

**Third Item on the Agenda: Information and Reports on the Application of Conventions and Recommendations****Report of the Committee on the Application of Standards**

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# Report of the Committee on Application of Standards

## PART ONE

### GENERAL REPORT

#### A. Introduction

1. In accordance with article 7 of the Standing Orders, the Conference set up a Committee to consider and report on item III on the agenda: “Information and reports on the application of Conventions and Recommendations”. The Committee was composed of 225 members (119 Government members, 24 Employer members and 82 Worker members). It also included 9 Government deputy members, 57 Employer deputy members, and 155 Worker deputy members.<sup>1</sup> In addition, 41 international non-governmental organizations were represented by observers.

2. The Committee elected its Officers as follows:

*Chairperson:* Mr. Sergio Paixao Pardo (Government member, Brazil)

*Vice Chairpersons:* Mr. Alfred Wisskirchen (Employer member, Germany); and  
Mr. Luc Cortebeeck (Worker member, Belgium)

*Reporter:* Ms. Erlien Wubs (Government member, Netherlands)

3. The Committee held 18 sittings.

4. In accordance with its terms of reference, the Committee considered the following: (i) information supplied under article 19 of the Constitution on the submission to the competent authorities of Conventions and Recommendations adopted by the Conference; (ii) reports supplied under articles 22 and 35 of the Constitution on the application of ratified Conventions; and (iii) reports requested by the Governing Body under article 19 of the Constitution on the Protection of Wages Convention (No. 95), and Recommendation (No. 85), 1949.<sup>2</sup> The Committee was also called on by the Governing Body to hold a special sitting concerning the application by Myanmar of the Forced Labour Convention, 1930 (No. 29), in application of the resolution adopted by the Conference in 2000.<sup>3</sup>

<sup>1</sup> For changes in the composition of the Committee, refer to reports of the Selection Committee, *Provisional Records* Nos. 3, 4A to 4J.

<sup>2</sup> Report III to the International Labour Conference – Part 1A: Report of the Committee of Experts on the Application of Conventions and Recommendations; Part 1B: Protection of wages: Standards and safeguards relating to the payment of labour remuneration.

<sup>3</sup> ILC, 88th Session (2000), *Provisional Record* No. 6-1 to 5.

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## **Work of the Committee**

5. As usual the Committee began its work with a discussion of general aspects of the application of Conventions (particularly ratified Conventions) and Recommendations and the discharge by member States of standards-related obligations under the ILO Constitution. In this part of the discussion, reference was made to Part One of the Report of the Committee of Experts on the Application of Conventions and Recommendations. During the first part of the general discussion, the Committee also considered its working methods with reference being made to a document submitted to the Committee for this purpose.<sup>4</sup> The second part of the general discussion dealt with the General Survey on protection of wages carried out by the Committee of Experts. A summary of all aspects of the general discussion is set out in Part One of this report.
6. The Committee began its most essential work of examining the application of ratified Conventions in individual cases with a special sitting concerning the case of Myanmar on the first Saturday. During its second week, the Committee considered various individual cases relating to the application of ratified Conventions as well as cases concerning compliance with obligations to submit Conventions and Recommendations to the competent national authorities and to supply reports on the application of ratified Conventions.
7. The examination of individual cases was based principally on the observations contained in the report of the Committee of Experts and the oral and written explanations provided by the governments concerned. As usual, the Committee also referred to its discussions in previous years, comments received from employers' and workers' organizations and, where appropriate, reports of other supervisory bodies of the ILO and other international organizations. Due to time restrictions, as usual the Committee had to make a selection among the Committee of Experts' observations of a limited number of individual cases to discuss. The Committee trusts that the governments of all those countries which were the subject of individual discussion will strive to take the measures necessary to fulfil the obligations they have undertaken in relation to standards. With respect to the discussions of selected individual cases on the application of standards, a summary of the information supplied by governments, the discussions in the present Committee and any conclusions it has drawn are set out in Parts Two and Three of this report.
8. The Worker and Employer members submitted a draft list of cases to be examined. The Worker members stated that they had come to agreement following long and difficult discussions within the Workers' group. They considered the Committee of Experts' report, which contained 696 observations and reference to 1,214 direct requests, to be worthy of in-depth reading and examination. They stressed the importance of each comment and of the report as a whole even though the Conference Committee had to limit discussion to a selection among the comments. In response to the surprise expressed by certain governments at the choice of some of the cases, the Worker members stated their hope that each government would seriously consider responding to the observations. They also stressed that debate on observations should not be limited to the Conference Committee but should also take place elsewhere. The role of the Committee was to make a selection of individual cases on which to undertake public dialogue. The Worker members felt that, as they had said in the past, the list largely reflected the criteria stipulated in section (b) of the document on the working methods of the Committee on the Application of Standards. This year 25 cases were selected for consideration by the Committee. The Worker members

<sup>4</sup> Working methods of the Committee on the Application of Standards, ILC, 2003, C. App./D.1.

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regretted the fact that time restraints and limitation of means made it impossible to discuss more cases.

- 9.** The Worker members drew to the attention of the Committee of Experts, the Office and the governments concerned and this Committee, their concerns over four situations to which they would need to return next year. The first concerned the application by Argentina of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87). They recalled that for several years the Committee of Experts had noted important contradictions between legislation and the Convention and had requested the Government to correct them. They hoped that, even if the contradictions persist despite the measures announced by the Government, it will be able to announce some progress in applying the Convention next year, given the present economic, political and social context. Secondly, they raised the problem of child trafficking, in particular in West Africa, and child exploitation. They referred to Gabon and Côte d'Ivoire as being the countries of destination and Burkina Faso and Mali as countries of origin of trafficking. They hoped this global phenomenon would be taken up in the next report of the Committee of Experts so that it could be discussed in depth at the next Conference. Thirdly, the Worker members regretted that dialogue with the Government of Japan on the application of the Forced Labour Convention, 1930 (No. 29), had not been possible. Indeed, the observations of the Committee of Experts raised fundamental issues, such as the Government's refusal to respond to the serious issues concerning certain aspects related to the situation of the "comfort women" and their right to reparations, as well as measures to be taken by the Government to compensate the victims, given the deficiency of compensation provided by the "Asian Women's Fund". They regretted that, once again, these issues could not be taken up in a dialogue with the Government of Japan. This case had been frustrating the work of the Committee for a long time and in a manner that was difficult to comprehend. The Worker members nevertheless insisted the case be taken up again next year. Another case to which the Workers' group attached importance was that of the application by Norway of the Radiation Protection Convention, 1960 (No. 115), which, despite the fact that the Worker members had asked for an examination of that Convention by the Committee of Experts in order to be able to discuss it this year, it was not in this year's report. The Worker member of the Netherlands, concerned over the lack of opportunity to follow up on this case, requested an explanation by the Office concerning this omission.<sup>5</sup>
- 10.** Emphasizing the gravity and relevance of the cases selected for discussion as well as those that were not retained, the Worker members regretted the systematic refusal by some governments to accept dialogue. They felt that dialogue allowed a better understanding of the issues and was the starting point for solutions. They invited the other members of the Committee to respect the working methods of the Committee and to value dialogue. They hoped the imminent debate at a special session on the case of Myanmar, concerning the application of Convention No. 29, would lead to improved application of the Convention and advance social justice.
- 11.** The Employer members stated that, as in previous years, they were not satisfied with the list of individual cases to be examined by the Conference Committee, but they accepted it. This was due to the fact that the Conference Committee was not yet able to find objective selection criteria accepted by all. The criteria identified so far, including those listed in the document on working methods, were sensible, but their application would not necessarily result in the selection of the particular countries for this year's list. The use of the current criteria could lead to several other results, as the application of each of them required

<sup>5</sup> See reply of the representative of the Secretary-General, para. 165 of the report.

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discretion, the setting of priorities and weighing of the elements involved. The criteria used were therefore to some extent auxiliary criteria.

