the Committee drew up a list of the provisions mentioned by

⁴⁷ See GB.267/LILS/4/2; see also GB.267/9/2, para. 14, and GB.267/PV, p. IV/6.

⁴⁸ See para. 653 of the General Survey.

governments in their reports as giving rise to difficulties and observed that nearly all of the provisions of the Conventions, the annexes and the relevant Recommendations were cited.⁴⁹ In the Committee's opinion, certain difficulties cited ought not to constitute fundamental obstacles to the ratification of these Conventions and it seemed to be generally agreed that the principles enshrined in these instruments were still valid.

- 108.** In addition to the adoption and supervision of standards, the ILO has undertaken a number of activities in the field of migration aimed at improving the situation of millions of migrant workers around the globe. The major part of the ILO's activities in the field of migration, in addition to promoting the ratification and application of ILO standards on migrant workers, consists of providing assistance to countries in the formulation of migration policies and legislation and in managing migratory flows more effectively, in line with the provisions of ILO instruments.
- 109.** Furthermore, since the early 1990s, the Office has launched several projects on different aspects related to migration including a Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration which was held in April 1997. This meeting resulted, inter alia, in recommendations to develop two sets of *guidelines*, one on special protective measures for migrant workers in time-bound activities, the other on special protective measures for migrant workers recruited by private agents and the use of *pattern or practice studies* of the exploitation of migrant workers as a means of action not falling under Convention-based procedures.⁵⁰ Since the approval by the Governing Body in 1997 of the creation of the *International Labour Migration Database*, the Office has collected data on the magnitude and nature of contemporary migration flows which is now accessible via the Internet.⁵¹
- 110.** It should also be recalled that in 1990 the UN General Assembly adopted the *International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families*.⁵² This Convention, building on the provisions contained in existing ILO Conventions, is aimed at articulating the rights of migrant workers regardless of their legal status. Since only 12 States have so far become party to the UN Convention through ratification or accession, it has not yet entered into force.⁵³ When it does, the UN will create a separate body for its supervision. The reasons why this new Convention has not yet received a sufficient number of ratifications to enter into force should be analysed and taken into account in future ILO work on this subject.
- 111.** Finally, with respect to the specific question of liberalizing the rules governing the temporary movement of "natural" persons rendering specific time-bound services, it will be recalled that the World Trade Organization adopted the *General Agreement on Trade*

⁴⁹ See para. 642 of the General Survey.

⁵⁰ See Report of the Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration, MEIM/1997/D.4, ILO, Geneva, Apr. 1997.

⁵¹ <http://www.ilo.org/public/english/protection/migrant/ilmdb/index.htm>.

⁵² See GB.249/IO/3/2.

⁵³ In 1998, a Global Campaign for Ratification of the Convention on Rights of Migrants was launched. For more details on the work of the United Nations and its specialized agencies, see paras. 49-61 of the General Survey.

and Services (GATS) in April 1994.⁵⁴ In the GATS, these natural persons are dominated by “international service providers”. It has been proposed⁵⁵ that the ILO examine this issue further.

112. Against this background (new forms of labour migration and the state of ratifications and ratification prospects of ILO Conventions on migrant workers), the Director-General stated in his Report to the International Labour Conference at its 87th Session (June 1999) that in the next biennium the ILO’s activities would “reflect the growing importance of labour migration in the global economy. The primary objective should be to help forge an international consensus [...] on how to ensure adequate protection for migrant women and men and their families, while allowing orderly and advantageous movements of workers in search of better lives”.⁵⁶ It would thus seem highly relevant to develop a comprehensive ILO strategy for achieving this objective. Such a comprehensive strategy should be developed in order to guide ILO action in the following areas:

- to assist member States in understanding migration problems, designing policy and improving administration;
- to follow up on the findings of the General Survey of ILO Conventions on migrant workers and campaign for wider ratification or examine revision as determined by the Conference;
- to promote bilateral or multilateral agreements as a means of fostering more orderly forms of migration;
- to promote action at various levels, particularly with the support of social partners, the combating of discrimination against immigrant workers in access to employment and to encourage the development of codes of conduct for their treatment;
- joint action with other UN and international as well as regional organizations in fostering orderly migration and promoting the integration of settled migrants; and
- to expand the ILO’s International Migration Database and enhance its accessibility to constituents.

Proposed action

113. The Office notes that what emerged from the discussions at the Conference was that the ILO could opt between three main courses of action. It could decide:

- to include the subject of migrant workers on the agenda of a future session of the International Labour Conference for a general discussion, with a view to reviewing and possibly revising the relevant instruments;
- to place the revision of [Conventions Nos. 97 and 143](#) on the agenda of a forthcoming session of the International Labour Conference; and

⁵⁴ For the text of the GATS, see WTO, Results of the Uruguay Round of Multilateral Trade Negotiations, Geneva, June 1994, or Internet: <http://www.wto.org/services/gats.htm>.

⁵⁵ By *Chile, Finland and Switzerland*. in the context of the consultations on the portfolio, 1997-99.

⁵⁶ *Decent work*, Report of the Director-General to the 87th Session (1999) of the ILC, “New programme on labour migration in the global economy”.

- to maintain the existing Conventions, while placing on the agenda of the International Labour Conference the question of adopting a new Convention to address contemporary migration concerns.

114. Although the trend in the discussion of the General Survey tended towards revision of [Conventions Nos. 97](#) and [143](#), a clear consensus was not reached on this issue. The Office proposes, therefore, to hold a general discussion on the question of migrant workers. Such a discussion might contribute to the development of a comprehensive strategy for the ILO in this area and of a common understanding on the most appropriate course of action to take.

Issues to be discussed

- 115.** A general discussion of the issues raised by the growing mobility of workers and the alternatives for ILO action might be organized around the following subjects:
- (a) *International labour migration in the era of globalization.* How can migration be better managed in the era of globalization to ensure that it plays a positive role in the growth and development of countries of origin and countries of employment, while protecting migrant workers in their search for a better life? What role can the ILO play in bringing about an international consensus on how to manage migration?
 - (b) *Best practices in dealing with irregular migration for employment.* What strategies compatible with the ILO's principles and basic human rights would be likely to have reasonable success in curbing irregular migration?
 - (c) *Improving migrant workers' protection through standard setting.* What approach should be taken to ensure wider ratification and application of ILO Conventions on migrant workers? How can the international standards be made more relevant in view of the emerging new forms of migration? In particular, should the existing standards be revised or implemented?

Social dialogue

7. *Social dialogue (general discussion)*

Summary

Social dialogue has still not acquired a precise, commonly understood meaning, although it is a widely used concept. Nevertheless, the attraction of social dialogue, based on the ideals of democracy, equity and efficiency, continues to grow. Social dialogue is an integral component of decent work and an essential channel for achieving it, yet the potential, and the extent to which it is used, still needs to be explored. For these reasons, it is proposed to hold a discussion on this issue at the International Labour Conference. The objectives of this discussion are to promote a better understanding of the concept and its importance, to review the topic in the light of changes brought about by globalization, to make better known the existing standards on social dialogue, to clarify its role in relation to ILO strategic objectives and to highlight innovations for the benefit of constituents. These objectives could be achieved through a discussion of topics regarding the different aspects of social dialogue. Possible topics could include a look at the multifaceted nature of different aspects of social dialogue, its formal and informal institutions, mechanisms and processes, the actors in social dialogue, the underlying factors necessary for successful social dialogue such as cooperation, trust and commitment and, finally, the role of the ILO and social dialogue. Such a discussion would allow the constituents an opportunity to give the ILO guidance on how to address social dialogue, to determine priority areas for action and to tackle the issue of promoting social dialogue through cooperation between the ILO and other international agencies.

