



SECOND ITEM ON THE AGENDA

(a) Date, place and agenda of the 92nd Session (2004) of the International Labour Conference**Contents**

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Date

1. *In accordance with the provisions adopted by the Governing Body at its 254th Session (November 1992),¹ it is proposed that the 92nd Session (2004) of the International Labour Conference should open on Tuesday, 1 June 2004.*

Place

2. *It is proposed that the session be held in Geneva.*

Agenda

3. At its 92nd Session (2004) the Conference will have before it the following standing items:
 - Reports of the Chairperson of the Governing Body and 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;
 - Information and reports on the application of Conventions and Recommendations.
4. The agenda of the 91st Session (2003) of the Conference, as determined by the Governing Body at its 280th Session (March 2001), 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*).
5. During first discussion on the agenda of the Conference for the 92nd Session (2004) in November 2001, the Governing Body requested the Office to report to it on two preliminary issues: the question of the procedure to follow in the preparations for the revision of the Human Resources Development Recommendation, 1975 (No. 150), placed on the agenda for the 91st Session (2003) of the Conference and the question of the follow-up to be given to Conference discussions based on an integrated approach.

Procedure related to the agenda item for the International Labour Conference on human resources training and development

6. At its 280th Session (March 2001), the Governing Body examined a proposal to place the question of human resources development and training – revision of the Human Resources

¹ GB.254/16/19, para. 5.

Development Recommendation, 1975 (No. 150) – on the agenda of the International Labour Conference in 2003. It is recorded in the minutes of the meeting that at the conclusion of the discussion the “[...] Governing Body had reached agreement that the agenda of the Conference in the year 2003 would include items concerning human resources training and development – revision of the Human Resources Development Recommendation, 1975 (No. 150), (standard setting, first discussion)[...]”.²

7. During the discussion in November 2001, the Governing Body requested the Office to clarify whether human resources development and training – Human Resources Development Recommendation, 1975 (No. 150), necessitated a second discussion at the 92nd Session (June 2004) of the International Labour Conference.
8. It should be recalled that the question of human resources development was the object of a general discussion at the 88th Session (2000) of the International Labour Conference. It appeared in the course of that discussion that this item involved several complex issues such as training and learning in the informal economy, the roles of unions and employers in design, implementation and financing of training, the roles and responsibilities of private training providers, and the placing of human resources development in the global economic context. The development of a consensus on these issues for the purposes of the revision of Recommendation No. 150 calls for careful consideration and consultations which could not realistically be carried out within a single-discussion procedure.
9. Furthermore, in terms of procedure it should be noted that since the decision in March 2001, the Office has prepared the required “preliminary report setting out the law and practice in the different countries and any other useful information, together with a questionnaire” in accordance with article 39 of the Standing Orders of the Conference, regulating the preparatory stages of a double discussion. This report has been concluded and translated for transmission to member States by January 2002. The procedure to follow in the case of a single-discussion procedure, set out in article 38 of the Standing Orders of the Conference, requires the Office to prepare “a summary report upon the question containing a statement of the law and practice in the different countries and accompanied by a questionnaire drawn up with a view to the preparation of Conventions or Recommendations”. A changed procedure at the present stage would require an adaptation of both the report and the questionnaire as one level of the analysis would not be carried out, and it would be difficult to ensure that this work could be done with the required level of quality of the work, particularly within the given time frames.
10. Against this background, the Office considers that the preparation of the question of human resources development should be continued pursuant to the double-discussion procedure. The aim is to have a well-considered Recommendation which covers a number of important but also controversial topics on which consensus is to be sought. This item would thus be on the agenda of the 92nd Session (2004) of the International Labour Conference for a second discussion.

² GB.280/PV, p. 1-5 (Minutes approved at the 282nd Session (November 2001) of the Governing Body. Under article 10.4 of the Standing Orders “[...] unless the Governing Body has otherwise decided a question placed on the agenda of the Conference shall be regarded as having been referred to the Conference with a view to a double discussion”).

Follow-up to Conference discussions based on an integrated approach

11. In the course of the discussions in November 2001 members of the Governing Body requested the Office to consider ways to ensure a timely follow-up to possible outcomes of integrated approach discussions and whether further adjustments were needed to the current process for the selection of Conference items.
12. As detailed previously,³ the specific purpose of general discussions based on an integrated approach 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.⁴ 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), and new standards etc., the details of such proposals would be developed and submitted to the Governing Body for consideration in accordance with regular practice. It is to be hoped that the plan of action would be concrete enough to give the Office and the Governing Body sufficient guidance for further proposals. The aim is to work out an early consensus on the action to be undertaken.
13. According to current practice, proposals for the agenda of the International Labour Conference, whether for standard setting or for general discussion, are examined twice, with a first discussion in November and a second discussion in March the following year. This second discussion by the Governing Body and the decision to fix the agenda of the Conference thus takes place approximately 26 months prior to the International Labour Conference during which the item in question is to be discussed.⁵ According to this procedure, possible proposals for standard setting emanating from the Conference discussion in 2003 could be submitted to the Governing Body for consideration in November 2003 and March 2004 in the context of the agenda of the International Labour Conference in 2006. The question raised in November 2001 was whether it was possible to consider an earlier follow-up to possible proposals for standard setting, i.e. in the context of the International Labour Conference in 2005. The feasibility of this from a legal and practical point of view and its implications for the whole question of the fixing of the agenda of the Conference merits and requires a thorough examination that the Office proposes to undertake. As the first discussion on the agenda of the 93rd Session (2005) of the International Labour Conference to be held in November 2002, the Office proposes to present the results of such an examination on at occasion.

Proposals

14. The present document, submitted for consideration by the Governing Body at its 283rd Session (March 2002), contains proposals for items that 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 obsolete Recommendations on the

³ GB.282/2/1, paras. 6-14.

⁴ GB.279/4, para. 16.

⁵ For more details regarding the procedure to follow in preparing such items for standards setting, see GB.279/3, para. 4.

agenda of the 92nd Session (2004) of the International Labour Conference. This proposal is examined in a separate document.⁶

- 15.** The first discussion by the Governing Body on the proposals for the Conference agenda for the year 2004 at its 282nd Session in November 2001 was held on the basis of two documents prepared by the Office on this question.⁷ After this discussion the Governing Body decided to request law and practice reports, or more detailed proposals on the following subjects to be submitted at its 283rd Session (March 2002):
- (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 (*standard setting*);
 - (2) Child labour and the protection of children and young persons (*general discussion based on an integrated approach*);
 - (3) New gender-related proposal (taking into account the items Employment of women; Gender equality in the world of work; and Work and family in the twenty-first century) (*general discussion based on an integrated approach*);
 - (4) Migrant workers (*general discussion based on an integrated approach*); and
 - (5) Social dialogue (modified in the light of the discussion held) (*general discussion*).
- 16.** Item 1, submitted for standard setting, was shortlisted by the Governing Body on a previous occasion.⁸ The present proposal remains essentially the same, but it has been updated to take into account recent developments in law and practice. The substance of item 2, proposed for a general discussion based on an integrated approach, remains the same as the proposal submitted in November 2001.⁹
- 17.** As regards item 3, the Office notes that it was called upon to develop a new gender-related proposal taking into account three separate proposals submitted in November 2001, which all had a gender dimension. In response, the Office submits such a new proposal entitled “Gender equality between women and men in the world of work” for a general discussion based on an integrated approach. While the proposal “Work and family in the twenty-first century” was also taken into account, the Office notes that significant parts of this proposal distinguished it from the other two gender-related proposals. Further consideration will thus be given to whether this item should be maintained as a separate proposal for future consideration.
- 18.** The Governing Body also decided that “In order to permit a choice between at least two standard-setting items for the agenda of the 92nd Session (2004) of the International Labour Conference, [the Office should] examine the possibility of proposing to the Governing Body at its 283rd Session (March 2002) at least one additional item for standard setting”. The Office notes that the Governing Body examined in November 2001 a proposal entitled “Addressing the decent work deficit in the fishing sector – An

⁶ GB.283/2/2.

⁷ GB.282/2/1 and GB.282/2/2.

⁸ GB.277/2/1, paras. 21-34.

⁹ Subject to an update of the number of ratifications of the relevant instruments.

integrated approach”.¹⁰ In response to the request from the Governing Body for an additional standard-setting proposal, this proposal has been further developed into a proposal to develop a comprehensive fishing sector labour Convention and Recommendation.

19. Against this background the Governing Body is invited to complete the agenda of the 92nd Session (2004) of the International Labour Conference on the basis of the six proposals presented in the following. They include two items proposed for standard setting, three items proposed for general discussions based on an integrated approach and one item for general discussion.
20. According to practice, the Conference can deal with three technical items at the same session. Subject to the considerations concerning the procedure to follow in the preparations of the agenda item on human resources training and development (paragraphs 6-10 above) the Governing Body would have to choose two additional items in order to complete the agenda of the 92nd Session (2004) of the Conference.
21. *The Governing Body is accordingly invited to complete the agenda of the 92nd Session (2004) of the International Labour Conference in the light of the following proposals:*
 - (a) *new measures concerning discrimination in employment and occupation – extension of the grounds on which discrimination is prohibited in Article 1 of Convention No. 111 (standard setting);*
 - (b) *a comprehensive standard (a Convention supplemented by a Recommendation) on work in the fishing sector (standard setting);*
 - (c) *child labour and protection of children and young persons (general discussion based on an integrated approach);*
 - (d) *gender equality between women and men in the world of work (general discussion based on an integrated approach);*
 - (e) *migrant workers (general discussion based on an integrated approach); and*
 - (f) *strengthening tripartism and social dialogue (general discussion).*

¹⁰ GB.282/2/1, paras. 164-170.

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

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 (standard setting)

Summary

In its Special Survey of 1996 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 covered by this Convention. Convention No. 111 is, however, the ILO's principal instrument against discrimination. It therefore is recommended that the Governing Body consider the adoption of a Protocol which would leave the Convention itself unchanged and 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

22. 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 provide 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.
23. The Committee of Experts 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.

The situation in national law and practice

24. 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 that would allow States to undertake additional obligations in respect of some or all of the following criteria (listed in alphabetical order): age, disability, family responsibilities, language, matrimonial status, nationality, property, sexual orientation and state of health. Recent research reveals an increasing number of countries extending grounds of prohibited discrimination to include the aforementioned ones. Indications are given below of how these criteria are addressed in national law and practice.