- 12.** Noting the Worker members' regret concerning the absence on the list of Argentina in respect to Convention No. 87, the Employer members stressed that they had no influence on this decision. However, they would not have been able to share the concerns of the Committee of Experts in that case, as differences in trade union status do not in any case infringe upon freedom of association. It was arbitrary to accept a 5 per cent difference in membership as sufficient to recognize status, while a 10 per cent difference was regarded as unacceptable. Convention No. 87 was completely silent on this issue. With regard to the decision not to include Japan on the list concerning Convention No. 29, the Employer members expressed their surprise with regard to the Committee of Experts' observation, which was 15 pages long but contained very little on the measures which should be taken now, following a violation of the Convention which took place some 60 years ago. The Committee had declared itself impotent as regards the question of compensation and nobody would assert that there was a danger that those tragic events, would occur again in the future. It even appeared that the members of the Committee of Experts had never been more divided in their assessment, even though they reported each year that decisions were taken by consensus. The observation did not provide a basis for a useful discussion in the Conference Committee and therefore it seemed to the Employer members that this would be the last time this case was commented on.
- 13.** The Employer members stated that, as usual, they did not wish to comment on possible candidates for inclusion on the list next year. They noted the concern of a Worker member that this point was missing on the list of criteria contained in the document and recalled that the Workers frequently expressed their views on the list that should be adopted the following year. However, nobody could seriously expect the fact that a country was mentioned the year before could serve as an objective criterion nor a binding reason for placing that country on the list the following year. If this were to be the case, the Worker and Employer members could already determine now the entire list for the next year through comments of this kind. Finally, the Employer members stated that there was an agreement between the Workers and Employers that next year's list would again comprise 24 countries, one less than this year's list.
- 14.** The Government member of Cuba stated that her Government had reservations concerning the adoption of the list. This list of individual cases submitted to the Committee for approval emphasized the need to establish selection criteria that were just, impartial and transparent, and reflected the priorities and objectives of the Organization. The speaker regretted the emphasis placed on freedom of association and its violation in developing countries over violations in other places and of the other fundamental rights. She pointed out the numerous observations on the violations of Conventions on freedom of association, right to collective bargaining, discrimination, forced labour and child labour in developed countries, contained in the Committee of Experts' report. In particular, she pointed to the violation of Convention No. 182 on the worst forms of child labour by a developed country on which the observation in the Committee of Experts' report refers to the death of 59 children working in agriculture.
- 15.** The Worker member of Venezuela emphasized the importance of Convention No. 182 on the worst forms of child labour and drew attention to the absence of any cases of non-compliance with this Convention on the list of cases to be examined.

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## **Working methods of the Committee**

16. During the first part of the general discussion, the Committee turned its attention to discussing its methods of work based on a document submitted by the Office on the working methods of the Committee on the Application of Standards.<sup>6</sup> At the request of the Committee in 2002, the document was prepared based on informal consultations with all groups.
17. With reference to the working methods document, the Employer members noted that whatever outcome would be decided from the discussion, the working methods of the Committee would have to continue to be examined. The revision of the working methods was a permanent process of improvement. However, the Employer members agreed that no amendment of the Standing Orders would be necessary.
18. The Employer members appreciated the financial constraints on the Office, but could not endorse the elimination of the published minutes for the general discussion. The Committee had a special function and decisions and conclusions could only be made on the basis of a written record, not just verbal discussions.
19. On the subject of the general discussion (paragraphs 8 and 9) the Employer members did not believe it possible to significantly reduce the general discussion of the report during the Conference Committee, as long as the Committee of Experts addressed a number of general questions in the general part of their report. The Conference Committee needed to have the possibility of discussing subjects raised in a general manner in the General Report, such as the contents of standards, and the ratification and the application of standards. Examples of the possibilities for shortening the general discussion included that representatives of member States could report in writing on what they had done with regard to international labour standards and on the good intentions they had for the future. The proposal to limit speaking time in paragraph 9 did not appear useful as long as the total duration of the discussion and/or the number of speakers was not reduced. It was already possible to reduce the speaking time to five minutes under article 62(4) of the Standing Orders of the Conference, as had often been the practice. A shortening of the opening statements alone would have no impact without these measures. The reduction of the speaking time for the opening statements was unacceptable because it would constitute a violation of the principle of tripartism of the ILO. An indispensable and integral element of tripartism was the autonomy of the groups, as provided for by article 70 of the Standing Orders. The groups should be able to determine how to use their own time without external influence. Thus, the Employer members would not agree to a limitation of the time for the opening statements in the general discussion. Moreover, there were doubts whether this shortening would lead to more time for the discussion of individual cases as government representatives were hesitant to sign up for their individual cases, early in the second week. They recalled that the Employer members had used less speaking time in comparison to the other groups this year, as was the case in previous years.
20. With regard to paragraph 10 of the document, the Employer members noted that a proposed entire day for the discussion of the General Survey was unrealistic and they did not find the suggestions for this realistic or convincing. With regard to paragraph 11 of the document, the suggestion that automatic cases be dealt with in the first week depended on an extreme shortening of the general discussion, which was not realistic. Regarding the suggestion in paragraph 12 to highlight automatic cases in which problems were persistent, this was already possible and did not need further comment.

<sup>6</sup> Working methods of the Committee on the Application of Standards, ILC, 2003, C. App./D.1.

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- 21.** In the Employer members' view, the indications in paragraphs 13-15 of the document on the establishment of the list of individual cases reflected current practice, which was not fully satisfactory. The selection of cases was based on certain plausible criteria but was not an exact science. According to the criteria listed in paragraph 17, many different lists would be possible. Improvements should seek to eliminate the impression of arbitrariness. It was important to consider whether a case had already been discussed (the fourth point under paragraph 17), but such previous discussions could be used for or against inclusion in the list. Governments should not be called upon repeatedly to appear before the Committee unless there was a compelling reason in each instance. Paragraph 18 appeared to refer to temporary restrictions on speaking times. Mention should also have been made of limitations of Saturday discussions to 1 p.m.
  - 22.** The Employer members supported the suggestions, in paragraphs 20 and 21 of the document, concerning the Chairperson of the Committee. It was clear that the Chairperson would have to be competent. The Employer members hoped that governments would continue to respect these criteria in the future. In conclusion, the Employer members hoped that an examination of its working methods would become a permanent task of the Committee.
  - 23.** Referring to paragraph 4 of the document on working methods, the Worker members found it deplorable that the budgetary situation no longer permitted the publication of the minutes of the general discussion and the discussion on the General Survey. The absence of these minutes could have repercussions for the length of the discussion devoted to the adoption of the report of this Committee and they asked that the provisional notes utilized for the preparation of the final report be put at their disposal. Further, the proposal in paragraph 9, which aimed at balancing the speaking time of the different groups, should be reformulated. Moreover, the Worker members did not wish to underestimate the importance of the discussion on the general report.
  - 24.** On individual cases, the Worker members found the proposal in paragraphs 13 and 14 of the document to be reasonable. It aimed at adopting a list of cases as early as possible to be reasonable, taking into account the fact that certain indications such as the footnotes in the Committee of Experts' report or the special paragraphs in the previous year's Conference report allowed States to prepare in advance. While the criteria serving as a basis for the determination of the list of individual cases could be improved, they certainly permitted some objectivity in the selection of cases. However, they found that the formulation of the last point in paragraph 17 in the elements of proposed criteria referring to the likelihood of "tangible impact" of the discussion of an individual case not appropriate, in that a problem could occur in trying to define the notion of tangible impact.
  - 25.** As regards paragraph 19 of the document, the question was raised whether it was really necessary to specify all the elements to be taken into account in the drafting of the conclusions. Conclusions should be clear and as short as possible. On paragraph 21 of the document, referring to the continuity of the chairperson of the Committee, the Worker members concluded that even if this continuity had certain advantages, care should be taken with regard to the formulation utilized in this paragraph.
  - 26.** The Government member of Argentina, speaking on behalf of the Latin American and Caribbean Group (GRULAC), referred to the principle that the Committee should always reflect its independent, objective and impartial character in the fulfilment of its mandate, and reiterated that the revision of the working methods of the Committee should be guided by the fundamental principles of transparency, impartiality and predictability, especially in relation to the individual cases. He insisted that any change in the working methods of the Committee or in its established practice should have the objective of generating confidence



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among the tripartite partners and making its functioning more efficient. In relation to the information session (paragraph 5), the speaker agreed on its usefulness at the beginning of the Committee's sessions. However, it was not enough to provide information on how the Committee works. This Committee should give objective and precise criteria in order to facilitate the discussion concerning the programme of work. With respect to the agenda (paragraph 7), the speaker considered that the automatic cases should be examined in the first week, because governments knew in advance that they would be called before the Committee. He added that interventions by regional government groups should be accorded more time.