- 116.** What is social dialogue? It is a widely used concept, though it has yet to acquire a precise and commonly understood meaning. The views of what social dialogue means are necessarily coloured by the fact that the practice and outcomes of social dialogue vary considerably from region to region, from country to country. Despite the conceptual difficulties involved, the attraction of social dialogue with its solid grounding in ideals of democracy as well as equity and efficiency continues to grow.
- 117.** From an ILO perspective, social dialogue is an integral component of decent work and an essential channel for achieving it: social dialogue is both a means and an end. Although part of the very fabric of the Decent Work Agenda, and of the ILO itself, the vast potential of social dialogue has yet to be fully explored. The Director-General has acknowledged that “[w]e need to know much more about the extent of social dialogue among our constituents and about deficits in voice representation in general. All this information should be broken down by gender”:⁵⁷
- A well-structured discussion of this issue by the International Labour Conference could be a means of examining the many facets of social dialogue, in terms of both institutions and outcomes, to provide a basis for the constituents to harness the potential of social dialogue and for the Office to better assist them in this regard. Specifically, a discussion could provide an opportunity:
 - to promote a better understanding of the concept and importance of social dialogue and, within that context, the role of the social partners and the ILO;
 - to clarify the role of social dialogue in relation to operationalizing the ILO’s strategic objectives and promoting the cross-cutting issues of gender and development;
 - to highlight innovations and best practices in social dialogue from which other countries could benefit;
 - to enable the ILO to take stock of and draw lessons from the dramatic changes that have occurred in the field of social dialogue as a result of globalization, including the regional dimensions of social dialogue;
 - to promote social dialogue in a globalized economy, including through cooperation among international organizations;
 - to explore and better understand the links between competitiveness, managing change and social dialogue at the different levels (i.e. enterprise, sectoral, national, subregional and international); and
 - to make better known the existing standards on social dialogue (i.e. Conventions Nos. 87, 98, 144, 150 and 154; Recommendations Nos. 91, 92, 94, 113, 129, 130, 152, 158 and 163).
- 118.** In order to meet these objectives, the following elements could be included in a discussion on social dialogue. It is acknowledged, however, that considerable consultation and preparation would be needed before determining the precise focus of the discussion to ensure that it was relevant to the needs and realities of the constituents.

⁵⁷ *Reducing the decent work deficit: A global challenge*, Report of the Director-General, ILO, Geneva, 2001, p. 66.

- 119.** *Social dialogue – A multifaceted concept.* Social dialogue is, and must continue to be, an evolving concept given that the world in which it takes place is in a constant state of flux. A discussion could begin by broadly exploring the conceptual parameters of social dialogue, focusing on how it has evolved in the face of globalization, with a view to adopting a sufficiently broad and flexible definition that could keep abreast of future developments.
- 120.** *The institutions, mechanisms and processes of social dialogue – Formal and informal.* A more detailed survey of existing types of institutions, mechanisms and processes could follow. This would be with a view to exploring avenues for the promotion of social dialogue within the process of development, transition, economic and regional integration, and the fostering of dynamic forms of social dialogue. The various levels at which social dialogue takes place and the interaction of such levels could also be examined.
- 121.** *The issues for social dialogue.* This aspect of the discussion could highlight the broad range of issues that are capable of being addressed successfully through social dialogue. The framework for this part of the discussion would be the ILO's strategic objectives and the cross-cutting issues of gender and development. The purpose of this would be to provide practical guidance for the work of the various sectors of the ILO, thereby ensuring that the strategic objectives are pursued through social dialogue.
- 122.** *The actors in social dialogue.* "Cohesive tripartism is the ILO's bedrock."⁵⁸ The role of workers' and employers' organizations and representatives of government in moving forward social dialogue is of paramount importance, whether that dialogue be inside the ILO or beyond its walls. When examining the actors in social dialogue, the emphasis would be on the key role of tripartite and bipartite social dialogue and the capacity of labour administrations and the social partners to initiate and contribute to fruitful social dialogue. It would also be useful to consider the benefits of involving other arms of government and alliances together with other actors to promote certain aspects of ILO policies and priorities.
- 123.** *Underlying factors for successful social dialogue.* Balanced, successful social dialogue does not necessarily come easily. "Social dialogue is a powerful tool that has helped solve difficult problems and foster social cohesion. But it cannot be taken for granted. Developing a reflex for consultation and negotiation takes time and commitment. It also needs social partners that have the capacity and will to engage in the process responsibly and the strength and flexibility to adjust to contemporary circumstances and exploit new opportunities."⁵⁹ The importance of strong, independent and representative parties in the process cannot be denied and, in this context, full respect for the principles of freedom of association is paramount. Some of the other issues that could be addressed in this context include the role of mutual respect, trust, consensus building, adopting a problem-solving approach and access to information.
- 124.** *The ILO and social dialogue.* The ILO has a wealth of social dialogue-related standards. It is also involved in a wide range of technical cooperation projects to promote and strengthen social dialogue mechanisms and institutions, and build up the capacity of the relevant parties to engage in social dialogue. However, social dialogue has not been used consistently as a means of operationalizing the other ILO strategic objectives. With respect to the standards, some form of social dialogue is envisaged in a large number of

⁵⁸ *Reducing the decent work deficit: A global challenge*, Report of the Director-General, ILO, Geneva, 2001, p. 70.

⁵⁹ *Decent work*, Report of the Director-General, ILO, Geneva, 1999, p. 39.

Conventions, from those dealing with occupational safety and health (see for example the Occupational Safety and Health Convention, 1981 (No. 155)) to the recent Conventions on Private Employment Agencies, 1997 (No. 181), and on the Worst Forms of Child Labour, 1999 (No. 182). In terms of those standards focusing on social dialogue, the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87), and the Right to Organise and Collective Bargaining Convention, 1949 (No. 98), clearly provide the backbone for social dialogue. The Tripartite Consultation (International Labour Standards) Convention (No. 144), and its accompanying Recommendation (No. 152), 1976, have influenced the shape of tripartite institutions in a number of countries and have provided a starting point in many instances for much broader dialogue. The role of labour administrations in social dialogue is addressed through the Labour Administration Convention (No. 150), and its accompanying Recommendation (No. 158), 1978. There are also a number of other standards dealing with social dialogue institutions, some of which are less well known. These include those dealing with collective bargaining (the Collective Agreements Recommendation, 1951 (No. 91), the Collective Bargaining Convention (No. 154), and its accompanying Recommendation (No. 163), 1981); as well as the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92), the Cooperation at the Level of the Undertaking Recommendation, 1952 (No. 94), the Consultation (Industrial and National Levels) Recommendation, 1960 (No. 113), the Communications within the Undertaking Recommendation, 1967 (No. 129), and the Examination of Grievances Recommendation, 1967 (No. 130).

125. The Conclusions concerning Tripartite Consultation at the National Level on Economic and Social Policy adopted by the International Labour Conference in 1996 (following a general discussion on tripartite consultation) would of course also be relevant in the context of a discussion on social dialogue. It could be useful to examine the developments in tripartite consultation since the 1996 discussion, as well as the role of tripartism as the basis for other forms of social dialogue. The 1996 discussion, and the conclusions that resulted therefrom, could be a useful starting point for a discussion on social dialogue though, in order to avoid repetition, a new discussion would need to move beyond traditional parameters.
126. A discussion on social dialogue would provide the constituents with an opportunity to give the ILO guidance on how to address social dialogue and to determine priority areas for action. Cooperation between the ILO and other international agencies, with a view to promoting social dialogue, could also be addressed.

Gender

8. *Gender equality in the world of work (general discussion based on the integrated approach)*

Summary

In 2004, it will be almost 20 years since the International Labour Conference undertook a comprehensive review of gender equality issues in the world of work. In 1985, a general discussion was held at the International Labour Conference on Equal Opportunities and Equal Treatment for Men and Women in Employment. Since then a large number of individual yet important ILO activities have taken place. For this reason it is proposed that an item on Gender Equality in the World of Work be considered as an item for general discussion based on the integrated approach to ILO standards-related activities in the area of gender equality in the world of work with a view to the adoption of a plan of action for such activities.