Age

25. Recent research has identified over 35 countries that have included age among the prohibited grounds of discrimination. National labour legislation makes specific reference to age among grounds of discrimination for workers in *Benin, Brazil, Canada, Chad, Côte d'Ivoire, Croatia, El Salvador, Finland, Hungary, Israel, Niger, Poland, Spain, Tajikistan, Ukraine, Venezuela* and *Yemen*. Some countries prohibit discrimination on the basis of age in certain aspects of the labour conditions, e.g. salaries, termination of employment, access to employment; such is the case in *Australia, Belgium, France, Ireland, Latvia, Mauritania, Mali, Portugal* and *Singapore*. Other countries have preferred to include general provisions that prohibit discrimination on the basis of age covering the entire population in their constitution, human rights acts or other legislation (for example, *Costa Rica, Czech Republic, Ecuador, Hungary, Ireland, Madagascar, New Zealand, South Africa, Switzerland* and *Thailand*). Currently, some countries (such as *France, Netherlands, Slovenia* and the *Russian Federation*) are considering legislative proposals prohibiting discrimination against workers specifically on grounds of *age* in employment and occupation.

State of health

26. A worker's state of health should not be an acceptable motive for refusing to employ or for dismissing him or her, unless there is a very strict relationship between the worker's present state of health and the normal occupational requirements of a given job. A variety of measures have been adopted in this regard in different countries, some concerning the state of health generally, bearing in mind that one of the current problems linked to state of health is discrimination against workers who are HIV-positive or who have contracted AIDS. Those countries with legislation and regulations on this subject consider that a definition of unlawful discrimination based on the HIV status of a worker should be as broad and universal as possible. Such a definition should include discrimination against both symptomatic and asymptomatic carriers of the virus, as well as that based on the mere suspicion that an individual could be a carrier because he or she belongs to a so-called high-risk group, or because of his or her relationship with a carrier. More than 15 countries have incorporated in their legislation a prohibition of any kind of discrimination based on *health status* including people who are HIV-positive or who have contracted AIDS including *Colombia, Costa Rica, Ecuador, Finland, France, Italy, Hong Kong, New Zealand, Philippines, Portugal, South Africa, Thailand* and *Zimbabwe*. Several member States specifically define disability to include individuals infected by HIV/AIDS, e.g. *Australia, Canada* and the *United Kingdom*. Inclusion of such a provision would be in agreement with the recently adopted ILO code of practice on HIV/AIDS and the world of work.

Disablement

27. More than 40 member States have adopted measures to protect and promote equality of opportunity between disabled and other workers. While some countries have adopted constitutional provisions that prohibit discrimination specifically against disabled persons (for example: *Antigua and Barbuda, Costa Rica, Ecuador, Finland, Germany, Ghana, Netherlands, Paraguay, New Zealand, Switzerland* and *Thailand*), more countries have adopted legislation prohibiting discrimination in employment and occupation based on the grounds of disability (*Argentina, Australia, Austria, Brazil, Canada, Guatemala, Guyana, Hong Kong, Hungary, Ireland, Kuwait, Namibia, Niger, Philippines, South Africa, Spain, Sweden, Trinidad and Tobago, United Kingdom, United States* and *Zimbabwe*). Others have adopted measures to protect disabled workers in certain aspects, i.e. access to employment, or promulgated laws that cover the rights of the disabled (*Benin, Bolivia,*

France, Gabon, Honduras, Iceland, Italy, Luxembourg, Madagascar, Poland, Uruguay, Venezuela and Viet Nam).

Sexual orientation

- 28.** Member States are increasingly adopting measures specifically protecting workers who are vulnerable to discrimination on the basis of their sexual orientation. Over 20 member States have prohibited some form of discrimination on this ground in their legislation, e.g. *Australia, Canada, Costa Rica, Czech Republic, Denmark, Ecuador, Finland, France, Germany, Ireland, Israel, Luxembourg, Netherlands, New Zealand, Norway, Slovenia, South Africa, Sweden and Switzerland.* For example, article 23(3) of the new Constitution of *Ecuador*, adopted on 5 June 1998, provides for equality of rights and opportunities, and the freedoms recognized for all individuals, without discrimination, inter alia, on the basis of sexual orientation.

Language

- 29.** A growing number of member States also expressly include the prohibition of discrimination on the basis of the specific ground of language in their current Constitution, anti-discrimination or labour legislation. Such protection is provided for in *Azerbaijan, Angola, Bolivia, Cambodia, Colombia, Egypt, Ecuador, Ethiopia, Greece, Finland, Germany, Italy, Malawi, Mali, Mozambique, Nicaragua, Peru, Russian Federation, Senegal, Slovenia, South Africa, Spain, Switzerland and Thailand.*

Coverage in other standards

- 30.** The Committee of Experts also devoted considerable attention in the Special Survey to the additional grounds for 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 cover many of the areas on which ILO standards offer the strongest – and often the only – protection in international law. This includes age,¹¹ nationality,¹² trade union

¹¹ The Maternity Protection Convention, 1919 (No. 3), Art. 2; Night Work (Women) Convention, 1919 (No. 4), Art. 3; Night Work (Women) Convention (Revised), 1934 (No. 41), Art. 3; Night Work (Women) Convention (Revised), 1948 [and Protocol, 1990] (No. 89), Art. 3; Migration for Employment Convention (Revised), 1949 (No. 97), Art. 6, para. 1(a)(i); Plantations Convention, 1958 [and Protocol, 1982] (No. 110), Art. 46; Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), Art. 6; Private Employment Agencies Convention, 1997 (No. 181), Art. 5(1); Employment (Women with Family Responsibilities) Recommendation, 1965 (No. 123), Para. 9(2); Human Resources Development Recommendation, 1975 (No. 150), Para. 50(b)(v); Older Workers Recommendation, 1980 (No. 162), Para. 3; Termination of Employment Recommendation, 1982 (No. 166), Para. 5(a); Private Employment Agencies Recommendation, 1997 (No. 188), Para. 9.

¹² The Maternity Protection Convention, 1919 (No. 3), Art. 2; Maternity Protection Convention (Revised), 1952 (No. 103), Art. 2; Plantations Convention, 1958 [and Protocol, 1982] (No. 110), Arts. 2 and 46; Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), Art. 6; Seamen's Welfare in Ports Recommendation, 1936 (No. 48), Para. 3; Vocational Training (Agriculture) Recommendation, 1956 (No. 101), Para. 3(1); Indigenous and Tribal Populations Recommendation, 1957 (No. 104), Para. 35(b); Plantations Recommendation, 1958 (No. 110), Para. 2. It should be noted that the ground of nationality is fundamental to the standards relating to migrants and that provisions intended to ensure them equality of opportunity and treatment and/or protection against discrimination are therefore included in the corresponding instruments, namely: the Maintenance of Migrants' Pension Rights Convention, 1935 (No. 48), Arts. 2 and 10; Migration for Employment Convention, 1939 (No. 66); Migration for Employment Convention (Revised), 1949 (No. 97), Art. 2; Equality of Treatment (Social Security) Convention,

membership,¹³ disability¹⁴ and family responsibilities.¹⁵ The adoption of a suitable Protocol would allow the consolidation of protection, and added coherence in the ILO's advisory and supervisory efforts on the subject. This may be a particularly important point in the context of the ILO's work in bringing its body of standards up-to-date and rendering them more coherent.

31. For example, Convention No. 156 on workers with family responsibilities, adopted after Convention No. 111, calls for persons to be protected against discrimination, as defined in Convention No. 111 on the basis of their family responsibilities. Convention No. 158 on termination of employment, 1982, 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.
32. Finally, 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.¹⁶ The Committee of Experts stated that, "with a view to the coherence of international human rights law, 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

1962 (No. 118), Art. 3; Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143); Maintenance of Social Security Rights Convention, 1982 (No. 157); Migration Statistics Recommendation, 1922 (No. 19); and the Migration for Employment Recommendation, 1939 (No. 61); Migration for Employment Recommendation (Revised), 1949 (No. 86); Protection of Migrant Workers (Underdeveloped Countries) Recommendation, 1955 (No. 100), Para. 45.

¹³ The Social Policy (Non-Metropolitan Territories) Convention, 1947 (No. 82), Art. 18(1) and (2); Right to Organise and Collective Bargaining Convention, 1949 (No. 98), Art. 1; Plantations Convention, 1958 [and Protocol, 1982] (No. 110), Art. 2; Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117), Art. 14(1) and (2); Social Policy in Dependent Territories Recommendation, 1944 (No. 70), Para. 41(3); Plantations Recommendation, 1958 (No. 110), Para. 2; Workers' Housing Recommendation, 1961 (No. 115), Para. 25. Trade union membership of migrant workers is referred to in Recommendation No. 100, Para. 38, and in the Migrant Workers Recommendation, 1975 (No. 151), Para. 8(3); Private Employment Agencies Recommendation, 1997 (No. 188), Para. 9.

¹⁴ The Employment Promotion and Protection against Unemployment Convention, 1988 (No. 168), Art. 6; Private Employment Agencies Convention, 1997 (No. 181), Art. 5(1); Employment (Transition from War to Peace) Recommendation, 1944 (No. 71), Para. 43(3); Vocational Rehabilitation (Disabled) Recommendation, 1955 (No. 99), Paras. 25 and 41; Private Employment Agencies Recommendation, 1997 (No. 188), Para. 9.

¹⁵ The Workers with Family Responsibilities Convention, 1981 (No. 156); Workers with Family Responsibilities Recommendation, 1981 (No. 165); Private Employment Agencies Recommendation, 1997 (No. 188), Para. 9.

¹⁶ Selected list of international instruments: *disability* has been interpreted as included in "other status" in ICESCR, art. 2(2) – CESCR General Comment No. 5 (E/1995/22-e/c.12/1994/20, p. 99), para. 2; *language* as ground for discrimination is clearly established in international law: see UN Charter, arts. 1, 13, 55, 76; UDHR, art. 2; ICCPR/ICESCR, art. 2; ICCPR, art. 4; *nationality* has been interpreted as included in the category "other status" in ICCPR – Human Rights Committee, Communication No. 196/1985 (*Gueye et al. v. France*), paras. 9.4, 9.5 and 10 – ICCPR, arts. 2, 26. *But see* ICESCR, art. 2(3) providing that developing countries may determine to what extent to guarantee economic rights to non-nationals: *see also* relevant CESCR Committee interpretations; and *sexual orientation*: see, inter alia, Optional Protocol cases, Human Rights Committee, under the ICCPR.