- 27.** Concerning the list of individual cases (paragraphs 13-15), it should not lend itself to negotiations with governments which might be included on the list, but it should involve the Chairperson of the Committee, in his or her capacity as representative of the Government group to ensure the objective, impartial and transparent application of the criteria which would be determined. With respect to paragraphs 16 and 17 of the working methods document, GRULAC considered it necessary to establish specific selection criteria to ensure predictability, impartiality and transparency. He stated that the Committee would attain its objectives more easily if, under a system of criteria previously agreed upon, it succeeded in diminishing the defensive attitude which countries included on the list felt. A consideration of the balance between regions, combined with a selection of fundamental and technical Conventions, and in respect to the urgency and gravity of the individual cases, could serve as points of departure to draw up selection criteria. Noting the selection criteria elements in paragraph 17, he stressed that elements should not be taken into account that contradicted or were not reflected in the report of the Committee of Experts. In relation to the adoption of the conclusions (paragraph 19), they should clearly reflect in each case the tripartite discussion in the Committee and not be a mere repetition of the Committee of Experts' observations. With a view to easing the adoption of conclusions, the Chairperson could consult the Reporter and the Vice-Chairpersons of the Committee, before proposing the conclusions. With regard to the Chairperson (paragraph 20), the speaker stated that, although the role of the Chairperson was crucial for the functioning of the Committee, and that he or she should moreover possess the necessary skills, experience and legal knowledge, he felt that an indefinite re-election of the same Chairperson was not desirable, as this was contrary to the principle of the geographic rotation of positions in multilateral bodies. He added that perhaps an informal arrangement could be made so that the Reporter of the Committee would occupy the post of the Chairperson of the Committee in the following session. The speaker announced that GRULAC agreed with the election of the Reporter at the beginning of the Committee session (paragraph 22). Finally, the speaker indicated that GRULAC hoped that an agreement to continue the debate on the revision of the working methods could be reached. This should be done in consultation with the Office, in a manner similar to the consultations which took place in February and March 2003.
- 28.** The Government member of Cuba endorsed the statement of GRULAC on the working methods of the Committee. She considered that governments should not be indifferent when it comes to the selection of individual cases. Transparent selection criteria consistent with fundamental principles and rights at work should be established in such a way as to be evaluated without hypocrisy using a balanced approach and impartial objectives. Freedom of association should not dominate the cases selected, and she urged the Committee to follow up more rigorously on Conventions related to the efforts of the Organization to alleviate poverty, such as those related to employment policies and social security issues. These subjects should be treated more often in the work of the Committee.
- 29.** The Government member of the United States, on behalf of the Industrialized Market Economy Countries (IMEC) group, thanked the Office for the document which

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synthesized the many suggestions that had been made to increase the efficiency, transparency and objectivity of the Committee's work. IMEC viewed the present exercise as a key element in the Organization's ongoing efforts to reinforce the integrity of its entire system of standards-related activities. It was encouraging though not surprising, that the informal consultations held during the year did not reveal any major problems in the current working methods, but considered adjustments could be made that would further improve the functioning of this important Committee.

- 30.** IMEC welcomed a number of administrative changes that had already taken place. They also welcomed the early election of the Committee's Reporter this year, but felt that further consultations were warranted with regard to the structure and timing of the general discussion and the selection and discussion of cases. Further reflection and some experimentation would be preferable to a rush to create new rules that might prove arbitrary or inhibit the atmosphere of dialogue that was the hallmark of this Committee. That said, IMEC considered that: the Committee's general discussion should be focused on emerging issues of high importance and all interventions should be brief and to the point; the automatic cases should be considered in the first week; it was important to establish fair and transparent criteria for selecting individual country cases; the list of cases should be balanced in terms of both countries and Conventions and should be adopted as early as possible; the Office should invite governments on the list to be briefed on Committee procedures; an experienced Chair was critical to the Committee's work; and the Chair should have adequate time to reflect on the Committee's conclusions in each case. The Office also had a role in the success of the supervisory system, and IMEC also looked forward to receiving information on steps the Office was taking to review its own procedures and methods of work. IMEC was committed to fully participate in the continuing dialogue toward that goal.
- 31.** A number of Government members (Belgium, Canada, Germany, Italy, Japan, Portugal, and the Government member of Norway, speaking on behalf of the five Nordic Government members of Denmark, Finland, Iceland, Norway and Sweden), supported the statement of IMEC concerning the working methods of the Committee. The Government member of Norway, speaking on behalf of the Nordic Government members, noted with great interest that the Conference Committee and the Committee of Experts had agreed on a number of significant changes relating to their working methods with a view to promoting the visibility and influence of their work. They emphasized that the IMEC group in the Governing Body had examined suggestions aimed at improving the functioning of the International Labour Conference, including methods to improve more effective supervision of standards. Some of these changes are included in the document on working methods. The Government member of Canada further welcomed the proposed changes and encouraged continued discussion on further improvements to the working methods of this important Committee. The Government member of Germany observed that the report of the Committee of Experts continued to grow in size, but said that this was not due to the general part of the report, which remained more or less constant in length. Therefore there was no reason not to continue thinking about reducing the time devoted to the discussion of the general report.
- 32.** The Government member of Japan believed that attention should be paid to the position of the supervisory mechanism in the ILO's activities. Securing transparency and impartiality of the Committee was the least that should be done in order to ensure the reliability of the supervisory mechanism. He emphasized the following points: making explicit criteria and methods for selection of individual cases clearly defined beforehand; neutrality in selection of the case to be examined; prompt establishment of the list of individual cases for examination, and prompt establishment of the list, time limits and efficiency should be required in the examination of individual cases. He believed that governments should be

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allowed to become substantially engaged in the selection process given the tripartite nature of the Organization. Due consideration should be given to achieving a regional balance in the selection of countries and types of Conventions for examination.