Background

- 127.** A report to the 71st Session (1985) of the International Labour Conference analysed the situation of women in the labour market at that time and reviewed ILO means of action to address inequality. Following a discussion based on this report, the Conference adopted a resolution on equal opportunities and equal treatment for men and women in employment. The resolution provided for national action in the areas of equal access to employment and training, equality of remuneration, working conditions and environment, maternity protection, workers with family responsibilities, social security, participation, administrative arrangements to promote equality of opportunity and treatment and improving the database. The resolution also provided for action by the ILO concerning standard setting, including: a review of protective measures, cooperation with the UN system, inclusion of equal opportunity and treatment for men and women on the agendas of ILO meetings, research on the situation of women, data collection, dissemination of information, technical cooperation, strengthening of institutional arrangements, provision of childcare to enable more women to attend ILO meetings and promotion of the use of non-sexist language.
- 128.** Since 1985, a number of standard-setting and other measures particularly relevant to gender equality and women's employment have been on the Conference agenda. These include the adoption of the Night Work Convention, 1990 (No. 171), the Part-Time Work Convention, 1994 (No. 175), the Home Work Convention, 1996 (No. 177), and the Maternity Protection Convention, 2000 (No. 183). A General Survey on the night work of women in industry was submitted to the 89th Session of the International Labour Conference in 2001.⁶⁰ The adoption by the Conference of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up in 1998 gave added impetus to the promotion of gender equality with the inclusion of the principle of the elimination of discrimination. In 1991, the International Labour Conference adopted a resolution concerning ILO action for women workers. It reaffirmed the provisions of the 1985 resolution, many of which remained valid but unimplemented. It called on the ILO constituents and the Office to undertake a range of measures to promote equality for women. These included the ratification and implementation of standards, improving the participation of women in the International Labour Conference and ILO meetings and attention to issues such as methods of job evaluation free of sex bias and sexual harassment. Furthermore, ministerial meetings were held on *More and better jobs for women* at the International Labour Conference in 1998 and on *Let's make gender equality a reality* at the International Labour Conference in 1999.
- 129.** In addition, a number of tripartite meetings have been held on gender equality issues, covering such areas as protective measures for women, equal opportunity and treatment for men and women in social security and women in management positions. The Governing Body has addressed gender equality issues on a number of occasions and, in particular, held a one-day symposium in March 2000 on Decent Work for Women as a contribution to the Beijing +5 Special Session of the UN General Assembly held in June 2000. The ILO's first strategic programme and budget adopted for 2000-01 and the Strategic Policy Framework established gender as a cross-cutting concern in all the activities of the ILO. In March 2000, the Office's Plan of Action on Gender Equality and Mainstreaming was submitted to the Governing Body. As part of the implementation of this plan, the Office is currently conducting an Office-wide gender audit of programmes both to assess the extent to which institutional mechanisms have been established and are operational and to ensure that gender is systematically mainstreamed into all ILO activities. The audit report is also

⁶⁰ ILO, *Night work of women in industry*, Report III (Part 1B), ILC, 89th Session, Geneva, 2001.

expected to highlight good practices and tools used for gender mainstreaming and to contribute to a better formulation of performance indicators on gender equality in the world of work.

Future policy development

- 130.** A substantive amount of time has elapsed since the International Labour Conference addressed gender equality in a comprehensive way, despite the fact that an impressive number of individual yet important ILO activities have taken place over the years. During the last two decades tremendous changes have taken place with uneven progress in gender equality, new manifestations of gender inequality and new challenges to achieving gender equality flowing from the globalization of the economy. The ILO's response, as reflected in its global agenda of decent work for all provides a clear mandate for addressing gender equality in the world of work in an integrated and comprehensive manner.
- 131.** Therefore it would be appropriate and extremely useful in 2004 for the International Labour Conference to undertake a global review of gender equality in the world of work and of the ILO's performance on implementing an integrated approach to gender equality through its programmes and activities. It would also be a timely review (ten years after the Fourth Conference on Women held in Beijing in 1995). Such an item on the International Labour Conference agenda in 2004 would provide an important opportunity both to analyse and take stock of the labour market and global economic trends that impact upon the promotion of gender equality, as well as to assess the changing status of the different categories of men and women workers in the labour force in both the formal and informal sectors. The identification of priority gender issues for the ILO and the discussion of new areas of work such as the care economy, HIV/AIDS, the life-cycle approach, men's role in promoting gender equality and work and family could also be addressed. A report to the International Labour Conference could, in addition, provide for an examination of the extent to which ILO standards – specific to gender equality – as well as specific provisions on equality in other standards have been translated into the range of ILO means of action. The report could identify gaps and obstacles and highlight good practices in this regard. The important role of the social partners and other actors and of social dialogue in promoting gender could be especially highlighted.
- 132.** Such an item on the International Labour Conference agenda could provide a critical space for ILO policy development and give rise to recommendations to ensure an integrated approach to gender mainstreaming. It would represent a significant means to update the overall policy of the ILO on gender equality in the light of the Platform of Action adopted in Beijing, the Social Summit commitments included in the Copenhagen Declaration of 1995 and ECOSOC's adoption in 1997 of a gender-mainstreaming strategy. Moreover, a global discussion on gender equality at the 2004 International Labour Conference would provide an important impetus for sustained follow-up on the Plan of Action likely to be adopted following discussion of the Global Report on Discrimination under the Declaration at the 2003 International Labour Conference. An item on the 2004 International Labour Conference agenda would give constituents the opportunity to appraise and assess the results of the Office's strategy to mainstream gender into all of its activities (standard setting, research, technical cooperation, advocacy and advisory services).

Part II. Proposals for the agenda of future Conferences

Social protection

9. Working time

The problem: Divergence and convergence in working time patterns

- 133.** The eight-hour day and 48-hour week, which underlie the Hours of Work Convention, 1919 (No. 1), are still the main reference point in most countries, especially in the developing world, while limits to maximum hours of work and guaranteed weekly rest to protect workers' safety and health remain topical issues in many countries and sectors. On the other hand, both statutory and actual working hours have fallen considerably, especially in Western European countries. Over the years, there has been a growing diversification of hours of work and working time arrangements away from traditional models of the organization of working time. At the same time, hours of work and the arrangement of working time are becoming increasingly interlinked. As noted in the Director General's Report on *Decent work*:

New work schedules are emerging with changes in the economy and society. There are new production systems, new combinations of family, community and market work, new employment relationships based on information and new technologies, new needs for continuous learning. Changes in working time are widely seen as promoting employment or raising its quality, but this relationship is far from straightforward, and in many situations working time is lengthening. There appears to be a trend towards greater diversity in working time patterns ...”⁶¹

- 134.** Working time remains a central issue in industrial relations. The diversity in regulatory methods often reflects national disparities in the nature of industrial relations, bargaining systems and also different strategies by the social partners with regard to the duration and adaptation of working time. The role of the social partners in negotiating working time has also become a focus of much interest in recent years, with particular interest in developments within enterprises. The European Union Working Time Directive (1993), for example, clearly specifies a number of benchmarks while allowing considerable space for the negotiation of agreements which derogate from or expand upon its provisions.⁶² Hence, a cross-country analysis restricted to the statutory regulation of working time may give a misleading view of the diversity in working time patterns.

Changes in hours of work

- 135.** Today, the normal hours of work in countries around the world range from 35 to 54 hours a week. However, the traditional legal limit on hours of work – eight hours a day and 48 hours a week – is still the most widespread.⁶³ Another large group of countries have

⁶¹ ILO, Report of the Director-General: *Decent work*, Geneva, 1999.

⁶² Council Directive 93/104/EC of 23 Nov. 1993 concerning certain aspects of the organization of working time.

⁶³ Fifty-three countries of the 151 countries surveyed; ILO, *Conditions of Work Digest*, op. cit.

adopted a normal working week of 40 hours.⁶⁴ In general, whether normal weekly hours are 48 or 40, they still imply an eight-hour working day. Some countries provide shorter hours for some sectors, for individuals working in hazardous or arduous work or in severe climatic conditions and, in some cases, for young and older workers. Normal hours of work are not an absolute maximum, however, because overtime may be permitted under certain conditions.⁶⁵ Limits on total hours, including overtime, are usually specified as maximum daily or weekly hours. However, reference periods (i.e. the period over which hours of work are calculated) may vary. The European Union Working Time Directive adopted in 1993, for example, specifies that the average working time for each seven-day period, including overtime, should not exceed 48 hours calculated over a reference period of four months.