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”.¹⁷

Conclusions

- 33.** 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 (see paragraph 24). 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.
- 34.** The Committee of Experts also 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 not yet met with a positive response.
- 35.** It may be expected that this Protocol would have several important differences from Article 1(1)(b). 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

¹⁷ 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.

discrimination under Convention No. 111, and they do not appear in fact to carry out consultations in this regard.

36. 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.

2. A comprehensive standard (a Convention supplemented by a Recommendation) on work in the fishing sector

Summary

It is proposed to develop a comprehensive standard (a Convention supplemented by a Recommendation) on work in the fishing sector and to place this item on the agenda of the 92nd Session (2004) of the International Labour Conference. Such standards are proposed because, while this sector shares many of the special characteristics of the shipping sector, there are sufficient differences in the nature and diversity of its operations, employment and arrangements, methods of remuneration and other aspects to warrant separate consideration and distinct standards. Recent (1999) discussions of this issue by an ILO sectoral meeting have confirmed this need, including the importance of convening a tripartite meeting of experts to assist in the preparation of such fishing sector labour standards. Much preparatory work has already taken place within the ILO.

Introduction

37. The fishing sector is diverse. At one extreme are large, multinational joint ventures, utilizing large factory trawlers and numerous other vessels, employing thousands of workers on several oceans. At the other are small, wooden canoes and other boats used by individual fishermen to catch sufficient food for their families and perhaps more to sell in their local communities. Most fishing operations fall somewhere between these extremes. The issue of sustainable fishing on the international agenda, in particular as regards Agenda 21: Programme of Action for Sustainable Development requires consideration to be given to social and labour standards.
38. The ILO has discussed conditions of work in the fishing industry since its very founding, with the first fishing instrument being adopted in 1920. Since 1954, advice on fishing issues has been provided through the Committee on Conditions of Work in the Fishing Industry, a tripartite body which has met four times (1954, 1962, 1978 and 1988) and, more recently, through a Tripartite Meeting on Safety and Health in the Fishing Industry (13-17 December 1999), held as a part of ILO's programme of sectoral and technical meetings. At the 1988 and 1999 meetings, as well as at the 84th (Maritime) Session of the International Labour Conference, the ILO was requested to consider new labour standards in the fishing sector.

Major issues and considerations

- 39.** In 1998, there were roughly 36 million people engaged in primary capture fisheries and aquaculture production, comprising 15 million full-time, 13 million part-time and 8 million occasional workers. Marine capture fisheries account for about 60 per cent of this total, inland and marine aquaculture 25 per cent and inland capture fisheries about 15 per cent.¹⁸ More than 90 per cent are working on vessels less than 24 metres in length.¹⁹
- 40.** Most fishermen are either self-employed, the employees of very small fishing enterprises employing one or two fishermen on either a regular or casual basis, or fishermen who have no formal employment relationship with their employer. In countries where employer-worker relationships are normally recognized by legislation, fishermen may be excluded from such provisions because of the share arrangements peculiar to the fishing industry.²⁰ This exclusion can lead to difficulties in obtaining unemployment insurance, health care and other benefits enjoyed by many shore-side workers. In large-scale fishing enterprises employment arrangements are more formal.
- 41.** Many fishermen remain at sea for extended periods, often as long as one year. On-board accommodation and food preparation are essential issues. Accommodation may vary in accordance with the economic situation and the length of time the vessel is expected to remain at sea. There are many reported cases of extremely poor conditions at sea.
- 42.** Fishermen may face abandonment in foreign ports following the bankruptcy or disappearance of the owner. Following seizure of the vessel in connection with illegal fishing operations, fishermen, some having had no control over the movement of the vessel, have been jailed for extended periods.
- 43.** Fishing is one of the most hazardous of all occupations. Fatality rates are among the highest for any economic sector. In Denmark, from 1989 to 1996, the rate was 25-30 times the rate of those employed on land; in the United States in 1996, the rate was 16 times higher than occupations such as fire-fighting and police work; in 1997 in Estonia and Poland it was 11 times the average for all workers; in several African countries the rates are as high as 300-500 deaths per 100,000.²¹ Fatigue, brought on by long working hours, appears to be a major contributing factor to these accidents as well as to health problems.
- 44.** The very fact that work is carried out at sea, far removed from traditional means of labour inspection, makes it difficult to enforce safety, health and other requirements. No international labour standards exist for the inspection and enforcement of labour conditions on foreign-registered fishing vessels as they do for seafarers.
- 45.** Many fishermen, particularly those from developing countries, experience exploitative methods of recruitment and placement, including having to pay recruiters to obtain work.

¹⁸ Food and Agriculture Organization of the United Nations (FAO), *The state of world fisheries and aquaculture, 2000* (FAO, 2000).

¹⁹ Food and Agriculture Organization of the United Nations (FAO), *The state of world fisheries and aquaculture, 1998* (FAO, 1999).

²⁰ Crew and owner, together, cover certain operating expenses which are deducted from the gross proceeds obtained for the sale of the catch. The net proceeds are then divided between the boat owner and the members of the crew according to an agreed formula.

²¹ ILO: *Safety and health in the fishing industry* (Geneva, 1999).

Child labour is not uncommon. Fishermen are frequently forced to sign contracts far below conditions of service agreed prior to joining a vessel. Insurance coverage is often not provided. Trade union membership is relatively low compared to other sectors.

ILO and fishing standards

Standards specific to the fishing sector

46. Three separate sessions of the International Labour Conference have adopted a total of seven instruments (five Conventions and two Recommendations) specifically concerning fishermen. To assist the work of the Working Party on Policy regarding the Revision of Standards of the Committee on Legal Issues and International Labour Standards (LILS), the Governing Body invited the Tripartite Meeting on Safety and Health in the Fishing Industry (Geneva, 13-17 December 1999) to examine the instruments adopted specifically for fishermen (all of which were adopted prior to 1985).
47. The Tripartite Meeting set up its own working party on standards for the purpose of making proposals, inter alia, as to which standards concerning fishermen should be proposed for revision; promotion or ratification (or, in the case of Recommendations, be given due effect); or should be considered out of date. The proposals were subsequently submitted to and considered by the Working Party of the LILS. The decisions by the Governing Body²² on the relevant instruments are detailed below (table 1).

Other maritime labour standards which may be extended to cover fishermen

48. At the most recent Maritime Sessions of the International Labour Conference (the 74th Session in 1987 and the 84th Session in 1996), the question was raised as to whether the standards under consideration should be extended to cover fishermen. Fishing was not included in the scope of the Conventions, although a provision was included permitting the possibility of applying the provisions to commercial maritime fishing. The special nature of fishing operations and the lack of proper representation by fishing vessel owners in the maritime Conferences, which were primarily aimed at shipping, was among the reasons referred to for the non-inclusion of fishing within the scope of the Convention. Since the ratification rates of the 1987 and 1996 maritime labour Conventions are rather low, this provision has had little impact on the conditions of work of fishermen.
49. The 1996 Maritime Session of the Conference also adopted a resolution inviting the Governing Body to convene a tripartite meeting to assess which of the ILO maritime instruments should be applied to the fishing sector through the adoption of appropriate protocols, and/or the adoption of new international labour standards for the sector and in this regard to place the issue of new labour standards for fishermen on the agenda of an early session of the International Labour Conference. When the Governing Body at its 268th Session (March 1997) decided on the purpose of the Tripartite Meeting on Safety and Health in the Fishing Industry, it referred to this resolution.²³ The report prepared by the Office thus included a brief assessment of the extension of ILO maritime labour

²² GB.277/LILS/WP/PRS/2; GB.277/LILS/4; GB.277/11/2; GB.277 Record of Decisions; GB.279/LILS/WP/PRS/1/1; GB.279/LILS/3(Rev.1); GB.279/11/2; and GB.279 Record of Decisions.

²³ ILO: *Composition and purpose of the sectoral meetings to be held in 1998-99* (Geneva, GB.268/STM/1, Mar. 1997), para. 28.

instruments to the fishing sector and, in its points for discussion, asked the Meeting to provide, in addition to views on the standards specifically concerned with fishing as noted above, its views on the question of extension of maritime standards to fishing.

50. The Tripartite Meeting recommended the convening of a group of experts, with terms of reference broad enough to enable it to examine the possibility of extending to fishermen ILO instruments applicable to seafarers. It suggested that the report to be prepared by the Office for the meeting 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. The Governing Body, when considering the report requested, inter alia, that the Director-General bear in mind, when drawing up proposals for the future work of the Office, the proposal for the convening of a Meeting of Experts, with the terms of reference suggested by the Tripartite Meeting, in the course of the next biennium.²⁴

Other relevant ILO standards

51. Other ILO standards may of course be relevant to fishing. However, some instruments, such as the Occupational Safety and Health and the Working Environment Convention, 1981 (No. 155), and its Recommendation (No. 164), provide that the ratifying State may exclude fishing from its application. In the first reports submitted under article 22 of the ILO Constitution, none of the States which had ratified Convention No. 155 indicated that they would exclude fishing from the application of the Convention. The Committee of Experts on the Application of Conventions and Recommendations has indicated that one State (*Cyprus*, Safety and Health at Work Law No. 89(I)/96 11 November 1996) has specifically excluded fishing from its application.

Other international standards relevant to the living and working conditions of fishermen

52. The relevant work of other international organizations should be considered to ensure that the ILO's work adds value to that of other organizations concerned with fishing and that an ILO standard would not duplicate the work of these organizations.
53. The International Maritime Organization (IMO) has the primary responsibility for maritime safety and marine pollution prevention. Its instruments relevant to fishing include:
- the *International Convention for the Safety of Life at Sea (SOLAS)*, as amended in 1974 and 1988, which provides general safety requirements for all vessels, including fishing vessels, in Chapter V;
 - the *Torremolinos International Convention for the Safety of Fishing Vessels, 1977*, and the *Torremolinos Protocol of 1993*, which established a safety regime for fishing vessels. These contain detailed regulations concerning the standards of construction to be applied essentially to new vessels, including the type and nature of equipment of all types, which has a bearing on vessel safety. The Protocol had been ratified by only eight States at 31 December 2001;

²⁴ See TMFI/1999/12, p. 42 (para. 21); GB.277/STM/3/3 (para. 7); GB.277/14 (para. 51) and GB.277, Record of Decisions (para. 53).

- the *International Convention on Standards of Training, Certification and Watch keeping for Fishing Vessel Personnel, 1995 (STCW-F)*. The Convention had been ratified by two States at 31 December 2001.