- 33.** The Government member of the United Arab Emirates, speaking on behalf of the Gulf Cooperation Council, welcomed the review of the working methods of the Conference Committee. He agreed that a method should be established in order to strike a balance in the participation of the social partners by offering an opportunity for governments to be consulted on the agenda of the Conference Committee and to reach an agreed formula on certain issues. With regard to individual cases, it was important to lay down clear and specific criteria for the selection of cases and for the submission of a list of cases, either at the beginning of the work of the Committee or on the second day. This would allow governments to prepare their answers in due time and enable them to take measures to have their names withdrawn from the list of individual cases. Moreover, the presence of standards specialists in the meetings of the Committee was very important so that countries could benefit from their experience.
- 34.** The Government member of Saudi Arabia hoped that the Committee would formulate specific and clear criteria for the selection of individual cases and proposed that the list be announced on the second day of the meeting of the Conference Committee. The Government member of Egypt expressed agreement with the Government member of the United States that the Committee should be objective when discussing individual cases. The role of the Chairperson of the Conference Committee was very important in this respect and members from various regions of the world should be elected to this post. The Government member of Namibia referring to paragraph 8 of the document supported the shortening of the first part of the general discussion and extending the discussion on the General Survey. Referring to paragraph 13, he supported the Chairperson being involved in the compilation of the list of individual cases in order to promote objectivity.
- 35.** With regard to the criteria for the selection of individual cases, the Worker member of Venezuela emphasized the importance of balance in the types of Conventions, geographical distribution and other criteria that would ensure that the discussion of the cases had a tangible effect. The Worker member of the Netherlands expressed surprise at some strange elements in the document concerning the Committee's working methods. Some criteria for the selection of individual cases were missing from the report. One of them concerned cases that the Worker members mentioned on the occasion of the adoption of the list of cases, with an indication that they wished, in principle, to discuss them in the coming year. The Worker member of Colombia indicated that in the compilation of the list of individual cases it was necessary to avoid the exclusion of certain countries which should have been on the list in view of their special situation and the Conventions violated, such as the case of Japan and Convention No. 29.
- 36.** The Chairperson provided a general summary of the discussion which had taken place on the working methods. He stated that some changes would come into effect this year. While these were small, they were productive and could pave the way for future reform. The information session, which had taken place on the first day, was the subject of many positive comments, and it was considered very useful for both new and experienced members of the Committee. Noting that many members of the Committee lamented the absence of published minutes during the discussions of the General Report and the General Survey, he stressed that this was a practice adopted by other Committees and which had been adopted for administrative and financial reasons. Referring to the agenda of the Committee, there appeared to be agreement that there would be a special sitting on the first Saturday which would examine a particular case, not in order to perpetuate a case eternally, but to highlight a case of particular seriousness or of exceptional progress. On

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the other hand, the use of the second Saturday depended on how the work of the Committee advanced. With regard to the selection of the list of individual cases, the Chairperson noted that this was a subject that generated much controversy. While many wanted the list to be adopted on the first or second day, this would be difficult to ensure. He noted the timing this year in which the Committee had succeeded in publishing the list on the first Thursday at 11 a.m. Referring to the possible role governments could play in the selection of individual cases, he noted that while there had been numerous views expressed, further discussion would be required based on more concrete proposals. There was a consensus that the selection of cases should be done with objectivity and transparency, and with a view to a balance. In relation to the adoption of conclusions, the Chairperson stated that a greater effort would be made to ensure that the conclusions were objective and technical, not political. On the election of the Chairperson, there was agreement to rotate the position with due consideration given to geographical regions, which had occurred this year. With regard to the election of the Reporter, this year a very necessary change had been made so that the Reporter could be elected at the beginning of the Committee's work. As concerned the placement on the agenda of the automatic cases, he suggested that they be examined on the first Friday. He indicated that concern had been expressed that such a scheduling would depend on the subject of the General Survey, which he noted would be the Employment Policy Convention, 1964 (No. 122), and related instruments next year. He invited the opinions of the Committee members regarding the possibility of examining the automatic cases during the first week and suggested that they also submit their suggestions in written form to the Office.

- 37.** The Government member of Guatemala stated that, in relation to the document on working methods, it was necessary to consider continuing informal consultations on the review of the working methods of the Conference Committee, or to constitute a working group to formulate recommendations. There were questions that required further debate, such as, for example, the selection criteria for cases and the adoption of conclusions. She asked for clarification on the manner in which the review of the working methods would be continued, so as to optimize the work of the Committee. The Government member of Mexico emphasized the necessity of making it clear that the review of working methods would continue at the next Conference on the basis of a new document. She stressed the usefulness of delivering this document well in advance so that it could be studied, as had been done with the present document. In this regard, she recalled that the present document was the result of informal consultations carried out by the Office, and that they had proved to be very useful.<sup>7</sup>
- 38.** Replying to the Chairperson's invitation for views on the automatic cases, the Worker members replied that it seemed possible to examine the automatic cases in the first week. With regard to the repercussions resulting from financial restrictions, they recalled that they had already reacted negatively on this subject. Finally, with regard to the status of the document, the Worker members understood that this document constituted a first step and that decisions would be taken at the next Conference on the basis of a new document that would take into account the discussions that had taken place during this session of the Committee.
- 39.** The Employer members stated that the document contained a number of suggestions and alternative possibilities and no real points for decision, and that the discussion of the working methods had revealed a number of differing positions. Conclusions at this point were therefore not possible and the discussion would have to be continued. In reply to the

<sup>7</sup> See the reply of the representative of the Secretary-General, para. 165 of the report and the statement of the Chairperson of the Committee, para. 40 of the report.

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question on automatic cases, they did not think it would be possible to address automatic cases on the Friday of the first week next year given that the subject of the General Survey might require a long debate. In any event, the Committee could not prescribe the agenda of the next session.

40. The Chairperson of the Committee stated that the Committee as a whole had to decide on how to proceed with the discussions on the methods of work. He added that the Committee was open to this type of discussion, which should not be held in a hasty manner; it was important to have an open debate. Members could prepare suggestions for the Conference session in 2004 at which a new working document would be available. He concluded by assuring the Committee that the discussion would continue at the next session.

## **B. General questions relating to international labour standards**

### ***General aspects of the supervisory procedures***

41. The Committee noted the information presented by the representative of the Secretary-General concerning the mandate of the Committee and its methods of work, and information on ratifications and denunciations, reporting, cases of progress, standards policy, constitutional and other procedures, special procedures for freedom of association, the Global Report on equality and the promotion of standards and technical assistance. The number of ratifications registered was 7,133 as of 31 May 2003, which constituted 133 new ratifications since this time last year. He pointed out that 91 member States have ratified all eight of the fundamental Conventions and only six States have ratified one or two of these Conventions. He announced that the Safety and Health in Agriculture Convention, 2001 (No. 184), would enter into force on 20 September 2003. He provided specific information on the abovementioned technical points including the indication that the Committee of Experts had identified 30 cases of progress in 24 countries in national law and practice following its previous comments. Further, the representative of the Secretary-General stressed the importance of the work of this Committee in this period of rapid and profound global changes. In his view, this Committee establishes the essential link between law and politics, international standards and national legislation, political responsibilities and social dialogue, universalism and particularities. It is at the heart of international labour law and its work is essential.
42. The Committee welcomed Ms. Robyn Layton, Chairperson of the Committee of Experts. She pointed to the increasing workload of the Committee of Experts and the difficulties posed to its efficient functioning by the late reporting of Governments. Referring to the General Report, she highlighted the sections marking the anniversary of the Social Security (Minimum Standards) Convention, 1952 (No. 102), discussing the application of the Employment Policy Convention, 1964 (No. 122), and indicating the ratification levels of the Tripartite Consultation Convention, 1976 (No. 144). She pointed out the five countries that the Committee of Experts had specifically requested in footnotes to supply full particulars to the Conference Committee this year.
43. With respect to the General Survey on Protection of Wages, the Chairperson pointed to a number of issues addressed, including the current forms of payments such as electronic bank transfers; the scope of privileged protection of wages in the case of an insolvent employer; the importance of independent guarantee institutions and the effect of the Protection of Workers' Claims (Employer's Insolvency) Convention, 1992 (No. 173); and the trend at national level towards adopting specific standards reflecting the principles contained in Convention No. 173.