- 136.** Actual hours of work may vary from normal (statutory) hours. A century ago, typical working hours totalled over 3,000 a year – 60 hours or more per week. Since then there has been an overall decline in working hours. In terms of average annual hours worked (which takes into account public holidays and paid leave), there is a trend towards short and decreasing hours of work in most industrialized countries, particularly in Western Europe. In the European Union, annual hours typically range between 1,500 and 2,000 per year and, in Japan, annual working hours declined from 2,052 in 1990 to 1,879 in 1998.⁶⁶ The general trend towards shorter hours is not uniform, however. In the United States, for example, annual working hours actually increased from 1,883 in 1980 to 1,976 in 1999.⁶⁷ Moreover, long hours of work are still a major concern in many developing countries.⁶⁸ Although accurate data on actual hours of work in developing countries is not easy to obtain, actual annual hours generally range between 2,000 and 2,500.⁶⁹ It has been noted that long actual hours of work are prevalent because of frequent recourse to overtime.
- 137.** Within countries, there is a tendency towards a bifurcation of working time, with increasing proportions of workers working either very long or very short hours. For example, a study of 16 European countries reveals that more than 17.5 million workers work more than 60 hours per week.⁷⁰ On the other hand, there has also been an increase in part-time work, especially in the European Union. These figures highlight growing differences in the number of hours worked between workers within industrialized countries, in addition to the disparities between industrialized and developing countries.

⁶⁴ Forty-two countries of the 151 countries surveyed; ILO, *Conditions of Work Digest*, op. cit.

⁶⁵ In a survey of 150 countries, around 60 countries stipulate daily limits on the amount of overtime which may be performed. The number increases to 100 countries taking into account the difference between normal hours of work and maximum hours permitted; ILO, *Conditions of Work Digest*, op. cit., pp. 301-317.

⁶⁶ Japan Institute of Labour, *Japanese working life profile 2000 – Labour statistics*, Tokyo, 2000.

⁶⁷ ILO, *Key indicators of the labour market* (Geneva, ILO, 1999), table 6b.

⁶⁸ ILO, Proceedings of the Asian Tripartite Workshop on Working Time Arrangements (Bangkok, 18-22 July 1994), PIACT/1994/2; ILO, *Yearbook of labour statistics 2000*, Geneva, ILO, 2001.

⁶⁹ ILO, *Key indicators of the labour market*, op. cit.

⁷⁰ P. Paoli, *Second European survey on working conditions* (Dublin, European Foundation for the Improvement of Living and Working Conditions, 1997), cited in Anne Spurgeon, *Working time: The impact on safety and health*, ILO, 2002, pp. 8-9.

138. A primary focus of working time reductions in a number of countries has been to safeguard or create jobs. However, the evidence from countries where working time reductions have been adopted with the aim of encouraging or safeguarding employment (i.e. work sharing) is mixed, including, for example, in Germany and France. Employment effects of working time reductions vary according to the circumstances and the manner in which the reduction of working hours is carried out.⁷¹

Diversification of working time arrangements

139. Together with these changes in hours, the organization of working time has changed to meet the needs of enterprises and workers. These changes are reflected in a variety of working time arrangements, including flexitime schemes, different shift-work patterns, annual hours and hours averaging schemes, compressed work-weeks, part-time work, phased retirement, time banking and new patterns of combining education, training and work. In OECD countries, for example, around 16 per cent of workers were part-time workers in 1999 and the figure was much higher at 30 per cent in the Netherlands.⁷² In the United States, the proportion of workers with flexible schedules increased from 13 per cent in 1985 to 28 per cent in 1997⁷³ and Japan witnessed a significant increase in annualized hours schemes in the 1990s.⁷⁴ The decoupling of plant operating times and shop opening hours from individual working time has often resulted in increases in shift work and variations in shift work patterns.⁷⁵

140. Arranging working time to allow workers to realize a satisfactory balance between their work and other facets of their lives has been an important criterion in many countries.⁷⁶ The needs of women workers in particular, because of their caring role, are of particular concern.⁷⁷ There is also the recognition that working times should be viewed from the perspective of the life cycle of the worker, understanding that workers' needs vary across their lives, from leaving education through their child-rearing years until retirement and that their preferred working hours and working time patterns are likely to vary as a consequence.

⁷¹ See, for example, Gerhard Bosch, "Working time: From redistribution to modernization", op. cit., pp. 97-98.

⁷² J. Evans; D. Lippoldt; P. Marianna, "Trends in working hours in OECD countries", Labour market and social policy Occasional Paper No. 45, Paris, OECD, 2001, p. 31.

⁷³ Thomas M. Beers, "Flexible schedules and shift work: Replacing the '9-to-5' work days?", in *Monthly Labor Review*, Washington, DC, June 2000.

⁷⁴ In 1999, 21 per cent of Japanese workers were entitled to take part in annualized hours schemes, Japan, Ministry of Labour, *General survey on wages and working hours systems*, Tokyo, 1999.

⁷⁵ Commission of European Communities, *Green paper: Partnership for a new organization of work*, Brussels, 1997.

⁷⁶ In the Netherlands, for example, recent working time legislation was designed to reconcile employers' needs for greater flexibility with workers' expressed desire for a better work-life balance, "Working Time Act: Five years on", in *European Industrial Relations Review*, No. 331, Aug. 2001, pp. 23-25.

⁷⁷ See, for example, ILO, Proceedings of the Asian Tripartite Workshop on Working Time Arrangements, op. cit.; and Anne Spurgeon, *Working time: The impact on safety and health*, op. cit.

Status and relevance of existing standards

- 141.** The ILO has adopted 22 Conventions and 17 Recommendations in the area of working time since the adoption of the Hours of Work (Industry) Convention in 1919. These can be classified as related to hours of work, night work, weekly rest, paid leave and part-time work. Standards in other areas are also relevant, perhaps most notably the Workers with Family Responsibilities Convention, 1981 (No. 156), and its accompanying Recommendation, which suggests that particular attention be paid to the progressive reduction of daily hours of work and overtime and the introduction of more flexible arrangements as regards working schedules, rest periods and holidays.
- 142.** The Working Party on Policy regarding the Revision of Standards summarized the status of existing working time standards in its report of March 2001.⁷⁸ It has declared eight of the working time standards to be up to date, two to be in need of revision and 20 to be outdated. The Working Party has also recommended that the Sheet-Glass Works Convention, 1934 (No. 43), and the Reduction of Hours of Work (Glass-Bottle Works) Convention, 1935 (No. 49), be included among those which might be revised should it recommend a revision of other Conventions dealing with hours of work and the working conditions of shiftworkers. In addition, the Governing Body invited the member States to provide reports under article 19 of the Constitution and requested the Committee of Experts to carry out General Surveys based on these reports in respect of three instruments on night work of women which were discussed by the Committee of Experts in June 2001. A General Survey is also to be conducted on the Hours of Work (Industry) Convention, 1919 (No. 1), and the Hours of Work (Commerce and Offices) Convention, 1930 (No. 30), at a date not yet determined. With respect to the Forty-Hour Week Convention, 1935 (No. 47), the Holidays with Pay Convention (Revised), 1970 (No. 132), and the Holidays with Pay Recommendation, 1954 (No. 98), the Governing Body has decided to maintain the status quo.⁷⁹
- 143.** In considering the relevance of Conventions Nos. 1 and 30, the ILO Meeting of Experts on Working Time, convened in 1993, reached the following conclusion:
- The experts agreed that certain provisions of Conventions Nos. 1 and 30 on hours of work in industry and commerce and offices with respect to the limitations on maximum hours of work over different periods did not adequately reflect some recent developments in working time arrangements. They recognized that, with these exceptions, Conventions Nos. 1 and 30 are still relevant.⁸⁰
- 144.** As the Meeting of Experts pointed out, despite changing circumstances many of the provisions contained in the ILO standards on working time remain relevant. Some of the

⁷⁸ See table 1 in Appendix 2 in Working Party on Policy regarding the Revision of Standards, "Follow-up to the recommendations of the Working Party" (GB.280/LILS/WP/PRS/1/2), 280th Session, Geneva, Mar. 2001.

⁷⁹ GB.280/LILS/WP/PRS/1/2, 280th Session, Geneva, Mar. 2001.

⁸⁰ ILO, Report of the Meeting of Experts on Working Time (Geneva, 11-19 Oct. 1993), MEWT/1993/8, p. 35; Prof. Gerhard Bosch, a recognized expert on working time, has also concluded that "[B]ecause of the long hours still worked in many parts of the world and because they have grown even longer in recent years, the classic ILO Conventions on the scheduling and duration of working time (Nos. 1, 14, 30, 47 and 106) continue to be pertinent today", Gerhard Bosch, "Working time: Tendencies and emerging issues" (1999), 138, in *International Labour Review*, 131, p.147.