54. The Food and Agriculture Organization of the United Nations (FAO), in 1995, adopted the code of conduct for responsible fisheries, which provides, inter alia, that “States should ensure that fishing facilities and equipment, as well as all fisheries activities, allow for safe, healthy and fair working and living conditions and meet internationally agreed standards adopted by relevant international organizations”.

The state of national law and practice in the fishing sector

55. The analysis below is based on information available to the Office.²⁵

56. The majority of laws and regulations dealing with the fishing industry is concerned with vessel construction, safety equipment, certification of the personnel, and the protection of the marine environment and living marine resources. Working conditions are often covered in legislation that is not fishing specific, for instance, general maritime law, general occupational safety and health legislation or labour law. For example, *Norway* has one law covering occupational safety and health and environmental measures, wages, and termination conditions for all seafarers, including those on fishing vessels. However, some countries do have specific laws relating to fishermen or have established specific fishing safety programmes falling within the framework of broader legislation. In *Australia*, for example, the Western Australia Fishing Industry Council has initiated a comprehensive safety and health programme based on the Australian Occupational Safety and Health Act, 1984. In *Chile* and *Guinea*, non-governmental organizations have also implemented occupational safety and health programmes.

57. Where they do exist, laws and regulations tend to focus on larger vessels. However, some countries do have regulations in place for small-scale fishing. For example, *Japan* regulates vessels down to three gross registered tons (grt), *Norway* vessels down to 15 metres and in *India* and *Israel* certain laws apply to all fishing vessels. *India* has also introduced a law that gives small-scale traditional fishermen exclusive fishing rights over certain areas. In both *India* and *Guinea*, programmes have been introduced to help modernize small vessels, improve housing, provide insurance, equip small vessels with safety equipment and provide training to fishermen.

58. Some countries require fishermen to undergo medical examination and in some cases they must produce a medical certificate in order to be employed. For the most part, examinations are only required for new entrants to the industry. In others, regular examinations are required. For example, in the *Russian Federation* all entrants into the industry must be examined and undergo yearly re-examinations or twice yearly if there is a known health problem noted. In *Poland*, examinations are every two years, or once a year for those over 50.

²⁵ *Safety and health in the fishing industry*, prepared for the Tripartite Meeting on Safety and Health in the Fishing Industry (December 1999); the ILO’s database on national legislation (NATLEX); a (draft) ILO report on conditions of work in the fishing sector in southern Africa; and *Fishermen’s conditions of work and life*, prepared for the Committee on Conditions of Work in the Fishing Industry (1988).

59. A number of countries have requirements for safety equipment, first aid and medical facilities on board, though the quality and quantity often depends on the country, the size of the vessel and its purpose. In the *United States*, all fishing vessels are required to carry life-saving and fire-fighting equipment as well as immersion suits and emergency position-indicating radio beacons (EPIRBs). *India*'s regulations also apply to all vessels but are less detailed. *Japan* has regulations applying to different sizes of vessels: those covering vessels under 20 gross tons (gt) are less stringent than those covering vessels over 20 gt operating outside coastal waters.
60. There are a variety of ways in which the reporting and investigating of accidents is carried out. Some countries have detailed regulations on the reporting of accidents. There are also a variety of governmental authorities responsible for reporting. In *China*, accidents are reported to the Ministry of Agriculture or local fishing agencies. In the *Philippines*, the appropriate authority responsible depends on the size of the vessel. In the *United States*, any illness, injury or disability suffered must be reported to the Coast Guard. In the *Russian Federation*, a special commission consisting of representatives of the employers, crew and governmental authority is formed and has the power to investigate all accidents. If the accident happens at sea, the captain and crew can form a special commission to investigate. However, if the accident is major or fatal, the special commission is reconvened when the vessel enters port, this time with government representatives being present. There are also detailed provisions as to the reports and evidence to be taken.
61. Many countries have established training requirements and have set up specialist training institutes designed to educate fishermen at various levels. For example, *Norway* requires that all fishermen must have at least 40 hours of training with a 20-hour refresher course to be taken every few years. Usually the training requirements for officers are more stringent.
62. The majority of countries have numerous authorities each responsible for a different aspect of the fishing industry, such as the employment relationship, safety and health, inspection, investigations, education and training, policy-making, etc. In some countries, primary responsibility for safety and health has been given to one or two authorities. For example, in *Canada*, the main responsibility lies between Transport Canada (Marine Safety Branch) and the Department of Fisheries and Oceans, and in the *United States*, the Coast Guard has the primary responsibility for fishing vessel safety. Inspections primarily focus on the safety and certification of the vessel. Inspections of the living and working conditions for the crew, including occupational safety and health and medical facilities are also carried out, but less frequently. In *South Africa*, regulations provide for shipboard accommodation and safety of life at sea inspections to be carried out by the Maritime Safety Authority. In *Namibia*, the Ministry of Health may carry out inspections of water, provisions, accommodation and medicine chests. In some countries, the system allows for voluntary inspection or self-assessment.
63. A number of countries have advisory boards set up consisting of representatives from employers, crew and the governmental authority whose role is to advise the government on measures taken concerning the fishing industry and as regards the training of and information to fishermen.
64. Personal injury and death compensation requirements, where they exist, are generally based on private insurance schemes. The owner of the ship, sometimes with the contribution of the employee, usually pays premiums. Coverage is for death or serious injury, but there are cases where coverage is extended. In *Chile*, employers have their own insurance company. *Sri Lanka* has specific laws on fishermen pensions and social security although this only covers serious injury or death. In *India*, the Government has set up a group insurance scheme for active fishermen. In *Canada*, workers compensation has been

decentralized and is now handled at a regional level through the Worker Compensation Boards.

65. A number of governments have also set up schemes to help fishermen in a variety of ways. For example, in *Ireland* the Government has set up a vessel safety equipment grant to help fishermen purchase safety equipment. In *Mauritius* in 2001, the Government introduced a loan scheme for fishermen who group themselves in associations of ten members or more.
66. Regulations of employment contracts do not feature greatly in the majority of laws and regulations relating to fishing. These are sometimes regulated by general labour laws. However, the informal nature of the working arrangement of many fishermen means that there is not always clarity on whether national labour laws apply. Only a few countries, such as *Japan* and *Kenya*, provide for minimum wages for fishermen.

Regional standards concerning conditions of work in the fishing sector

67. In the European Union, several Council Directives²⁶ relevant to the conditions of work of fishermen have been adopted. These concern equipment safety, hygiene and cleanliness on board the vessels, emergency and first aid equipment, training and the dissemination of information on safety and health.
68. Control of working hours on fishing vessels has been a particularly challenging issue in Europe. A Council Directive applying to all workers, and even two Directives applying specifically to seafarers (based on the ILO Seafarers' Hours of Work and the Manning of Ships Convention, 1996 (No. 180)), were not considered sufficient for the fishing sector. A separate amending Directive 2000/34/EC was adopted which, inter alia, covered sea fishing. In April 2001, the European Parliament adopted a resolution on safety and causes of accidents in fisheries. Among other things, this urged those Member States which had not yet done so to ratify the IMO fishing instruments as well as ILO and FAO Conventions on fishing safety and working conditions. It also urged the Commission to include the social aspects in the regulation on the reform of the common fisheries policy for 2002.

Global standards concerning conditions of work, including safety and health, in the fishing sector

69. A comprehensive standard (a Convention supplemented by a Recommendation) on work in the fishing sector would provide added value by:
 - providing for a comprehensive revision of the seven existing fishing labour standards;
 - addressing new issues where serious decent work deficits can be addressed with a normative response;
 - providing for a comprehensive set of standards for the sector, covering all relevant issues; and
 - complementing the work undertaken in other international organizations.

²⁶ Council Directive 93/103/EC; Council Directive 92/29/EEC and Council Directive 97/70/EC.

70. Such new standards should be sufficiently broad and flexible to address a number of issues and to be effective for the majority of the world's fishermen (both those on deep-sea vessels and those engaged in artisanal fishing). It should be based on principles which could be implemented in a manner which would accommodate the diversity of economic and social conditions of countries, and it could take account of the differences in fishing fleets and types of fishing. It should not be overly prescriptive.

71. The objectives of these standards could be to:

- contribute to improvements in occupational safety and health and statistical data on safety and health issues in this sector;
- improve other forms of social protection in the fishing sector (e.g. social security for fishermen and their dependants);
- address conditions in the international fishing fleet (i.e., the conditions of work of fishermen serving on foreign vessels);
- provide an international standard to assist States to effectively exercise jurisdiction and control in social matters over fishing vessels flying their flag;
- improve inspection and enforcement of labour conditions on fishing vessels;
- contribute to the promotion of social dialogue in the fishing sector, particularly as concerns safety and health issues; and
- promote gender equality in fishing (including use of gender neutral language in the instrument).

72. An issue which will require further consideration is whether conditions of work of fish farming/aquaculture workers should be included, and, if so, whether there should be a distinction between marine and inland workers.

73. The fishing sector standard could contain provisions concerning:

- scope (it may be that some parts will be applicable only to larger vessels and some only to smaller vessels and artisanal fishing and fish farming/aquaculture);
- occupational safety and health;
- social protection, medical examination and medical care of fishermen (including financial responsibility in cases of injury or death);
- hours of work and rest;
- contractual arrangements;
- vocational training of fishermen, and manpower planning in the fishing sector;
- accommodation/food and catering on board fishing vessels;
- identity documents to assist fishermen in taking shore leave or joining/leaving a vessel in a foreign port;
- welfare services on board vessels and ashore;

- repatriation, including after abandonment;
- enforcement/inspection of labour standards, including flag and port State control, and possibly control measures by coastal States; and
- promotion of social dialogue, as appropriate in an international labour standard.

Preparatory work

- 74.** The ILO's Tripartite Meeting on Safety and Health in the Fishing Industry (December, 1999), and Working Party on Policy regarding the Revision of Standards of the LILS Committee, have already reviewed the existing fishing standards and made related proposals, since adopted by the Governing Body, on what action should be taken concerning standards.
- 75.** The Office has recently carried out a study on conditions of work in the fishing sector in southern Africa, with a particular emphasis on safety and health issues. It has also included in its programme of work for this biennium a study on working time arrangements in the fishing sector as requested by the Tripartite Meeting. Bearing in mind the recommendations of the 84th (Maritime) Session of the International Labour Conference and the conclusions adopted by the ILO's Tripartite Meeting on Safety and Health in the Fishing Industry in December 1999, it is recommended that an ILO tripartite meeting of experts should be held in advance to prepare proposals for new or revised labour standards for the fishing sector.