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44. She described the formal process the Committee of Experts now had begun to review its work and its working practices, including a subcommittee on working methods. In its last session, the subcommittee had produced a significant document, which had been discussed in detail by the plenary. It agreed to adopt 17 recommendations covering both matters of substance and procedure. While the recommendations remained internal to the Committee, she outlined the topics covered, which included: the ongoing need for the subcommittee to continue its work; the preparation of a manual on practices and procedures of the Committee; the acknowledgement and endorsement of term limits for members; the need for a better gender balance in the composition of the Committee; the need to have an agreed limit on the mandate of the Chairperson; improvements in work flow; how to strengthen and build on the expertise of members of the Committee and secretariat so as to further improve the quality of work; and improvements in the presentation of the report. The aim of this endeavour was to reach accord on specifically articulated recommendations that could be implemented and to view any recommended changes as being within a process of evaluation and continuing adaptation. The Committee also reflected on ways to enhance the cooperation between the two Committees. She welcomed any comments the Conference Committee might have to make to the Committee of Experts, noting that such information would undoubtedly enhance their own discussions.
45. The Employer members and the Worker members as well as the majority of Government members welcomed the presence of the Chairperson of the Committee of Experts in the general discussion of the Conference Committee.
46. A number of speakers (the Worker members, the Government members of Germany, Kenya, Namibia, Syrian Arab Republic, Tunisia, the Government member of the United Arab Emirates, on behalf of the Gulf Cooperation Council, and the Worker members of Luxembourg, Senegal and Turkey) also noted the excellent quality of the work and report of the Committee of Experts and the independence, impartiality and objectivity with which it continued to discharge its duties.
47. The Employer members noted that the report of the Committee of Experts had increased in volume over the past years. They hoped it would not continue to grow as the size and scope of the report had consequences. It was understandable that new ratifications created more reports to examine. Nevertheless, there were possibilities for reducing the individual comments. Detailed comments concerning allegations to which countries had not had an opportunity to respond seemed unnecessary, even problematic as they could create negative attitudes. In cases where governments did not reply to comments, alternatives to reproducing the comments in full could be examined. For example, the report could simply cite the publication in which the previous comment appeared or summarize the key points in the comment.
48. Significant possibilities for reducing the general part of the report of the Committee of Experts also existed. The Employer members questioned the necessity of including all the points discussed. They believed that over half of the General Report was dedicated to subjects outside the Committee of Experts' direct mandate and subjects under the Committee's mandate only began at paragraph 83. While such matters as new ratifications, denunciations, representations and complaints, decisions of the Governing Body concerning international labour standards, and the cooperation of the International Labour Office with other international organizations might be interesting to note, these matters did not concern the Committee of Experts directly according to its mandate. In paragraphs 70-82, the Committee of Experts reported on the activities of the International Labour Office in various bodies. These indications were traditionally included in the report, but could be more appropriately produced in an Office report. The Employer members also noted that the Committee of Experts made general comments on

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Conventions Nos. 102, 122 and 144, and similar comments that were hidden before the observations on individual Conventions. It was not clear to them why the Committee of Experts always examined these Conventions and not others.

- 49.** They also questioned whether the Committee of Experts had the mandate to make comments in areas regarding the classification of Conventions as fundamental, priority or otherwise, especially in cases where such comments might be understood as contradicting the classification of the Governing Body; and in the encouragement of member States to ratify certain Conventions. Member States were fully free to decide whether or not to ratify a Convention and even the Governing Body did not formulate such direct encouragement. The Employer members therefore recommended that the Committee of Experts review such practices in the light of its mandate.
- 50.** With respect to the Committee of Experts indication that they were interested in conducting missions in the field “with a view to promoting the visibility and influence of the Committee”, the Employer members queried whether such activity would be compatible with the Committee’s independence, impartiality and objectivity. The influence of the Committee of Experts originated in its institutional authority and the execution of its mandate, so they questioned whether it really needed to engage in marketing itself. If the Committee of Experts wished to do so, the question arose as to whether or not it was seeking to change its mandate.
- 51.** It was the Employer members’ view that the changes in the working methods of the Committee of Experts, as described in paragraph 8 of the report, appeared to be an announcement of intentions. However, they noted that the statement of the Chairperson of the Committee of Experts provided further details in this regard. They hoped that these changes would be positive, as had been other reforms that had been initiated in recent years at the ILO.
- 52.** With respect to standard setting, it was recalled by the Employer members that a new approach had been adopted which included, as a first step, a critical review of older standards. Future standard setting would only seek to establish standards that addressed important, basic problems of a general interest. Such standards should be flexible and not full of technical details. An indicator of the viability of a standard was a wide consensus at its adoption and whether or not the standard favoured the creation of employment. It was to be seen whether the new approach would lead to better standard setting in the future.
- 53.** The rules governing the entry into force and the denunciation of Conventions needed to be reviewed. Conventions currently entered into force after two ratifications, a rule dating from a time when the ILO was a smaller Organization. The result was that Conventions which entered into force were ratified by only a small number of member States, making it impossible to speak of the universality of standards in such cases. Current practice in international law appeared to require more ratifications for an instrument to enter into force: for example, the Statute of the International Criminal Court required acceptance by 60 States, and the recent WHO Framework Convention on Tobacco required 40 ratifications to enter into force. The methods for denouncing Conventions needed to be revised as well.
- 54.** With regard to the ratification campaign for the eight fundamental Conventions, it can be questioned whether it has been a great success. According to the experts’ report, the Employer members noted that just under half of all member States had ratified all eight Conventions. They noted the positive trend in the ratification of Convention No. 182.

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- 55.** The Employer members thought that the supervisory system could also be improved. They welcomed the new reporting cycle and the revised report forms, which would make the reporting requirements for member States easier to fulfil. In their view, it was better not to have too many questions. The mandate of the Committee of Experts and the Conference Committee did not require significant changes, but both Committees needed to observe their mandate closely and respect it. They stressed that the footnotes, traditionally used as criteria to select cases for discussion, should not increase in number in order to maintain their usefulness in selecting cases for individual discussion. The Committee should, as much as possible, maintain its freedom to select cases. However, where the Committee of Experts made a footnote, it would be useful if a short explanatory commentary on the reasons for the footnote could be added to increase the transparency and clarity of these footnotes.
- 56.** Pointing to the number of cases under articles 24 and 26 of the Constitution, the Employer members supported a review of the use of constitutional procedures as it appeared these procedures were being used to settle domestic disputes at the international level.
- 57.** Finally, the Employer members noted that the layout of the Committee of Experts' report had significantly changed and become more attractive. They wished to see the Conference Committee report presented in a more attractive manner as well.
- 58.** With respect to the working methods of the Committee of Experts, the increased collaboration between the Committee of Experts and the Conference Committee was welcomed by the Worker members. Despite their different roles, these two Committees sought the same objective. The positions and experiences of those confronted with the reality in the field completed the legal, technical and impartial analysis by the Committee of Experts. The complementarities between these two Committees were one reason for the success of the supervisory system of the ILO. They congratulated the Committee of Experts for its important role in developing the supervisory system on the application of standards. While the reports of neither the Committee of Experts nor this Committee would ever be bestsellers, it should be acknowledged that the report of the Committee of Experts had become more accessible and more readable; new changes to the presentation of the report should be applauded.
- 59.** Referring to the request for suggestions by the Chairperson of the Committee of Experts, the Worker members indicated that they would reflect on this and submit proposals. However they wished to underline once more the large amount of work carried out by the Committee over many years. With respect to the volume of the report and the length of the general debate, the only important matter was that the discussions were rich in substance. There was a consensus on the effectiveness and the value added of the supervisory system of the ILO, and it would be desirable for the contact between the Committee of Experts and the Committee on the Application of Standards to be stepped up even more.
- 60.** The Worker members noted the Governing Body's approval of a new arrangement for the grouping of Conventions for purposes of reporting. They looked forward to the findings of a Governing Body review of this arrangement scheduled to be undertaken after five years.
- 61.** The Worker members called for increased resources to be made available to the Committee of Experts. This would allow for the filling of all the posts in the Committee of Experts, ensuring that its composition reflects all legal cultures, and enlarging its mission to carry out comparative studies on so-called fundamental standards developed within other international organizations. The Worker members considered that the ILO should do more to integrate fundamental labour standards in the rules and provisions of other international organizations. It should ensure coherence rather than competition with these organizations,



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and ensure the “one and indivisible” character of fundamental standards by refusing all selectivity. This meant not only abolishing the worst forms of child labour, but all forms, or not only ensuring freedom of association but all trade unions rights as well as the right to collective bargaining and consultation.