Conventions, for example, include provisions which provide the flexibility to introduce certain working time arrangements which do not reflect the standard work week. [Convention No. 1](#), for instance, contains specific provisions on shift work. It provides that where persons are employed in shifts, it shall be permissible to employ them in excess of eight hours per day and 48 hours per week if their average hours over a period of three weeks or less does not exceed these daily and weekly limits.⁸¹ Thus, maximum limits on working hours and minimum entitlements to hours of rest⁸² remain highly relevant benchmarks today. Moreover, 42 of the countries surveyed also meet the 40-hour goal of [Convention No. 47](#).

Progress made in research and preparatory work

- 145.** The ILO has carried out several studies on working time issues over the years.⁸³ In 1995, it published *Working Time around the World, Volume 14 of the Conditions of Work Digest*, which reviewed working time legislation in around 150 countries. A new publication will be issued soon which reviews new evidence on the effects of working time on health and safety, taking into account recent changes in the organization of working time.⁸⁴ The Office also has two forthcoming working papers, prepared with the aim of improving the current statistical methods to better capture the development of working time patterns. It has also commented on and responded to numerous pieces of draft legislation and requests from the constituents and provided technical advisory services.
- 146.** Nevertheless, substantial gaps remain in our knowledge of recent working time developments around the world. It is recognized that the current knowledge base regarding working time is oriented primarily to industrialized countries and, therefore, country studies on working time were launched in the 2000-01 biennium, primarily in developing countries and countries in transition. Even in the industrialized countries, however, the Office is exploring issues related to the implications of technological advances, new forms of work organization and the increasing link between working hours and working time. The programme on work and family also has implications for working time arrangements through its investigation of how working time can be organized in ways that benefit workers with family responsibilities. Finally, ongoing efforts to improve statistical information will provide an important input to the analysis of working time trends, thereby nurturing policy discussions concerning working time in ILO member countries.

Future directions

- 147.** In the light of all of the working time trends discussed above, a wider conception of working time would need to look beyond just hours of work. It is necessary to take into account the various other aspects of working time as well, such as weekly rest and paid annual leave. It is also necessary to take into account the reference period for calculating

⁸¹ Article 2(c).

⁸² [Conventions Nos. 1](#) and [30](#) have been ratified by 52 and 30 countries, respectively. In addition, 117 member States have ratified the Weekly Rest (Industry) Convention, 1921 ([No. 14](#)), and 62 countries have ratified the Weekly Rest (Commerce and Offices) Convention, 1957 ([No. 106](#)).

⁸³ Some of its results have been published in the series of reports known as the *Conditions of Work Digest*, which include *Flexibility in working time* (Vol. 5, No. 2, 1986), *Part-time work* (Vol. 8, No. 1, 1989) and *The hours we work: New work schedules in policy and practice* (Vol. 9, No. 2, 1990).

⁸⁴ Anne Spurgeon, *Working time: The impact on safety and health*, op. cit.

working time as, for example, when hours of work are calculated on an annual basis. Measures which allow for trading off working hours against annual paid leave should also be examined.

- 148.** In view of the divergence and convergence of working time patterns, reviewing working time standards has become increasingly complex. The Office continues to carry out further research in this field. This research is designed to improve and update the knowledge base regarding working time issues in member States, including relevant standards and the relationship between working time, productivity and the quality of working life, as recommended by the Meeting of Experts on Working Time in 1993.⁸⁵ In seeking to close the gaps in the existing knowledge base, the new issues regarding the definition and measurement of working time present problems for existing definitions and the collection of comparable data. Furthermore, there is a need to gather additional information on working time trends in developing and transition countries. More importantly, analysis of enterprise experiences in introducing and adapting working time patterns in response to competitive demands and workers' needs is necessary. It has become apparent that much of the innovation in working time and work organization is taking place at that level.
- 149.** This research will enable the ILO to be in a better position to provide technical advisory services and technical assistance to its constituents. It will also be useful in developing practical training materials, such as a module on working time as part of the work improvement in small enterprises (WISE) methodology. In addition, other practical awareness-raising materials such as information sheets on specific working time issues and experiences will be developed and disseminated. Workshops on working time will also be organized at the regional level to provide a forum for constituents to exchange experiences on working time developments. Such discussions might assist the Office in framing working time debates so as to identify possible areas of consensus.

10. Prevention of sexual harassment in the workplace

The problem

- 150.** It is increasingly clear that sexual harassment at work is a serious problem, especially for women workers, and a barrier to equality in the workplace. In recent years, there has been a growing worldwide awareness of the nature and seriousness of sexual harassment in the workplace. A range of measures has been designed to prevent it. For example, a growing number of countries in all regions of the world have enacted national-level legislative provisions which explicitly prohibit this form of workplace mistreatment.⁸⁶ Several different approaches are used, but the most common method is the inclusion of harassment provisions in equality or sex discrimination measures.⁸⁷ Laws entirely devoted to sexual

⁸⁵ ILO, Report of the Meeting of Experts on Working Time (Geneva, 11-19 Oct. 1993), MEWT/1993/8.

⁸⁶ According to an incomplete list: *Argentina, Australia, Austria, Bahamas, Bangladesh, Belgium, Belize, Canada, Costa Rica, Dominican Republic, Fiji, Finland, France, Germany, Guyana, Honduras, Hong Kong, Iceland, Ireland, Israel, Japan, Republic of Korea, Lesotho, Luxembourg, Mauritius, Namibia, Netherlands, New Zealand, Panama, Paraguay, Philippines, Portugal, South Africa, Spain, Sri Lanka, Sweden, Switzerland, Thailand, United Republic of Tanzania, Uruguay, Venezuela.*

⁸⁷ e.g. *Australia, Austria, Finland, Guyana, Ireland, Japan, South Africa, Sweden, Switzerland, Uruguay.*

harassment have also been enacted in a number of countries.⁸⁸ In conjunction with these trends, in a number of countries where sexual harassment is not specifically addressed in legislation, equality, discrimination and labour law provisions have been interpreted to cover it.⁸⁹ In many cases, the legislation is recent. More than half the countries which have enacted legislation dealing specifically with sexual harassment have done so for the first time in the period since 1995.⁹⁰

- 151.** The number of employers who have introduced policies on sexual harassment has also increased over the last decade; more information is available on industrialized countries, but there are examples also in developing countries. During this period, it has become widely accepted that the primary preventive role belongs to workplace measures. In addition, a range of other tools has been used by governments, employers' and workers' organizations and NGOs both to reinforce national legal prohibitions and in countries where none exist. These include codes of practice, guidelines, training initiatives and awareness campaigns.
- 152.** At the international level, sexual harassment is not yet the explicit subject of any binding international Convention, and the only international Convention that explicitly prohibits this practice is the ILO's Indigenous and Tribal Peoples Convention, 1989 (No. 169). Article 20 specifically prohibits sexual harassment of indigenous and tribal women and men. However, this lack of explicit attention in international treaties does not mean that sexual harassment is not addressed at the international level. International forums and supervisory bodies of the ILO and the United Nations have highlighted and condemned sexual harassment and considered it to be covered by existing international instruments on human rights, sex-based discrimination, violence against women, and occupational safety and health. Within the United Nations, for example, it has been addressed as both a manifestation of sex discrimination and a form of violence against women by the Committee on the Elimination of Discrimination against Women⁹¹ and in the Platform for Action adopted at the Fourth World Conference on Women held in Beijing in 1995.⁹² It has also been dealt with as a human rights violation.⁹³ At the regional level, sexual harassment has been treated as both sex-based violence and discrimination by the European Union,⁹⁴ while it has been conceptualized primarily as a manifestation of

⁸⁸ *Belgium, Belize, Costa Rica, Israel, Luxembourg, Philippines.*

⁸⁹ *e.g. Greece, India, United Kingdom, United States.*

⁹⁰ *Costa Rica, Finland, Paraguay, Philippines, Sri Lanka and Switzerland (1995); Belize (1996); Guyana and Uruguay (1997); Ireland, Israel, Mauritius, Portugal, South Africa, United Republic of Tanzania and Thailand (1998); Fiji, Japan and Venezuela (1999); Luxembourg (2000).*

⁹¹ General Recommendation No. 19 on Violence against Women. Sexual harassment is also within the mandate of the United Nations Special Rapporteur on Violence against Women.