Table 1. Status of instruments concerning fishermen

Instruments	Number of ratifications (at 20/01/02)	Status
Instruments to be revised (This category comprises instruments which are no longer fully up-to-date but remain relevant in certain aspects and those that need to be revised)		
Medical Examination (Fishermen) Convention, 1959 (No. 113)	29	The Governing Body has recommended that this instrument be revised to adapt to the existing needs of the fishing sector.
Fishermen's Articles of Agreement Convention, 1959 (No. 114)	22	The Governing Body has recommended the partial revision of this instrument.
Fishermen's Competency Certificates Convention, 1966 (No. 125)	10	The Governing Body has recommended the revision of this instrument in the light of the IMO International Convention on Standards of Training, Certification and Watch-keeping for Fishing Vessel Personnel (STCW-F).
Vocational Training (Fishermen) Recommendation, 1966 (No. 126)	–	The Governing Body has recommended that this instrument be revised in the light of advances in science and technology.
Requests for information		
Accommodation of Crews (Fishermen) Convention, 1966 (No. 126)	22	The Governing Body has invited member States to inform the Office of the obstacles and difficulties encountered, if any, that might prevent or delay the ratification of this Convention or point to the need to revise it.

Instruments	Number of ratifications (at 20/01/02)	Status
Other instruments (This category comprises instruments which are no longer fully up-to-date but remain relevant in certain aspects)		
Hours of Work (Fishing) Recommendation, 1920 (No. 7)	–	The Governing Body has recommended that the status quo be maintained for this Convention and that the Office undertake studies into the working time arrangements and rest periods in the fishing industry.
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)		
Minimum Age (Fishermen) Convention, 1959 (No. 112)	29 (of which 20 have been denounced)	The Governing Body has invited States parties to this Convention 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. 112 on the condition stated in Article 10(4)(b) of Convention No. 138 and to possibly abrogate Convention No. 112 when the number of ratifications has substantially decreased. ²⁷

3. Child labour and protection of children and young persons

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.

Background

76. 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)), accompanied by their supplementing Recommendations (the Minimum Age Recommendation, 1973 (No. 146), and the Worst Forms of Child Labour Recommendation, 1999 (No. 190)). These

²⁷ GB.279/LILS/3(Rev.1) and GB.279/11/2.

instruments, which figure among the fundamental Conventions, are receiving overwhelming support from member States as highlighted by the surge of ratifications.²⁸

77. 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 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 (TBPs), 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.
78. It should also be recalled that these actions 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 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

79. The recent actions in this area have focused on the elimination of child labour 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 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

80. 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.
81. It should also be recalled that there are a number of earlier sectoral Conventions which have already been revised by Convention No. 138.²⁹ Thus, further ratification of

²⁸ See table 2.

²⁹ See Art. 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

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.

- 82.** 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 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".
- 83.** 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

- 84.** 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.³⁰
- 85.** 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

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.

³⁰ See table 2.

80, should be revised. The most recent General Survey by the Committee of Experts on night work of women in industry³¹ 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.

- 86.** 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, leaves 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.
- 87.** 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.
- 88.** 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.³² 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.

³¹ 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.

³² See table 2. Of relevance in this context is also the Medical Examination of Young Persons (Sea) Convention, 1921 (No. 16). The Governing Body’s 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.

89. 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.
90. 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

91. Against this background, the Governing Body might wish to consider 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, and 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.

Table 2. Status of instruments concerning the protection of children and young persons

1. Elimination of child labour

Instruments	Number of ratifications (at 20/01/02)	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)	116	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)	115	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 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)	–	

Instruments	Number of ratifications (at 1/10/01)	Status
Outdated instruments (This category includes the Conventions that member States are no longer invited to ratify and the Recommendations whose implementation is no longer encouraged)		
Minimum Age (Industry) Convention, 1919 (No. 5)	21	The Governing Body invited the States parties to Convention No. 5 to contemplate ratifying the Minimum Age Convention, 1973 (No. 138), and denounce Convention No. 5 at the same time, with a recourse to technical assistance as required.
Minimum Age (Agriculture) Convention, 1921 (No. 10)	13	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.
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)	0	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.

Instruments	Number of ratifications (at 1/10/01)	Status
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 (at 20/01/02)	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	
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)	–	

Instruments	Number of ratifications (at 20/01/02)	Status
Outdated instruments (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.		

4. Migrant workers (general discussion based on an integrated approach)

Summary

International labour migration has today become a more complex and diverse phenomenon, involving anywhere from 60 to 65 million people and many more countries than ever before. Much of contemporary migration is organized by private intermediaries, not by states, and there are growing problems with irregular migration, illegal employment and exploitation. The large majority of today's migrant workers are admitted only for temporary periods, which in many instances make them subject to unequal treatment. Unemployment levels among settled immigrants are often much higher than those of native workers, and problems with discrimination and social exclusion are of serious concern even in advanced democratic societies. In response to the low and declining rate of ratification of 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 on the subject of migrant workers at a future session of the International Labour Conference, with a view to reviewing and possibly revising the instruments. This view was widely endorsed by members of the Governing Body at its previous two sessions, most recently with many urging an integrated approach to a general discussion that would allow consideration of a range of approaches, solutions, and instruments. To cover these issues the general discussion might be organized along three main themes: (1) international labour migration in the era of globalization; (2) policies and structures for more orderly migration for employment; and (3) improving migrant workers' protection.

Contemporary trends in international migration

92. With the observed growth of global migration in the 1990s, it is estimated that today between 60 and 65 million persons are economically active in a country other than their own, with or without authorization, and they are accompanied by as many dependants. More than 100 countries are now engaged in migration either as receiving countries or countries of origin, or both. While the doors to unskilled labour migration have remained officially shut in many countries, there has been an intensifying competition for skills, especially among the more advanced countries. 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 these may be added the political changes in Eastern Europe and the dislocation of many industries during the process of transition to market economies. Finally, there is some evidence that the absorption of foreign labour is associated with growth of the informal economy in many countries.
93. The increasing complexity of international labour migration has defied attempts at simple classification of migrants. Skilled industrial and construction workers 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, in many cases highly qualified, who undertake jobs as domestic helpers or care-givers for the aged and children 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. 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.

94. Many policy issues and dilemmas relating to migration have surfaced with the growing flexibilization of employment and informalization of work. In some sectors notably agriculture, construction, tourism, and care of the aged, only foreign workers, particularly the undocumented, are willing to accept short-term, insecure jobs with little career opportunity. On the other hand, in the more buoyant economic sectors notably those related to information and communications, supplies of native technical workers have proven inadequate to meet large surges in demand and pressures have built up for bringing in foreign workers.
95. Considerable evidence indicates that discrimination and xenophobia directed against migrant workers and their family members have been on the rise in many countries. In several European countries ILO research has shown that levels of unemployment among first and even second generation immigrants have been double or even triple the levels for the same age cohorts (and same educational attainment) of native workers. In the face of growing restrictionism in immigration, the number of migrant workers in an irregular situation has also grown rapidly in many countries. These include many “trafficked” persons, notably young women and even children who are subjected to forced labour. Their status as “illegal” prevents them from seeking legal protection against exploitation and abusive treatment and from availing of the most basic social services particularly health and medical attention. Together these factors have worked to further worsen their social “stigmatization” and the racial/ethnic prejudices they are made to suffer. There are signs that the situation of migrants is deteriorating further following the events of 11 September 2001 in the United States.

ILO mandate and objectives

96. The ILO Constitution specifies the need for protection of “... the interests of workers when employed in countries other than their own ...”. In the 1944 Declaration concerning the aims and purposes of the ILO (Declaration of Philadelphia) the problems of migrant workers were singled out for special attention. In the more recent Declaration on Fundamental Principles and Rights at Work, adopted by the International Labour Conference on 18 June 1998, ILO’s responsibility to pay special attention to this category of workers was again reaffirmed.
97. The Director-General stated in his Report to the International Labour Conference at its 87th Session (June 1999) that 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”. A comprehensive ILO strategy for achieving this objective includes ILO action in the following areas :
- follow up on the findings of the General Survey of ILO Conventions on migrant workers, promotion of ratification, and addressing the question of possible revision, as may be determined by the Conference;
 - incorporation of ILO principles and standards in the design of labour migration policies at national as well as at regional levels, with the support of the social partners;

- promotion of bilateral or multilateral agreements as a means of fostering more orderly forms of migration;
 - with the support of social partners, design of programmes to combat discrimination against (im)migrant workers in employment and development of codes of conduct for their treatment;
 - addressing the issues raised by growing feminization of migration;
 - joint action with other United Nations and international as well as regional organizations in fostering orderly migration and promoting the integration of settled migrants; and
 - monitoring migration trends and expanding ILO's international labour migration database while enhancing its accessibility to constituents.
- 98.** Action in these areas has involved the Office in many activities including the supervision of standards, legislative and policy advisory services, and technical training and awareness raising among government officials, including labour officers and statisticians, and representatives of workers' and employers' organizations.
- 99.** Monitoring and assessing emerging issues in the field of migration and the conditions of migrants have remained a mainstay of ILO activity. Recent research included evaluation of comparative experiences with temporary foreign worker programmes, recruitment methods and their implications on the labour market in some countries, the use of immigration quotas, the effectiveness of measures to prevent the illegal employment of undocumented migrants, lessons from experience with "regularizing" their status, recent evidence on "brain drain" and their implications for the development, incidence of discrimination against migrant workers and remedies to it, and the characteristics of some labour migration systems. The ILO established the online international labour migration database (ILM) in 1997 to provide a comprehensive and comparative source for national statistical information; over 80 countries now share data on this system.
- 100.** Recent initiatives addressed particular regional concerns. A regional programme established in 1995 entitled "*Informal network on foreign labour in Central and Eastern Europe*" periodically brought together administrators and researchers from 13 countries of the region to promote exchange of information on labour migration, to stimulate research, and foster other means of exchange and cooperation among the participating countries, at bilateral or multilateral levels. A *Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration*, held in April 1997, drew up recommendations for two sets of *guidelines*, one on special protection measures for migrant workers in time-bound activities, the other on measures for migrant workers recruited by private agents, as well as the use of pattern or practice studies of treatment of migrant workers as a means of action beyond Convention-based procedures. Several initiatives are currently under way in cooperation among various ILO units to address issues of trafficking in migrants and protection of victims.
- 101.** Recognizing that there are other actors in this field, the ILO has promoted joint activities with other United Nations and intergovernmental agencies. The ILO is an active partner together with the United Nations Institute for Training and Research (UNITAR), the United Nations Population Fund (UNFPA), and the International Organization for Migration (IOM) in a capacity-building project called "International Migration Policy Program" (IMP), under which training is provided to senior government officials in several world regions. It has provided training in migration statistics in collaboration with the United Nations Population Division, UNFPA, and OECD. The ILO is cooperating with the

Council of Europe in documenting best practices to prevent discrimination and xenophobia, and with the United Nations Commission on Human Rights in relation to the work of the Special Rapporteur on Migrant Workers.