- 62.** The Worker members observed a significant increase in the number of ratifications of fundamental Conventions. However, there was still a need to pursue the ratification campaign on these Conventions as a follow-up to the adoption of the Declaration on Fundamental Principles and Rights at Work in order to achieve the objective of universal ratification. They also emphasized that the significant increase in the number of ratifications of fundamental Conventions should not lead member States to consider that other Conventions were of less importance and they urged member States to ratify other priority and technical Conventions.
- 63.** As regards the importance of the application of Conventions, the Worker members indicated that to generate any impact, instruments adopted at the Conference should first of all be submitted to the competent national authorities and governments should be urged to meet this obligation. The second stage was ratification of the Conventions and their application in national law and practice. It was, however, questionable whether the increase in the number of ratifications translated into any concrete improvements for the workers. The complaints and representations received by the Organization proved that ratification was not synonymous with application. The practical application of instruments required a political will on the part of governments and the competent authorities.
- 64.** While this Committee had already discussed the future of standard setting, these discussions had not yet resulted in a consensus with the Employers. Last year, the ILO’s “integrated approach” towards standard setting had been presented to this Committee and such an approach could in principle create a new dynamic leading to new standards-related programmes. The first discussion in the context of the integrated approach was taking place this year on safety and health and it will be followed with interest. However, it was the Worker members’ view that the “integrated approach” should in no way weaken the standards-setting system. The traditional system of the adoption of Conventions completed by a supervisory system on their application was essential. The supervisory mechanism with its different stages remained vital to ensuring the application of Conventions and the decisive role of the Committee on the Application of Standards in this regard should be reaffirmed.
- 65.** The Worker members believed that the “integrated approach” seemed to be in line with a new and persistent trend in social law – both at national and international levels – which intended to abandon legal and contractual instruments in favour of non-binding instruments such as Recommendations, covenants and formal declarations. In order to counter this development, with which they disagreed, they made certain suggestions concerning the report of the Committee of Experts. More space and visibility should be given to cases of progress and to countries that received positive comments. One whole chapter could describe in more detail the progress achieved in law and practice, and this could constitute a showcase demonstrating the usefulness and vitality of Conventions and the work of the Committee of Experts and this Committee. This chapter could also contain a listing of the countries that were either violating or had shortcomings with regard to international labour standards. This approach could reinforce – instead of weaken – the impact and the weight of these two Committees.
- 66.** The Worker members highlighted the role of the International Labour Standards Department and, in particular, the valuable and high-quality work carried out by the officials of this Department in preparing the work of this Committee (research, studies,

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briefings and other minutes). They indicated that further decline in the financial means at the disposal of the Department was therefore deplorable. It was therefore hoped that there would be a re-evaluation of the financial situation so that the Department could carry out its essential tasks, notably, on the one hand, the supervision of the application of Conventions and Recommendations – a task that should include the mainstreaming of standards in development projects of other departments – and, on the other hand, the provision of technical assistance. The Department also did not have the means or time required to respond to all the demands made on it for technical cooperation.

- 67.** A number of speakers (the Government member of Italy, the Government member of the United States, speaking on behalf of IMEC, and the Worker member of Senegal) congratulated the Committee of Experts for setting up a subcommittee to improve its work and working methods.
- 68.** The Government member of the United States, speaking on behalf of IMEC, noted that the quality of the report of the Committee of Experts had a direct impact on the quality of the Conference Committee's work. Noting that the Committee of Experts were continuing the review of their working methods, they looked forward to receiving further details on the improvements they planned to make. The Government member of Norway, speaking on behalf of the five Nordic Government members, supported this statement and welcomed that one of the aims of the Committee of Experts was to implement further changes in their report in order to make it more accessible to those who read it.
- 69.** The Government member of Italy fully supported the proposals of the Committee of Experts, as indicated in paragraph 8 of its report. These complementarities between the committees were essential for the correct functioning of the supervisory mechanism. He expressed his support for the new cycle of reporting adopted by the Governing Body, and hoped that this would lighten the workload of the Office and the constituents. However, he believed that a reduction in the volume of work, in particular that of governments, would require a revision of the whole system, taking into account the interrelation of the functions of various ILO bodies so as to avoid a duplication of work.
- 70.** Also concerned about the workload, the Government members of Germany and Lebanon raised the question of the increasing number of cases and the ability of the supervisory system to handle them. The Government of Lebanon called for the issue to be examined by the Governing Body in the framework of improvements to the ILO's standards-related activities. This examination should take into account changes due to the new reporting cycle. She also wondered whether it was not time to consider increasing the number of experts on the Committee, as well as how diversity could be further achieved in its composition. The Government member of Germany also raised the question of whether, in view of its limited staff resources, the International Labour Standards Department would be able to handle the increased workload if more reports were submitted on time. He also wondered whether the Committee of Experts would be obliged to defer the examination of reports to later sessions.
- 71.** Other suggestions to reduce the size of the report came from the Government member of Mexico, who suggested that information supplied in the March session of the Governing Body, which took place after the meeting of the Committee of Experts, could be used in the Committee to update or replace paragraph 29 of the report (referring to representations). It was necessary to avoid inaccuracies and duplication in the report. She also felt it was necessary to draw a distinction between the supervisory machinery established by articles 19 and 22 of the Constitution, and the other mechanisms of the Governing Body such as representations under article 24 of the Constitution.

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72. The Worker member of Turkey emphasized that it was for governments and employers to make the Committee of Experts' report thinner by bringing national law and practice into conformity with ratified Conventions, which would facilitate the work of the Committee.
73. With respect to the use of footnotes, the Worker member of Senegal noted that the Committee of Experts included very few footnotes in its report concerning the application of fundamental Conventions, and that most footnotes concerned technical Conventions. Given the guiding role that footnotes played in the selection of individual cases, he hoped that in future different types of Conventions should be treated equally with regard to footnotes. The Worker member of the Netherlands raised concern over the reference in wording in the comment on the application of the Forced Labour Convention, 1930 (No. 29), by Japan, with reference to last year's report of the Conference Committee, as well as in this year's report of the Committee of Experts. When the list of cases had been adopted the previous year, the Worker members had indicated that they wanted to discuss the case this year. On the occasion of the adoption of the report of the Conference Committee, the Japanese Government had made a statement that there was no agreement among the three parties of Japan to revisit this case next year. With that in mind, he was astonished and alarmed to read in this year's report of the Committee of Experts, on two occasions, that the Conference Committee might wish to consider whether to examine the matter on a tripartite basis. This indication appeared confusing, since the Conference Committee was by its very nature tripartite. The only reasonable explanation that he could find for this recommendation was that it was considered desirable to discuss the case only if there was full tripartite agreement in the Conference Committee that it should be examined, which would require the assent of the Japanese Government. If this was the correct interpretation, it was a very slippery slope for if the Government's consent was required in this particular case, as the same approach could be applied in all other cases, which would completely undermine the system for dealing with individual cases. The Conference Committee was entitled to a very clear and categorical answer on this point by the secretariat.<sup>8</sup>
74. With respect to the composition of the Committee of Experts, the Government member of the Syrian Arab Republic noted that it should encompass representatives from all regions, including the Arab region. In the view of the Worker member of Egypt the membership of the Committee should be increased, particularly to achieve a better geographical representation and cultural diversity. He thought the composition of the Committee of Experts could be enhanced by increased membership of experts from developing countries, especially the African continent and Arab Muslim countries, from the latter of which only one expert had been appointed.
75. A certain number of Government members (Italy, Kenya, Portugal) welcomed the results of the ratification campaign on the fundamental Conventions. The Government member of Italy expressed his satisfaction that the number of ratifications of the Conventions regarding the worst forms of child labour and minimum age had also increased. The Government member of Kenya urged the ILO to continue with the current campaign, and at the same time intensify efforts to promote the ratification and application in practice of all international labour standards in order to achieve the Decent Work Agenda. The Government member of Portugal agreed that it was necessary to promote the application of fundamental rights, as well as to initiate ratification campaigns for the priority Conventions and those which were essential for the achievement of decent work (those relating to wages, hours of work, safety and hygiene and social security).