⁹² Report of the Fourth World Conference on Women (Beijing, 4-15 Sep. 1995) (A/CONF. 177/20, 17 Oct. 1995, New York, 1995), para. 13 and strategic objective F6.

⁹³ For example, at the World Conference on Human Rights held in Vienna in 1993 (UN Doc. A/CONF.157/23 (1993)).

⁹⁴ European Parliament, resolution of 11 June 1986 on violence against women (OJ C 176, 14.7.1986), p. 79; 92/131/EEC, Commission Recommendation of 27 Nov. 1991 on the protection of the dignity of women and men at work.

violence against women within the Organization of American States.⁹⁵ The ILO Committee of Experts on the Application of International Labour Conventions and Recommendations has identified sexual harassment as a form of discrimination based on sex under [Convention No. 111](#). Over the last decade, only a few ILO meetings have been entirely devoted to this subject, but a large number of events include it among the subjects discussed.

- 153.** A significant number of the countries in which it is directly prohibited do not include a definition in their legislation, allowing decision-making bodies to clarify the kinds of actions covered and the circumstances in which they are prohibited. However, definitions used in laws, codes, policies, court decisions and collective agreements throughout the world may differ, but, generally speaking, contain the following key elements:
- conduct of a sexual nature and other conduct based on sex affecting the dignity of women and men, which is unwelcome, unreasonable, and offensive to the recipient;
 - a person’s rejection of, or submission to, sexual harassment is used explicitly or implicitly as a basis for a decision which affects that person’s job; or
 - conduct that creates an intimidating, hostile or humiliating working environment for the recipient.
- 154.** Among those countries which do define sexual harassment, the tendency is to describe it as behaviour which is both unreasonable and unwelcome to its recipient. The meaning of reasonableness can then be elaborated on in accordance with prevailing cultural norms and differing perceptions of what constitutes sexual harassment. In many cases prohibition covers not only sexual behaviour (inappropriate touching, sexual comments, sexual violence, etc.) but some also covers sex-based behaviour (harassing behaviour which is based on the fact that the victim is a woman or, less often, a man).
- 155.** There are different approaches to defining potential victims and perpetrators of sexual harassment. Under some measures, only individuals in a supervisory relationship with the victim can be held responsible for sexual harassment. In others, harassing behaviour perpetrated by co-workers and even subordinates is prohibited. Some definitions of sexual harassment recognize that it can be perpetrated against men. Others confine it to conduct directed at women. There are also variations in whether same-sex harassment and harassment of homosexuals is recognized.
- 156.** There are also differences concerning the liability and duties of employers. Legal measures tend to provide that employers should be held responsible for the actions of supervisory employees. But, the extent to which the employer will be liable for the behaviour of co-workers and subordinates of the victim, as well as for the actions of non-employees present on their premises (including clients, contractors and customers) varies considerably. Moreover, the obligations imposed on employers under sexual harassment laws range from the obligation to respond to incidents and to the duty to introduce a specific policy or maintain a workplace free of sexual harassment. The degree to which workers and their representatives are involved in designing and implementing workplace measures also varies.
- 157.** As regards remedies and sanctions, the legal sanctions are available according to the branch of the law under which sexual harassment is prohibited. Under most criminal law

⁹⁵ Intra-American Convention on the Prevention, Punishment and Eradication of Violence Against Women, “Convention of Belem do Para”, Article 2(b).

regimes, for example, imprisonment and fines can be imposed, but the victim cannot be awarded compensation, nor can the employer be required to introduce preventive workplace measures. However, in some countries where specific provisions have been enacted, remedies and sanctions have been fashioned specifically to address sexual harassment in the workplace, for example, by requiring that the harasser compensates the victim in ways which take into account job-related losses or the employer introduces and effectively implements a preventive policy.

Proposed solution

158. It is proposed that the subject of sexual harassment be further developed and preparatory work undertaken. The aim would be to assess what strategies and measures could be adopted by governments, employers and workers to combat sexual harassment and how the ILO might support these measures, including the development of practical tools that could be used by its constituents. This would require, in addition to continuing research, opportunities for dialogue among constituents. A Regional Tripartite Seminar on Action against Sexual Harassment at Work in Asia and the Pacific, held in Malaysia in October 2001, was the Office's first region-wide opportunity in recent years to discuss the rapid evolutions in this area with constituents. The seminar brought out the diversity of views in the region on the desirability of standard setting, with Worker members calling for the adoption of an international standard, Employer members considering that a new standard was unnecessary and Government members calling for a more encouraging role by the Office "in educating the member countries and providing assistance towards the enhancement of awareness on the issue of sexual harassment until such time before any ILO Convention on sexual harassment is introduced".⁹⁶ It would be advisable to conduct further national- or regional-level tripartite consultations, or possibly a Meeting of Experts on preventing sexual harassment. On the basis of such preparatory work, it would be possible to assess whether sexual harassment might be suitable for standard setting.

Origin of the proposal

159. Sexual harassment was discussed by the Committee of Experts in the 1988 General Survey on equality in employment and occupation and was included in the 1996 Special Survey on equality and employment.⁹⁷ A number of Meetings of Experts have also included this issue in their discussions. The 1989 Meeting of Experts on Special Protective Measures for Women and Equality of Opportunity and Treatment, for instance, viewed personal security, including sexual harassment, as a health and safety problem affecting more women than men. The 1990 Tripartite Symposium on Equality of Opportunity and Treatment for Men and Women in Employment in Industrialized Countries emphasized the role of enterprise-level policies. The 1997 Tripartite Meeting on *Breaking through the glass ceiling: Women in management* also emphasized the important roles of governments and the social partners in promoting policies on the prevention of sexual harassment and other forms of discrimination. The subject has also been addressed at sectoral meetings,⁹⁸

⁹⁶ Report of the Regional Tripartite Seminar on Action against Sexual Harassment at Work in Asia and the Pacific (Penang, 2-4 Oct. 2001).

⁹⁷ See especially paras. 39, 40, 179 and 180 of the Special Survey.

⁹⁸ See, for example, the 1992 report of the Standing Technical Committee for Health and Medical Service (STC/HMS/1/1992/13, *Note on the Proceedings*), paras. 17 and 18.

at judges' meetings⁹⁹ and, at a regional level, a tripartite seminar on sexual harassment was held in Manila in 1993,¹⁰⁰ and at national and regional-level seminars held in Malaysia in 2001.

Relation to existing instruments

160. As indicated above, the only international Convention adopted by any organization that specifically prohibits sexual harassment at work is the Indigenous and Tribal Peoples Convention, 1989 (No. 169).¹⁰¹ However, the Committee of Experts on the Application of Conventions and Recommendations has confirmed that it views sexual harassment as a form of sex discrimination under the Discrimination (Employment and Occupation) Convention, 1958 (No. 111).¹⁰² Action to combat sexual harassment has therefore been taken up and promoted within the context of the promotion of Convention No. 111 and, more generally, within the Declaration on Fundamental Principles and Rights at Work.

Progress in research and preparatory work

161. The ILO has conducted research on the dynamics of sexual harassment at work and methods of addressing it. The 1992 edition of the *Conditions of Work Digest* reviewed legal measures and enterprise policies on sexual harassment across 23 industrialized countries, action taken by international organizations and measures recommended by governments, employers' and workers' organizations and NGOs. More recently, in 1999, an annotated bibliography was published which extensively reviews the literature in this area. A new report has been prepared, analysing developments in legislation and practice on sexual harassment in the Asian region, and a further report covering all regions is being prepared.¹⁰³ A number of other publications have specifically examined sexual harassment or included it as part of more wide-ranging discussions.¹⁰⁴ In preparation for the Regional Tripartite Seminar on Action against Sexual Harassment at Work in Asia and the Pacific

⁹⁹ Equality issues in employment: Judges' and assessors' subregional seminars held in Zimbabwe, 1999; Trinidad and Tobago, 2000; and Uganda, 2001.