ILO standards specific to migrant workers

102. The ILO has adopted a number of Conventions and Recommendations specific to migration and migrant workers since its establishment. The status of these instruments, as determined by the Governing Body on the basis of recommendations of the Working Party on Policy regarding the Revision of Standards is detailed below (table 3). Today the most relevant instruments are the Migration for Employment Convention (Revised), 1949 (No. 97), the Migration for Employment Recommendation (Revised), 1949 (No. 86), the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and the Migrant Workers Recommendation, 1975 (No. 151). Convention No. 97 has been ratified by 42 countries, and Convention No. 143 by 18.

Other relevant ILO standards

103. A number of ILO standards make specific reference to migrant workers. 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.

Other international standards

104. It should be recalled that in 1990, the United Nations General Assembly adopted the *International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families*. Since 17 States have now become contracting parties to the United Nations Convention through ratification or accession and 12 more have signed, it is expected to enter into force in 2002. When it does, the United Nations will establish a “treaty body” to supervise the application of the convention.

General Survey

105. The Governing Body at its 267th Session (November 1996) requested the Committee of Experts on the Application of Conventions and Recommendations to undertake a General Survey 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”.³³ The General Survey was discussed at the 87th Session (June 1999) of the International Labour Conference.

³³ See GB.267/LILS/4/2; see also GB.267/9/2, para. 14, and GB.267/PV, p. IV/6.

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”.³⁴

107. In addition, the Committee of Experts found that Conventions Nos. 97 and 143 do not deal with the elaboration or establishment of a national migration policy within the framework of national employment policy, nor with questions relating to migrant workers’ contracts, the payment of their wages and transfer through remittances.

A general discussion based on an integrated approach

108. The present document is submitted to the Governing Body following the suggestions made during its 282nd Session that the proposed general discussion on migrant workers be based on an *integrated approach*. An integrated approach has been advised especially because the issues raised by migrant workers for economic and social policy on the one hand, and the protection of human rights on the other, cut across practically all spheres of the

³⁴ See para. 653 of the General Survey.

normative and technical activities of the ILO. The search for employment and socio-economic security are fundamental motives for the migration of workers, and have raised important issues for employment policy in both source and destination countries. Non-discriminatory treatment of migrant workers in wages and other conditions of employment, their right to a healthy and safe working environment, their right to organize as workers, and their entitlement to benefits in social security are all recognized in various ILO Conventions and Recommendations. Moreover, migration questions arise in ILO's ongoing work on the social implications of globalization, promoting better jobs for women, combating the trafficking of child labour, linking migrants' remittances to microfinance and enterprise development, facilitating return and productive re-absorption of in post-conflict situations, and in the spread of HIV/AIDS in affected countries. An *integrated approach* would thus comprise a programmatic response to the issues of migrant workers in a cooperative, complementary and comprehensive process among the various concerned ILO sectors and units. It would also allow for a more comprehensive review of the question of whether and how the instruments need to be revised.

109. An *integrated approach* would also offer an opportunity to examine in greater depth the need for social dialogue in fostering consensus on migration policy at national and international levels. Workers' and employers' organizations are directly interested parties in all matters relating to the admission and employment of foreign workers, but tripartism is not yet accepted as an operative principle in structuring decision-making in this important area of public policy.
110. At another level, it would also permit consideration of how ILO might further elaborate and strengthen its role beyond standard setting in promoting more orderly forms of labour migration. Globalization is seen to be contributing to migration pressures, since only a few developing countries have succeeded in exporting manufactures and as a consequence income and wage differentials between the developed and the less developed regions have further widened. These pressures are complicating efforts to integrate and provide more security to those migrant workers who have gained legal status. The ILO is increasingly being called upon to offer guidelines on how member States, individually and in cooperation with others, could resolve problems of clandestine migration and trafficking, combat discrimination and xenophobia, and give legal status to the undocumented or facilitate their orderly return. It is likewise called upon to assist member States identify their long-term interests and stakes in labour migration, as countries of origin or countries of employment, so that appropriate changes could be incorporated in their respective laws and policies.

Issues for the discussion

111. Based on the foregoing, 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:
 - *International labour migration in the era of globalization.* What are the important features of contemporary forms of labour migration and to what changes in the global economy could they be attributed? What has been the impact on the conditions of migrant workers and what are the implications for ILO action? How can national and supra-national policies influence migration forms and processes so that migrants' rights are protected while they contribute to the growth and development of countries of origin and countries of employment? How could the social partners contribute more effectively to improving national policy-making along such lines?
 - *Policies and structures for more orderly migration for employment.* In the light of shared interests in more orderly forms of labour migration, what policies and

structures need to be developed in origin and host countries to insure that migration benefits all? What structures would enhance participation of the social partners play in migration policy decision-making? What are the principal factors giving rise to the growth of irregular migration and the illegal employment of undocumented workers? How can these best be addressed at national and inter-country levels? What measures compatible with ILO's principles and basic human rights have proven successful in reducing irregular migration and its consequences on the treatment of migrant workers? What, in practice, have proven the most effective strategies and institutions for safeguarding the rights of migrant workers? How can the ILO, working through the social partners, promote the adoption of best practices?

- *Improving migrant workers' protection through standard setting.* Can the international standards be made more relevant in view of the emerging new forms of migration and the status of national law and practice for the protection of their rights? What approach should be taken to ensure wider ratification and application of ILO Conventions on migrant workers? Should the existing ILO standards be revised or promoted? How can complementarity be assured with the implementation and monitoring of the 1990 United Nations International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families?

Table 3. Status of instruments concerning migrant workers

Instruments	Number of ratifications (at 20/01/02)	Status
Other instruments (This category comprises instruments which are no longer fully up to date but remain relevant in certain aspects)		
Migration for Employment Convention (Revised), 1949 (No. 97)	42	The Governing Body decided ³⁵ to invite the member States to provide reports under article 19 of the Constitution and to request the Committee of Experts to carry out General Surveys based on such reports. A General Survey, ³⁶ concerning Convention Nos. 97 and 143, was examined by the International Labour Conference in June 1999. Following this examination it was agreed to include an item on migrant workers in the portfolio of proposals for the agenda of the Conference with a view to holding a general discussion on this question which will enable to examine the possibility of revising Conventions Nos. 97 and 143. ³⁷
Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143)	18	

³⁵ GB.267/LILS/4/2(Rev.1), para. 62; and GB.276/9/2, para. 14.

³⁶ ILO: *Migrant Workers*, General Survey of the Committee of Experts on the Application of Conventions and Recommendations, International Labour Conference, 87th Session, 1999.

³⁷ GB.276/LILS/WP/PRS/1, para. 23; and GB.276/10/2, para. 10.

Instruments	Number of ratifications (at 20/01/02)	Status
Migration for Employment Recommendation (Revised), 1949 (No. 86)	–	The Governing Body has recommended that the status quo be maintained for Recommendations Nos. 86, 100 and 151 and that the Working Party (or LILS Committee) re-examine their status in due course. ³⁸
Protection of Migrant Workers (Underdeveloped Countries) Recommendation, 1955 (No. 100)	–	
Migrant Workers Recommendation, 1975 (No. 151)	–	
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)		
Inspection of Emigrants Convention, 1926 (No. 21)	33	The Governing Body decided to shelve the Convention with immediate effect and invited the States parties to Convention No. 21 to ratify Convention No. 97, if appropriate, and to denounce Convention No. 21 at the same time. They also recommended that the Working Party (or LILS Committee) re-examine their status in due course. ³⁹
Reciprocity of Treatment Recommendation, 1919 (No. 2)	–	The Governing Body noted that these instruments were obsolete and proposed the withdrawal of these Recommendations in due course. ⁴⁰
Migration (Protection of Females at Sea) Recommendation, 1926 (No. 26)	–	
Migration for Employment Recommendation, 1939 (No. 61)	–	The Governing Body noted the replacement of Recommendations Nos. 61 and 62 by Recommendation No. 86. ⁴¹
Migration for Employment (Co-operation between States) Recommendation, 1939 (No. 62)	–	

³⁸ GB.277/LILS/4(Rev.1) III.4 and III.5; and GB.277/11/2.

³⁹ GB.265/LILS/5, para. 72; and GB.265/LILS/WP/PRS/1, III.7.

⁴⁰ GB.277/LILS/WP/PRS/4 III.1 and III.2; GB.277/LILS/4(Rev.1), III.1 and III.2; and GB.277/11/2, para. 8.

⁴¹ GB.277/LILS/WP/PRS/4, III.3; and GB.277/LILS/4(Rev.1), para. 104.

5. Gender equality between women and men in the world of work (general discussion based on an integrated approach)

Summary

As Beijing+10 and Copenhagen+10 approach, it is timely to review the progress made in promoting gender equality through decent work in the context of a general discussion based on the integrated approach to ILO means of action. In 2004, it will be almost 20 years since the ILC undertook a comprehensive review of gender equality issues in the world of work. In 1985, a general discussion was held at the ILC on equal opportunities and equal treatment for men and women in employment. Since then significant yet important gender equality issues have been addressed by the ILC, including through standard setting such as, for example, the adoption of the Maternity Protection Convention, 2000 (No. 183).

Over the last two decades, 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 utilize fully the human potential of both women and men and to promote decent employment for all. The growing levels of poverty and unemployment, the burgeoning informal economy, the HIV/AIDS epidemic, practices such as child labour, sexual harassment and trafficking for prostitution, the persistent gender pay gap, occupational segregation, the gender division of paid and unpaid labour, and the considerably weaker position of women in decision-making in the public and private spheres, threaten to erode gains made towards gender equality.

The Conference may wish to focus a discussion on the following issues: (1) the Decent Work Agenda in relation to employment promotion, poverty reduction, rights, social protection and representation for women and men on equal terms; (2) taking stock of ILO action to respond to these issues and to promote gender equality; (3) identification of priority areas on which to focus the work and contribution of the ILO to gender equality; and (4) adoption of recommendations and a plan of action to address these and provide for an integrated approach to ILO policy and programmes to promote gender equality in the world of work.