<sup>8</sup> See reply of the representative of the Secretary-General, para. 165 of the report.

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- 76.** The Government member of the United Arab Emirates, speaking on behalf of the Gulf Cooperation Council, noted the increase in ratifications of the eight fundamental Conventions in the Council countries following the adoption of the Declaration on Fundamental Principles and Rights at Work. All of these countries had ratified more than four fundamental Conventions, and several had ratified six. Even when they had not ratified them they applied the principles of the fundamental Conventions in law and practice.
- 77.** A number of Worker members applauded the success of the ratification campaign on fundamental Conventions and urged its continuation. The Worker member of Luxemburg regretted, however, that almost one-third of the total number of member States had not yet responded to the call for ratification, and therefore had not taken up their responsibilities and obligations resulting from their membership. The Worker member of Colombia lamented the overall ratification rate represented little more than 25 per cent. The Worker member from Pakistan urged countries that were undergoing major industrialization but had not yet ratified Conventions Nos. 87 and 98 to do so. The Worker member of Kenya emphasized the importance of the right of freedom of association and regretted that his country had not ratified Convention No. 87.
- 78.** Several speakers (Government member of Italy and the Worker member of Uruguay) underlined that while ratification was important, the lack of application of many Conventions was also worrisome. The Government member of Italy drew particular attention to the lack of application of the freedom of association and collective bargaining Conventions, as was shown in the more than 60 cases treated by the Committee on freedom of association this year. The Government member of Tunisia emphasized the importance of application following ratification.
- 79.** The Worker member of Uruguay emphasized the clear contradiction between the ratification of Conventions and their application by governments through policies, which in practice overlooked the fundamental human rights that they had undertaken to promote and respect. With every passing day it was becoming even more necessary to establish more effective mechanisms of control and supervision. In short, even though a larger number of ratifications had been achieved, the living conditions of the world's population were constantly deteriorating. Many human beings were excluded from birth from the possibility of having access to decent work. It would only be possible to speak of success when reality was in conformity with the Conventions.
- 80.** Several speakers affirmed that fundamental workers' rights were basic human rights. The Government member of Tunisia emphasized the importance of ILO standards-related activities for the protection and promotion of human rights at work and the role played by the ILO in establishing a balance in the regulation of industrial relations. This was an important role, especially since the economic and social dimensions of integrated and sustainable development went hand in hand. The Government member of Kenya emphasized the human rights dimension of fundamental workers' rights and he encouraged the Office to involve other United Nations agencies in the supervisory machinery.
- 81.** Referring to collaboration with other international bodies in relation to human rights instruments, paragraph 38 of the report, the Government member of Belgium appreciated the information. He would like to see more explicit information on how closer cooperation is assured between the ILO and various bodies and committees of the United Nations. The Committee of Experts should therefore examine this question.
- 82.** The Worker member of Egypt also welcomed efforts to promote cooperation and information sharing on human rights with other United Nations system organizations and

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hoped that such collaboration would help to promote international labour standards. However, he emphasized that the supervision of fundamental labour standards was the responsibility of the ILO and cooperation with other organizations should therefore be for promotional purposes only. It was not for other organizations to make observations on the application of international labour standards. The Government member of the Libyan Arab Jamahiriya stated that the ILO's supervisory machinery should not run the risk of being taken over by international organizations, which were not competent in the field of labour. The Government member of Mexico stated that it was also necessary to assess the value of transmitting the reports received on certain Conventions to other bodies of the United Nations system. The Committee of Experts could report on the advantages and opportunities of this dialogue. With regard to submitting written reports to the United Nations concerning human rights, she emphasized that this information should not be included in the report, but that it should be mentioned in the appropriate context. She emphasized the importance of the Committee of Experts and the Committee on the Application of Standards respecting their mandate, which consisted of the examination of reports.

- 83.** With respect to cooperation with regional bodies, the Government member of Belgium referred to the valuable contribution made by the ILO through its examination of national reports within the framework of the European Code of Social Security and the European Social Charter. His Government supported an interregional approach and suggested that the paragraphs of the General Report concerning European Conventions should in future cover this subject in greater detail. The reaffirmation by the Johannesburg Summit of the importance of fundamental labour standards for sustainable development should make the international financial institutions take these standards more fully into account. In this respect, he pointed to the recent publication by the World Bank which recognized that collective bargaining made a positive contribution to economic and social development.
- 84.** A Worker member of France said multilateralism, which corresponded to the right to sustainable development and to decent work for all, needed to be chosen over de facto unilateralism and liberal globalization. Multilateralism presupposed a respect for standards, the authority of which was both a result of their multilateral origin and their tripartite character. The standards policy was not simply an activity of the ILO, but was at the heart of its existence with consequences for the multilateral system as a whole. As such, it appeared necessary for this Committee to recall to the plenary of the Conference the irreplaceable role of real multilateralism embodied by the ILO, which offered an alternative model to the International Monetary Fund and the World Trade Organization which found themselves in a deadlock. Recalling that the present session of the Conference takes place a few months before the World Commission on the Social Dimension of Globalization publishes the results of its work, it was hoped that the World Commission would have a major contribution in controlling liberal globalization and that its conclusions would give great importance to a standards policy. The Government member of Germany supported the statement by the Worker member of France and indicated that his Government also called upon the World Commission on the Social Dimension of Globalization to pay special attention to the fundamental Conventions.
- 85.** The Worker member from Turkey, like the Worker member from Pakistan, drew attention to the systematic worldwide violation of Conventions, especially in the developing world. Transnational company practices, privatization, subcontracting, commercialization of the public sector and of public services, under the directives of the IMF, and liberalization of world trade under the WTO, were leading to increased unemployment. For the Worker member of Turkey, this raised a new problem. ILO Conventions were ratified by and binding upon nation States, which were responsible for their implementation. However, transnational capital had taken on such dimensions that small nation States could not resist

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the resulting impositions. The OECD Guidelines for Multinational Enterprises and the ILO Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy were incapable of coping with these problems. In this context, it was becoming increasingly irrelevant to criticize nation States. The supervisory mechanism of the ILO would be ineffective and obsolete if it could not supervise the activities of transactional capital and international financial institutions. This Committee would also have to find the means of supervising the application of international labour standards in the newly emerging supranational State, namely the European Union, which he recalled did not have legislation on trade union rights. He therefore urged the Government representatives of those States that formulated the IMF, World Bank and WTO policies to inform their governments of the adverse and even destructive impact of these policies on the employment situation in the developing world.

86. Several speakers (Government members of Italy, Kenya, Lebanon, Saudi Arabia, Syrian Arab Republic and Tunisia) provided information on the status of recent submissions and ratifications. Several speakers (Government members of Egypt, Kenya, Lebanon, Saudi Arabia and Syrian Arab Republic, and the Worker member of Egypt) also provided information on new laws that had been adopted or were being considered for adoption in their country.
87. A number of speakers thanked the Office and the Standards Department for its high-quality work and the services it provided (Government members of Belgium, Egypt, Libyan Arab Jamahiriya and Saudi Arabia, the Government member of the United Arab Emirates on behalf of the Gulf Cooperation Council, and the Worker member of Egypt). The Government member of Portugal, emphasized the excellent work carried out by the Office with respect to fundamental rights in the context of the follow-up of the Declaration.
88. Several Government members (Canada, Kenya and Portugal) recalled the valuable work done by the Working Party on Policy regarding the Revision of Standards and agreed with the Committee of Experts on the importance of taking follow-up measures, particularly with regard to revising out-of-date instruments. The Government member of Portugal highlighted the need to promote the ratification and the application of Conventions and Recommendations that were considered to be up-to-date. The Government Member of Kenya called for further review and the rationalization of existing standards in order to reflect current needs and realities. Special attention should be devoted to the relevance and content of possible new standards, which should be fairly flexible and hence easy to ratify for many countries at different stages of development.
89. The Government members of Belgium and Canada and the Worker member of Senegal supported the campaign for the ratification of the constitutional amendment of 1997. The abrogation of obsolete Conventions was intended to strengthen consensus concerning the standard-setting activities of the ILO.