¹⁰⁰ ILO, Regional Office for Asia and the Pacific, *Towards gender equality in the world of work in Asia and the Pacific* (Technical report for discussion at the Asian Regional Consultation on the follow-up to the Fourth World Conference on Women, Manila, 6-8 Oct, 1999 (Geneva, ILO, 1999).

¹⁰¹ Article 20.

¹⁰² ILO, *Equality in employment and occupation* (Special Survey on Equality in Employment and Occupation in respect of [Convention No. 111](#)) (Geneva, ILO, 1996).

¹⁰³ ILO, Technical report for discussion, Action against sexual harassment at work in Asia and the Pacific (Geneva/Bangkok, 2001).

¹⁰⁴ See, for example, Ariane Reinhart, *Sexual harassment: Addressing sexual harassment in the workplace – A management information booklet* (Geneva, ILO, 1999); and Naina Kapur, "Sexual harassment at the workplace – A guide to sexual harassment law in India" in Aanchal Kapur, ed., *Women workers' rights in India: Issues and strategies – A defence guide* (New Delhi, ILO, 1999) p. 119.

(Penang, 2-4 October 2001), the ILO commissioned a number of studies from the region which reviewed national developments in this field.¹⁰⁵

Future prospects

162. In conjunction with the growing awareness of sexual harassment as a problem at the workplace, experience is growing on the most effective ways of defining and tackling the problem. However, at this stage most countries still do not have specific legislation on sexual harassment. Where it exists, national legislation is very recent so member States have very limited experience of efforts to combat the problem or opportunities to assess the effectiveness of different approaches in their own contexts. Moreover, some questions still remain concerning awareness of the problem, as distinguished from the importance of the topic. Although there is a growing body of experience and expertise at the enterprise level, it is largely confined to relatively few enterprises. Even from these experiences, little is known outside the enterprises concerned. There is therefore a pressing need to document workplace experience and to draw lessons from the success or otherwise of legislative and other approaches to tackling sexual harassment. Most importantly, there is a need for tripartite dialogue at national and regional levels in order to develop an understanding of the potential nature of eventual ILO standard setting on this subject.

163. The Office is preparing a report covering the nature and extent of the problem, trends in law and jurisprudence, and enterprise policies and programmes. This will update the information in the 1992 *Conditions of Work Digest* on selected industrialized countries and, in particular, extend the knowledge base to cover developing countries. On the basis of this report, and of focused country-level preparatory research, the Office will propose holding further regional meetings on sexual harassment at the workplace in the next biennium, following on from the Regional Tripartite Seminar on Action against Sexual Harassment at Work in Asia and the Pacific, October 2001. The Office will subsequently propose a meeting of experts. This meeting would contribute not only to raising the profile of sexual harassment as an issue of concern but also to providing an opportunity to interact with ILO constituents and experts, to discern areas of common concern and agreement that might eventually form a basis for standard setting in this area if the Governing Body so decided.

Specific categories of workers

11. Addressing the decent work deficit in the fishing sector – An integrated approach

164. The fishing sector employs 12-15 million people directly, and perhaps more than 100 million people are involved in processing marine products and/or are dependent on this sector. Fishing combines the special nature of maritime work with the complexity of agriculture. It is also a sector under pressure due to over-capacity and loss of major fishing stocks. This highlights the importance of the issue of sustainable development and the need to integrate the social with the economic and environmental dimensions. An integrated approach to this sector, bringing together not only all ILO normative and other activities but also the work of other UN system agencies – notably FAO and IMO – would enable to focus on major fishing issues and lead to reducing “decent work deficits” in this sector.

¹⁰⁵ ILO East Asia Multidisciplinary Advisory Team and Bangkok Area Office, *Technical report for discussion at the ILO/Japan Regional Tripartite Seminar on action against sexual harassment at work in Asia and the Pacific*, Penang, Malaysia, 2-4 Oct. 2001 (Bangkok, ILO, 2001).

- 165.** In terms of standards, the ILO has adopted seven instruments (five Conventions and two Recommendations) specifically concerning fisherfolk (fishers).¹⁰⁶ These instruments were examined by the Working Party on Policy regarding the Revision of Standards in the light of discussions held and conclusions reached by a Tripartite Meeting on Safety and Health in the Fishing Industry (TMFI), that was held on 13-17 December 1999. According to the recommendations adopted by the Governing Body on the basis of this examination, three of these Conventions and one Recommendation were classified in the category of instruments to be revised, namely the Medical Examination (Fishermen) Convention, 1959 (No. 113), the Fishermen's Articles of Agreement Convention, 1959 (No. 114), the Fishermen's Competency Certificates Convention, 1966 (No. 125), and the Vocational Training (Fishermen) Recommendation, 1966 (No. 126). The Governing Body requested additional information on the Accommodation of Crews (Fishermen) Convention, 1966 (No. 126), and classified the Hours of Work (Fishing) Recommendation, 1920 (No. 7), in the category of other instruments. As regards the Minimum Age (Fishermen) Convention, 1959 (No. 112), the Governing Body decided to invite the State parties to contemplate ratifying the Minimum Age Convention, 1973 (No. 138), and to take into consideration the conclusions of the TMFI meeting.¹⁰⁷ In addition, the Meeting of Experts also adopted conclusions concerning other Conventions and Recommendations adopted specifically for seafarers which may be applied to fishing. Furthermore, the relevance of other ILO Conventions to this sector could also be part of a comprehensive review, namely the extent to which the eight fundamental ILO Conventions are applied as well as the relevance of Occupational Safety and Health Convention, 1981 (No. 155).
- 166.** Having reviewed the status of the fishing standards, the Tripartite Meeting recommended the convening of a group of experts to examine them. It agreed that the terms of reference of that expert group should be broad enough to enable them to examine the possibility of extending to fisherfolk ILO instruments applicable to seafarers. It also agreed that the report to be prepared by the Office for the meeting of the group of experts should be comprehensive and should, in addition to the examination of maritime instruments, consider the question of port state control in the fishing industry. It also expressed the wish that any future International Labour Conference which considered standards directly relevant for the fishing industry should include appropriate representation from that industry.
- 167.** As a possible additional element in the preparation of the requested comprehensive review, the Governing Body may wish to consider calling for an article 19 General Survey in this area which would examine law and practice of the ILO member States in relation to the relevant standards.
- 168.** The comprehensive review that has been called for, which should be aimed at addressing the decent work deficit in this sector, should not, however, be restricted to possible standard-setting actions in the light of the directions indicated above, but should also include a review of other means of action available to the ILO in order to have an impact in this area.

¹⁰⁶ Hours of Work (Fishing) Recommendation, 1920 (No. 7), Minimum Age (Fishermen) Convention, 1959 (No. 112), Medical Examination (Fishermen) Convention, 1959 (No. 113), Fishermen's Articles of Agreement Convention, 1959 (No. 114), Fishermen's Competency Certificates Convention, 1966 (No. 125), Accommodation of Crews (Fishermen) Convention, 1966 (No. 126), and Vocational Training (Fishermen) Recommendation, 1966 (No. 126).

¹⁰⁷ According to these conclusions, the minimum age for admission to employment and work in the maritime fishing industry should in no case be lower than 16 years, and this activity should be considered a hazardous occupation within the meaning of Article 3 of [Convention No. 138](#).

- 169.** Together with the FAO and the IMO, the ILO has adopted several codes, guidelines and guidance documents concerned with the conditions of work of fisherfolk (fishers), with a focus on safety and health and training issues. The ILO is also using technical advisory services and technical cooperation as a means of improving conditions of work in the fishing sector. A strategy for how to coordinate such technical advisory and cooperation activities in other areas, including but not limited to the elimination of child labour, could also be considered. There is therefore a need to develop a plan of action for a better integration of this work with standards – in short, to follow an integrated approach to improving conditions and addressing decent work deficits in the sector.
- 170.** For these reasons, it is suggested that an “integrated approach to addressing decent work in the fishing sector” be included on the agenda of a future session of the International Labour Conference.