Introduction

- 112.** During its 71st Session (1985) the International Labour Conference examined the question of equal opportunities and equal treatment for men and women in employment in the context of a general discussion. This was the most recent occasion for a comprehensive ILO review of progress on gender equality in the world of work and ILO action in the context of global economic and labour market trends. During the considerable period of time that has elapsed since then, tremendous changes have taken place in the global labour market with uneven progress in achieving gender equality, different forms of gender inequality developing and new challenges to gender equality emerging with the rapid expansion of the global economy.⁴² These challenges include growing unemployment and poverty,⁴³ the feminization of international migration; trafficking for prostitution and

⁴² 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-centered instead of profit-centered 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.

⁴³ 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

forced labour,⁴⁴ and the emerging gender digital divide as new information and communication technologies shape the world of work.⁴⁵

- 113.** Over the past two decades, significant policy development initiatives have been taken at the global level such as the Beijing Platform for Action. The ILO has contributed to these events. It also has taken action through programme, policy and normative developments and technical assistance to mainstream gender and promote gender equality. As we approach Beijing+10 and Copenhagen+10 a comprehensive review would be timely and relevant and enable the ILO to chart a strategic course for its future work.
- 114.** The ILO needs to take stock of global developments, in order to update ILO policy and to determine priority areas for the ILO's work in promoting gender equality goals. A conference discussion on these issues would provide the ILO and its constituents with an opportunity to conduct a comprehensive up to date review of progress on gender equality in the world of work and ILO action in the context of global economic and labour market trends. Against this background and the experiences and possibilities of the ILO in standard setting, research, technical assistance and advocacy, the Conference could provide guidance on how better to integrate all the ILO means of action, the promotion of the Decent Work Agenda and the strengthening of the gender mainstreaming strategy to enhance the ILO's efforts and impact on eliminating gender discrimination.

Background: Progress and gaps

- 115.** Since the Fourth World Conference on Women in Beijing in 1995, the United Nations has noted the gain in the economic autonomy of women as a consequence of their increased participation in the labour market. Measures have also been introduced by governments to address women's economic and social rights. International labour Conventions have been ratified as well as legislation enacted or strengthened to make it compatible with these Conventions.⁴⁶
- 116.** At the same time, however, the United Nations has recognized that 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

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.

⁴⁴ "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 one million women and children are shipped across national boundaries and sold into modern day slavery. The trade in human beings is a worldwide scourge", in the *International Herald Tribune*, 1 June 2000.

⁴⁵ ILO, *World Employment Report 2001*, p. 319.

⁴⁶ United Nations, resolution adopted by the General Assembly, Further actions and initiatives to implement the Beijing Declaration and Platform for Action, Twenty-third Special Session, 2000, A/RES/S-23/3, para. 20.

inheritance, is not recognized yet in national legislation. Progression in the professions, in most cases, is still more difficult for women, due to the lack of structures and measures that take into account maternity and family responsibilities.⁴⁷

- 117.** The causal links between gender discrimination and poverty throughout the life cycle have become increasingly evident. Globalization is exacerbating the plight of the working poor in the informal economy, in particular agricultural workers, street vendors and home workers, the majority of whom are often women. Addressing gender issues in the context of the HIV/AIDS epidemic is a key concern. Sexual harassment and trafficking for prostitution are increasingly subjects for legislation and campaigns. The persistent lack of adequate representation of women and their concerns in business, and in political and labour institutions continues to hamper genuine progress in achieving gender equality in the world of work. For both men and women, ensuring a balance between work and family responsibilities and between paid and unpaid work remains a critical challenge. Assisting men and boys to play a positive role in changing gender relations within the home and in the labour market is a new avenue for advancing gender equality.
- 118.** Some figures derived from existing ILO statistics illustrate persistent gender disparities: there are only 54 per cent of working age women in the labour force as compared to over 80 per cent male participation. 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. 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 often 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.⁴⁸ 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.⁴⁹ 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.⁵⁰ Women are also much

⁴⁷ *ibid.*, para. 21.

⁴⁸ 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.

⁴⁹ 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.

⁵⁰ 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.

more likely than men to be underemployed or unemployed.⁵¹ Women spend less time on paid work but considerably more time on unpaid work than men.⁵²

- 119.** A critical input for assessing progress in gender equality, both quantitatively and qualitatively, is up-to-date and reliable data and analyses of labour market trends disaggregated by sex. However, the nature of women's and men's jobs and occupations is not adequately captured by conventional statistics. For example, they are deficient in analysing the roles of women and men in both the informal economy and the unpaid care economy. A combination of data on sex and on other factors such as race and age could enhance the identification of specific vulnerable groups. A more comprehensive measurement of all forms of "work" including unpaid care work is also needed. Improved data collection could provide a better delineation of different types of labour market work and a detailed description of the characteristics of such work (including in the informal economy) and other relevant information such as family composition, and the division of labour and decision-making within households (which would be helpful for identifying factors behind gender inequalities in the labour market.)
- 120.** 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 women, rural women and female household heads.

ILO action so far

- 121.** The 71st Session (1985) of the International Labour 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, 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 United Nations 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.
- 122.** 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),⁵³ the Part-Time

⁵¹ 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.

⁵² Recent time-use surveys show that women's total time worked daily 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.

⁵³ Six ratifications.

Work Convention, 1994 (No. 175),⁵⁴ the Home Work Convention 1996 (No. 177)⁵⁵ and the Maternity Protection Convention, 2000 (No. 183).⁵⁶ A General Survey on the night work of women in industry was submitted to the 89th Session of the International Labour Conference in 2001.⁵⁷ One of the challenges, however, is how to promote the ratification and implementation of some of these Conventions, which have not attracted many ratifications over the last decade. On the other hand, the adoption by the Conference of the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up in 1998 provides added impetus for the promotion of gender equality with inclusion of the principle of the elimination of discrimination in the Declaration. Within the context of the campaign to promote ratification of the fundamental Conventions, the Discrimination (Employment and Occupation) Convention, 1958 (No. 111), and the Equal Remuneration Convention, 1951, (No. 100), have received a large number of new ratifications and now figure as two of the most highly ratified international conventions. Numerous advisory and technical cooperation projects have been undertaken to promote and secure gender equality through improved application of these two fundamental Conventions

- 123.** 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, including 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 at Work a Reality* at the International Labour Conference in 1999.
- 124.** In addition, a number of tripartite meetings have been held on gender equality issues, as for example in the areas of 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 United Nations General Assembly held in June 2000.
- 125.** A number of technical cooperation projects have addressed gender equality in various fields. They have promoted women workers' rights and supported income generation and empowerment for women through microfinance initiatives, entrepreneurship, and organization of women, particularly in the informal sector. Other projects have addressed the growing problem of trafficking in women and children and the situation of homeworkers. The programme on gender, poverty and employment aims to build capacity of the constituents to fully integrate employment and gender concerns in the formulation and implementation of poverty reduction strategies.
- 126.** Through these actions over the last two decades, the ILO has increasingly focused on promoting equality between men and women. It has emphasized a rights-based

⁵⁴ Eight ratifications.

⁵⁵ Two ratifications.

⁵⁶ Three ratifications.

⁵⁷ ILO: *Night Work of Women in Industry*, Report III (Part 1B), ILC, 89th Session, Geneva, 2001.

development approach in its employment generation work and consistently linked economic progress with social justice. The promotion of the economic and social rights of women on an equal footing with men are an essential building block of this approach. A significant shift also has been made away from a protectionist approach only towards women workers just because they are women, although protection of maternity remains essential to promoting equal opportunities. Furthermore, the need for the protection of the rights of vulnerable categories of workers, a great proportion of whom are women, has been affirmed in the adoption of Conventions, such as those on part-time work and homework. Furthermore, since 1995, increasing attention has been given to mainstreaming gender concerns in ILO programmes and building the capacity of the Office and the constituents to ensure that gender is integrated into mainstream activities. This strategy was formally adopted by the member States at the Fourth United Nations Conference in Beijing, and has been endorsed as the most effective way to address the persistence of gender inequalities throughout the world. However, the ILO has yet to formally adopt the gender mainstreaming strategy as an integral part of its own gender equality policy.

127. The ILO's first strategic programme and budget adopted for 2000-01 and the Strategic Policy Framework established gender as a crosscutting concern in all the activities of the ILO. The goal is to ensure that work on gender equality does not remain on the margins, but becomes a key objective systematically included in all areas of ILO action. In March 2000, the Office's Action Plan on Gender Equality and Mainstreaming was submitted to the Governing Body. The aim of this Office Plan is to ensure that gender concerns are integrated into all ILO programmes. As part of the implementation of this Plan, the Office is currently conducting an Office-wide gender audit of programmes to assess the extent to which institutional mechanisms have been established and are operational to ensure that gender is systematically addressed through all ILO activities. The report to the Governing Body on the gender audit will highlight good practices; indicators and tools used by the ILO for gender mainstreaming and identify ways to improve the ILO's performance on promoting gender equality in the world of work.

ILO future policy development

128. In light of the above, it would be appropriate and extremely useful that in 2004, the International Labour Conference undertake a global review of gender equality in the world of work. Such a discussion could provide a critical space for ILO policy development in relation to these issues. It would also be timely, as it will be almost ten years after the Fourth World Conference on Women held in Beijing in 1995.
129. An item on the International Labour Conference agenda in 2004 would provide an important opportunity to analyse and take stock of the labour market and global economic trends and the consequences for gender equality in the world of work, as well as to assess the changing status of different categories of men and women workers in the labour force in both the formal and informal sectors. 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 on how the ILO's Global Employment Agenda is helping to promote productive, inclusive and equitable change so that women's work as well as men's is fully acknowledged and rewarded and economic efficiency is balanced with gender justice. Furthermore, the identification of priority gender issues for the ILO and 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.

- 130.** As ensuring a gender perspective within the ILO's Global Employment Agenda is based on all four of the ILO's strategic objectives, the focal points for the discussion might include:
- (a) Translating 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.
 - (b) Ensuring *secure and safe work for both women and men*. 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.
 - (c) *Strengthening 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.
- 131.** A conference discussion report to the International Labour Conference could take stock of ILO action to respond to these issues and to promote gender equality, in particular in the context of the ILO's Decent Work Agenda. It would provide for an opportunity to examine the extent to which ILO standards – specific to gender equality – as well as specific provisions on equality in other standards are translated into the range of ILO means of action, identifying gaps and obstacles, as well as highlighting good practices in this regard. An assessment of possible means of strengthening the knowledge base of the ILO on gender equality issues could contribute to improved data collection in future. This in turn could support and stimulate the advocacy and awareness raising work of the ILO, the promotion of standards and the implementation of technical cooperation.
- 132.** An item on gender equality for women and men in the world of work on the agenda of the Conference in 2004 would thus represent a significant opportunity to update the overall policy of the ILO as an Organization on gender equality and gender mainstreaming in relation to the Platform for Action adopted in Beijing, the Social Summit commitments included in the Copenhagen Declaration of 1995, and the 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 and linkages to the outcomes of the 2002 general discussion on the informal economy, the 2003 discussion on the integrated approach to occupational safety and health, as well as of the discussion of the Global Report on discrimination under the Declaration at the 2003 International Labour Conference. It would also reaffirm the ILO's commitment to the promotion of gender equality as being at the core of the Decent Work Agenda. An item on the 2004 International Labour Conference agenda would give constituents the opportunity to identify the way forward based on an assessment of the results of the Office's strategy to mainstream gender in all its activities: standard setting, research, technical cooperation, advocacy and advisory services.

6. Strengthening tripartism and social dialogue (general discussion)

Summary

The relevance of tripartism and social dialogue continues to grow in response to the challenges of a globalized world, in particular in seeking to reconcile the imperatives of social justice with those of enterprise competitiveness and economic development. However, the practice of tripartism and social dialogue is very uneven, and often its full potential has not been utilized or explored. A Conference discussion could address the challenges to social dialogue with a view to increasing the role and effectiveness of social dialogue in member States. Though social dialogue and tripartism have precise meanings within the ILO, deepening the level of understanding of and commitment to these concepts could be another objective of a general discussion. The many facets of social dialogue could be examined, 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. Other topics could include the institutions, mechanisms and processes of tripartism and social dialogue, both formal and informal, the broad range of issues capable of being addressed successfully through tripartism and social dialogue, the actors in social dialogue, the underlying factors for successful tripartism and social dialogue, and the role of the ILO and social dialogue. The precise scope of a general discussion and points for discussion would be determined only after fully engaging the constituents.

- 133.** For the better part of a century, the International Labour Organization has embodied tripartism and social dialogue at the international level. Having first found expression in the ILO's Constitution in 1919, the relevance of tripartism and social dialogue has continued to grow in response to the challenges of a globalized world, in particular in seeking to reconcile the imperatives of social justice with those of enterprise competitiveness and economic development.⁵⁸ However, the practice of tripartism and social dialogue is very uneven, and in many countries it is not embedded in economic and social policy and decision-making. Even where there is a tradition of tripartism and social dialogue, the full potential may not have been utilized or even explored. Though the practice and outcomes of social dialogue are uneven, its attraction with its solid grounding in ideals of democracy as well as equity and efficiency, continues to grow. Given this interest, it may be timely to have a Conference discussion to address the challenges to social dialogue with a view to increasing the role and effectiveness of tripartism and social dialogue in member States.
- 134.** From an ILO perspective, social dialogue is an integral component of decent work and an essential channel for achieving it: social dialogue can be both a means and an end. It is understood "to include all types of negotiation, consultation or simply exchange of information between representatives of governments, employers and workers, on issues of common interest relating to economic and social policy".⁵⁹ Similarly, tripartite cooperation is defined as referring "to all dealings between the government and employers' and workers' organizations concerning the formulation and implementation of economic and social policy".⁶⁰ Though social dialogue and tripartism have precise meanings within the ILO, deepening the level of understanding of and commitment to these concepts could be another important objective of a general discussion.

⁵⁸ See conclusions concerning tripartite consultation at the national level on economic and social policy, International Labour Conference, 1996.

⁵⁹ Programme and Budget proposals for 2000-01, Vol. 3 (ILO, Geneva, 1999), para. 114.

⁶⁰ See conclusions concerning tripartite consultation at the national level on economic and social policy, International Labour Conference, 1996.

135. 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:

- (a) 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;
- (b) to promote the wider use of tripartism and social dialogue and determine means of overcoming the obstacles thereto;
- (c) to clarify the role of tripartism and social dialogue in relation to operationalizing the ILO's strategic objectives and promoting the cross-cutting issues of gender and development;
- (d) to highlight innovations and best practices in tripartism and social dialogue from which other countries could benefit;
- (e) to enable the ILO to take stock of and draw lessons from the dramatic changes that have occurred in the field of tripartism and social dialogue as a result of globalization, including the regional dimensions;
- (f) to promote tripartism and social dialogue in a globalized economy, including through cooperation between the ILO and other international organizations;
- (g) 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
- (h) to make better known the existing standards that are relevant to tripartism and social dialogue (i.e. Conventions Nos. 87, 98, 144, 150, 154; Recommendations Nos. 91, 92, 94, 113, 129, 130, 152, 158,163).

136. In order to meet these objectives, and using as a starting point the ILO definitions of social dialogue and tripartite cooperation, the following elements could be considered for inclusion in a discussion on strengthening tripartism and social dialogue.

The institutions, mechanisms and processes of tripartism and social dialogue – Formal and informal

137. As noted above, social dialogue can be both a means and an end. How social dialogue takes place, and the institutional framework that facilitates it is as important as the result. The process may also impact on the quality of the result, since tripartism and social dialogue guarantee participation and democratic process, which are essential to good governance. The institutions, mechanisms and processes chosen can also lead to a broader range of options for solutions, provide more influence in decision-making and inspire a spirit of collaboration. Since there is such a wide range of social dialogue institutions, mechanisms and processes, both formal and informal, a discussion could begin with a detailed survey of the various national experiences, including the advantages and difficulties that have been encountered. Particular focus could be given to exploring the most appropriate and effective avenues for the promotion of tripartism and social dialogue in the process of development, transition, and economic and regional integration. How best to foster dynamic, innovative and equality-responsive forms of social dialogue could also

be addressed, as well as the various levels at which social dialogue takes place and the interaction of the various levels.

The issues for tripartism and social dialogue

138. The broad range of issues that are capable of being addressed successfully through tripartism and social dialogue could be highlighted. The focus could be on providing concrete examples of the benefits of expanding the agenda for tripartism and social dialogue beyond traditional industrial relations issues, and thus including the social partners in discussion, debate and decision-making on wider social and economic issues. Practical guidance could also be provided for the work of the various sectors of the ILO to ensure that the strategic objectives are operationalized and pursued at the national level through social dialogue.

The actors in social dialogue

139. “Cohesive tripartism is the ILO’s bedrock”.⁶¹ 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 focus would be on the key role of tripartite and bipartite social dialogue and the means of improving the capacity of labour administrations and the social partners to initiate and contribute to fruitful social dialogue.

Underlying factors for successful tripartism and social dialogue

140. Balanced, successful social dialogue does not necessarily come easily. A 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.⁶² 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, information and adopting a problem-solving approach.

The ILO and social dialogue

141. The ILO has a wealth of standards relevant to social dialogue, including collective bargaining. It is also involved in a wide range of technical cooperation projects to promote and strengthen tripartism and social dialogue, including collective bargaining, machinery and institutions, as well as building the capacity of the relevant parties to engage in tripartite consultation and social dialogue. However, social dialogue has not consistently been used as a means of operationalizing the other ILO strategic objectives. In this regard, the discussion could foster a wider understanding of the role of a number of standards in

⁶¹ *Reducing the decent work deficit: A global challenge*. Report of the Director-General, ILO, Geneva, 2001, p. 70.

⁶² *Decent work*. Report of the Director-General, ILO, Geneva, 1999, p. 39.

promoting social dialogue as a means of operationalizing the strategic objectives at the national level. With respect to the standards, some form of social dialogue is envisaged in a large number of Conventions, from those dealing with occupational safety and health (see, for example, the Occupational Safety and Health Convention, 1981 (No. 155)) to the recent Private Employment Agencies Convention, 1997 (No. 181), and on the Worst Forms of Child Labour Convention, 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, 1976 (No. 144), and its accompanying Recommendation (No. 152), have influenced the shape of tripartite institutions in a number of countries, and have provided a starting point in many instances for social dialogue on a broader range of issues. The role of labour administrations in social dialogue is addressed through the Labour Administration Convention, 1978 (No. 150), and its accompanying Recommendation (No. 158). There are also a number of other standards dealing with social dialogue processes and 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, 1981 (No. 154), and its accompanying Recommendation (No. 163)); as well as the Voluntary Conciliation and Arbitration Recommendation, 1951 (No. 92), the Co-operation 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).

- 142.** The conclusions concerning tripartite consultation at the national level on economic and social policy that were 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 strengthening tripartism and social dialogue. The 1996 conclusions set out some of the prerequisites for and the benefits of tripartite cooperation. They also address the challenges to tripartite cooperation due to the globalization of the economy. It could be useful to examine the developments in tripartite cooperation since the 1996 discussion, and to examine what concrete measures have been taken to implement the conclusions. The 1996 discussion, and the conclusions that resulted therefrom, could be a useful starting point for a discussion on tripartism and social dialogue; though it would be important to avoid a repetition of that discussion.
- 143.** 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, and much more needs to be known about the extent of social dialogue among our constituents. Given the information gap, an agenda item on strengthening tripartism and social dialogue would require additional research, which at present remains unfunded.⁶³ A substantial programme of research could be launched in preparation for a Conference discussion in order to build a solid knowledge base of good practices on tripartism and social dialogue, to identify the concrete needs of the constituents and the obstacles faced. Field research would be important to ensure that the actual needs of the constituents are being properly identified; therefore, the direct involvement of the constituents in this process would be essential.
- 144.** This paper intentionally provides a broad framework for a discussion on strengthening tripartism and social dialogue, since, due to the nature of the topic, it was felt that it would

⁶³ A proposal has been included in GB.283/PFA/2/2 for surplus funds to be designated for this purpose.

be appropriate to determine precisely the scope of a general discussion and the points for discussion only after fully engaging the constituents. The Office is committed to involving the constituents fully and directly in the development of the topic and in the preparatory research, to ensure that a Conference discussion would be relevant to the needs and realities of the constituents. If this topic is chosen for inclusion on the agenda of the 2004 International Labour Conference, the Office will of course consult closely with the constituents in the preparation of the background document. However, if it is felt appropriate, this subject could be considered for the 2005 Conference, providing more time for the necessary consultations and research to take place.

Geneva, 31 January 2002.

Points for decision: Paragraph 1;
Paragraph 2;
Paragraph 21.