12. *An integrated approach to work in ports*

- 171.** During the past few decades, mechanization and particularly containerization have affected the handling of all types of cargo. In recent years, ports have also been faced with a process of structural adjustment with the introduction of varying degrees of commercialization, privatization or other form of structural changes. Globalization of trade and the fierce competition in the shipping industry have resulted in the merger of a number of container shipping lines and the formation of shipping alliances. Furthermore, container terminals are now being owned and managed by global container terminal operators.
- 172.** A tripartite meeting on social and labour problems resulting from structural adjustments in the port industry was held in Geneva, 20-24 May 1996. The meeting adopted a set of conclusions as well as two resolutions. In undertaking activities concerning structural adjustment issues in the port sector, the meeting concluded that the ILO should: (a) continue to promote the ratification and application of relevant international labour standards; (b) provide technical advisory services to ports undergoing structural adjustment, including examining broader issues (within its competence) that affect port performance; (c) undertake technical cooperation to assist, as requested: (i) employers and workers’ representatives to develop effective systems for resolving industrial disputes; (ii) governments and ports with the drafting and revision of port regulations and legislation; and (iii) member States having difficulties in ratifying or applying the relevant instruments; (d) prepare a glossary of port terms to facilitate a consistent approach to port-related issues, (e) assist, on request, in the identification of training needs in the transport sector and the implementation of training programmes; and (f) expand the Portworker Development Programme.
- 173.** The ILO has adopted seven instruments relating to dock work,¹⁰⁸ four of which were adopted after 1970 (two Conventions and two Recommendations) specifically concerning dock work. The Dock Work Convention, 1973 (No. 137), and the Dock Work Recommendation, 1973 (No. 145), concern conditions of work of dock workers/port workers. The Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152), and the Occupational Safety and Health (Dock Work) Recommendation, 1979 (No. 160),

¹⁰⁸ Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27); the Protection against Accidents (Dockers) Convention, 1929 (No. 28); the Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32); the Dock Work Convention, 1973 (No. 137), and Dock Work Recommendation, 1973 (No. 145); the Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152), and the Occupational Safety and Health (Dock Work) Recommendation, 1979 (No. 160).

concern safety and health of dock workers/port workers. Of relevance is also an older Convention, the Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27).

- 174.** On the basis of recommendations of the Working Party on Policy regarding the Revision of Standards, the Governing Body decided to promote the ratification of the Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152), requested information concerning the Dock Work Convention, 1973 (No. 137), and the Dock Work Recommendation, 1973 (No. 145), and invited member States to give effect to the Occupational Safety and Health (Dock Work) Recommendation, 1979 (No. 160).¹⁰⁹ As regards [Convention No. 27](#), which was adopted at a time when shipping operations were markedly different from those of today, the Governing Body decided, following consultations with the member States on this issue, that it should be revised. In a proposal, submitted to the Governing Body in 1999,¹¹⁰ alternative ways to revise this Convention were contemplated including “to adapt it to container traffic” to ensure the “safe handling of containers” and to introduce a more modern risk-assessment approach to the subject.¹¹¹
- 175.** The abovementioned tripartite meeting on the port industry in 1996 adopted a resolution requesting the Office to prepare a report, following an examination of the difficulties encountered by member States in the ratification and application of [Convention No. 137](#) and [Recommendation No. 145](#), and to take appropriate action. In response to this request, the Governing Body decided at its 273rd Session (November 1998) to undertake, for the first time in this area, a General Survey in accordance with article 19, paragraph 5(e), of the ILO Constitution on [Convention No. 137](#) and [Recommendation No. 145](#). This General Survey will be examined by the Committee of Experts on the Application of Conventions and Recommendations at its next meeting in November 2001 and it will be submitted to the International Labour Conference at its 90th Session in June 2002.
- 176.** In addition to the above Conventions and Recommendations, the ILO has also adopted a Code of practice on Safety and Health in Dock Work and a Guide on Safety and Health in Dock Work. Ports worldwide have continued to evolve with more specialized terminals matching advanced cargo transfer methods. Safety considerations and equipment have also evolved. In many ports of the world, the gap between cargo handling methods in developing and developed countries has narrowed due to automation and the use of identical handling systems. The Code and Guide were however developed before the

¹⁰⁹ The Governing Body on the recommendation of the Working Party decided on the revision of the Marking of Weight (Packages Transported by Vessels) Convention, 1929 (No. 27), and the inclusion of this item in the portfolio of proposals for the agenda of the International Labour Conference. It also decided: (a) to shelve the Protection against Accidents (Dockers) Convention, 1929 (No. 28), with immediate effect; (b) to invite the State party to Convention No. 28 to contemplate ratifying the Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152), if appropriate, and denouncing Convention No. 28 at the same time; and (c) that the Working Party (or the LILS Committee) re-examine the status of Convention No. 28 in due course, with a view to its possible abrogation by the Conference. The Governing Body also decided: (a) to invite States parties to the Protection against Accidents (Dockers) Convention (Revised), 1932 (No. 32), to contemplate ratifying the Occupational Safety and Health (Dock Work) Convention, 1979 (No. 152), which *ipso jure* would entail the immediate denunciation of Convention No. 32; and (b) that the Working Party (or the LILS Committee) re-examine the status of Convention No. 32 in due course, in the light of information received pursuant to the Governing Body's request concerning Convention No. 152, including the possibility of shelving Convention No. 32.

¹¹⁰ [GB.276/2](#), paras. 259-270.

¹¹¹ *ibid.*, paras. 262-263.

adoption of [Convention No. 152](#) and [Recommendation No. 160](#). As a result of the rapid technological and structural changes which the industry has undergone, the Office has undertaken a revision of the Code and Guide to take into account those changes and has requested that the Programme and Budget proposals for 2002-03 include a provision for a meeting of experts to examine a revised and consolidated Code and Guide.

- 177.** Another development relating to [Convention No. 152](#) is a request recently received by the ILO Director-General from the Secretary-General of the IMO concerning the implementation of the International Maritime Dangerous Goods Code (IMDG Code) which is to be made mandatory under the International Convention for the Safety of Life at Sea as from January 2004 and which has governed the safe transport of dangerous goods by sea since 1965. A number of issues covered by that Code are under the control of shore-side cargo interests in the transport chain. The IMO is thus seeking the assistance of the ILO to build the necessary linkages between ILO Convention No. 152 and the IMDG code.
- 178.** The ILO is also using technical advisory services and technical cooperation as a means of improving conditions of work in the port industry. There is an increasing demand from constituents, in particular from developing countries, for guidance on port restructuring and privatization. A number of workshops have been held on the subject of privatization of port services. However, it will be necessary to develop guidelines on the implementation of structural adjustments in ports and in particular the process of social dialogue. This could serve to complement [Convention No. 137](#).
- 179.** Following a new strategy to promote port training, the Office has introduced the Portworker Development Programme (PDP). The PDP was inspired by a recent ILO publication on new cargo-handling techniques and their implications for employment and skills.¹¹² A major issue to emerge from this publication was the scale and extent of the training needs of port workers in developing countries. It concluded that insufficient attention was being given to human resource development and estimated that, worldwide, well over 1 million port workers require some form of training; this need for training is felt primarily in ports in developing countries. In the initial stage the ILO has developed 30 training units related to the training of personnel in container handling. Due to rapid changes in container handling systems and the introduction of new varieties of hazardous cargoes some of these units need updating. Furthermore, PDP training materials in the operations, safety and health in bulk handling and the implementation of port safety and environment management systems would have to be developed. The PDP has been acquired and is being used by more than 30 institutions worldwide. The PDP fulfils specific requirements contained in both [Conventions Nos. 137](#) and [152](#).
- 180.** The promotion of relevant ILO Conventions and Recommendations, the development of a revised guide to safety and health in dock work, the provision of advisory services in the process of port privatization, the development of a guide on structural adjustments in the port industry, developing linkages between [Convention No. 152](#) and the IMO's IMDG Code and expanding the implementation of PDP, would suggest the potential benefits of pursuing the integrated approach.

¹¹² A.D. Couper, *New cargo-handling techniques and their implications for employment and skills*, ILO, Geneva, 1986.

181. For the above reasons, it is suggested that an “integrated approach to addressing decent work in the port sector” be explored. This would permit an examination of all the various means of action for these workers: the relevant standards, codes of practice and guidelines, technical cooperation activities and advisory services in order to assess whether they adequately respond to the needs of the sector and ILO objectives, permit identification of gaps if any as well as the best means to address them. It would be possible to adopt the approach approved by the Governing Body at its 279th Session (November 2000).

Geneva, 26 October 2001.

Point for decision: Paragraph 25.