### ***Fulfilment of standards-related obligations***

90. Referring to paragraphs 83-101 of the Committee of Experts' report, the Employer members found some of these figures to be shocking: barely two-thirds of all reports due under articles 22 and 35 of the Constitution were received by the end of the session of the Committee of Experts, and only 25 per cent of the reports were received by the prescribed deadline. They thought it would be desirable if every Government representative who took the floor would indicate whether or not his or her government had submitted reports by the deadline, and if not, the reasons for not doing so. The number of States that handed in their reports between the end of the Committee of Experts and the beginning of the Conference had also grown. The experts had noted for the past four years member States which had

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engaged in this practice: Barbados and Cyprus were cited each year, while Belize, Iraq and Ghana were cited three times.

- 91.** The Employer members emphasized that the supervisory system stood or fell with the fulfilment of obligations. Governments that did not respect these obligations not only violated obligations under the Constitution, but engaged in unfair behaviour toward other member States, which duly submitted their reports for examination. With regard to cases of progress, the Employer members pointed out that, while these attested to the impact of the Committee of Experts, they were certainly the result of the entire supervisory system. If this were not the case, the other supervisory bodies could be abolished in order to save resources.
- 92.** The Worker members noted that the drafting and delivery of reports on the application of ratified Conventions were indispensable for an efficient supervisory system. They expressed concern over the fact that only two-thirds of the requested reports had been received, which constituted a slight decrease compared to last year. More worrisome was the delay with which reports on ratified Conventions were being received and new incentives needed to be sought to accelerate the delivery of reports. Further concern was expressed over the situation of certain countries in which the workers' organizations were not able to transmit their comments. The Office should send experts or observers to these countries in order to register the reactions and observations of workers' and employers' organizations.
- 93.** The Worker members also noted their concern over the failure of governments to meet the constitutional submission requirements. It was therefore regrettable that 130 member States had still not submitted the texts adopted at the Conference session of 2001, and 106 member States those adopted in 2000. There were various reasons for these failures. They urged governments to submit without delay the instruments adopted by the Conference to the competent national authorities. Then more efficient and convincing means needed to be found for denouncing those countries that had not yet ratified fundamental or other Conventions which were vital for the workers, and for leading these countries to ratification and meeting reporting requirements.
- 94.** Several speakers (Government members of Canada, Kenya, Portugal and Tunisia, and the Worker members of Pakistan and Senegal) drew attention to the importance of meeting constitutional obligations and their concern over late reporting as described in the Committee of Experts' report. Some speakers also offered suggestions to address the problem. The Government member of Canada considered the requirement for member States to report on ratified Conventions to be an essential element of supervisory mechanisms and urged the ILO to increase technical assistance to those countries that were not currently meeting those obligations. The Government member of Kenya noted that paragraph 130 of the report showed a rather worrying trend of a long list of 18 countries under the "special problems" column. Several of these countries were developing and transition countries, and they appeared to be in urgent need of technical assistance. The Government member of Namibia also supported the provision of technical assistance to help countries meet their reporting obligations.
- 95.** The Government member of Portugal expressed concern that despite the efforts made by the Office (for example, publication on the Internet of the reports due), there were still delays in submission of reports. In this regard, she suggested that the difficulties should be identified so that the necessary measures could be adopted to resolve the problem. The Government member of Lebanon suggested the creation of a working group to consider the issue of the fall in the number of reports received in relation to those requested, which had dropped to 65 per cent this year compared to 71 per cent in 2001. In her view, the most

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important point was to study the content of the reports, and not only the quantity of reports. The Government member of United Arab Emirates speaking on behalf of the Gulf Cooperation Council stressed the importance of having translations into Arabic of articles 19 and 22 reports.

96. The Government members of Egypt, Italy and the Libyan Arab Jamahiriya and the Worker member of Senegal expressed the opinion that the new arrangement for grouping Conventions by subject for reporting purposes, as approved by the Governing Body, was an improvement to the supervisory system and should help in reporting.
97. The Government members of Germany, Saudi Arabia and Tunisia indicated that their Governments fulfilled their obligations under articles 19 and 22 of the Constitution by submitting reports in due time.
98. The Worker member of Luxembourg stated that while each year there was an assessment on the Conventions that had been ratified, information on their enforcement was missing. Despite certain cases of progress and the efforts taken, and despite the clear devotion of trade union leaders and the commitment by the Organization, the same problems persisted with respect to the same member States. Therefore, he felt that the issue of sanctions against the most recalcitrant countries should be addressed. He further stressed the importance of obtaining up-to-date information on the respect by member States in the presentation of their reports at the opening day of the Conference. In regard to the financial constraints of the Organization, it would be appropriate to invite the most industrialized and wealthy member States to provide a more important contribution to the Organization so the member States that most need it could be assisted more effectively.
99. The Worker member of Kenya pointed to the importance of the report of the Committee of Experts being forwarded to the respective social partners at the national level as early as possible to facilitate their involvement in the supervisory system.

### ***Fiftieth anniversary of the Social Security (Minimum Standards) Convention, 1952 (No. 102)***

100. It was the view of the Employer members that in this part of the report, the Committee of Experts did not discuss the application of the Convention in member States, but rather made interpretations and general evaluations regarding the Convention. For example, the Committee of Experts underlined the flexibility of Convention No. 102. However, this appreciation of the Convention did not appear to be shared, since only 40 member States had ratified it. The Employer members believed the Committee of Experts were correct in their assumption that there was no perfect social security system; in fact there was no model, that fit all countries perfectly. They felt positions against partial or full privatization of social security services were unrealistic and pointed out that the Committee of Experts had rightly acknowledged the importance of these measures for social security in paragraphs 50-52 of its report.
101. The Worker members noted the anniversary of Convention No. 102. The Convention fixed objectives with regard to the level of minimum protection that needed to be ensured. The Experts had nevertheless indicated that the Convention did not prejudge the means for achieving these objectives. Unfortunately, this seemed to mean that all means to achieve the objective were acceptable. Over the past years, a wave of privatization in social security had taken away part of the State's responsibilities to the benefit of private insurance institutions on the pretext that they were better placed to guarantee protection. Yet, the Worker members observed that private insurance was confronted with serious problems of profitability and that privatization did not work. These economic and political



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reasons were driving governments even farther away from the objectives of Convention No. 102. The Worker members called for a new debate at the global level on social security to be held in order to find efficient solutions to ensure a minimum social security protection for all. In supporting this view the Worker member of Colombia expressed concern over the considerable deterioration of social security protection for workers worldwide.

- 102.** Worker members from Germany, Senegal and Venezuela also recognized the anniversary of Convention No. 102 and stressed the continuing importance of the Convention. The Worker member of Germany pointed out that the right to social security was a central tenet of international law, as laid down in the Universal Declaration of Human Rights (article 22) and the Covenant on Economic, Social and Cultural Rights (article 9), which also referred to the right to social insurance. The Worker member of Venezuela reaffirmed that developing countries such as her own should accord great importance to the Convention. The subject of social security should be further examined in these countries and the necessary subsystems immediately established so as to put an end to the movement to privatize social security, which had been shown to be ineffective and deepening social injustice throughout the world.
- 103.** The Worker member of Senegal stated that the Employers' view, that an improved social security system could be an obstacle to the creation of employment, did not reflect the spirit of Convention No. 102. As stated by the Committee of Experts, this Convention laid the basis for a system of social security unified by common principles of organization and intended to guarantee a minimum level of protection. The Convention set forth common rules of administration and organization as well as principles for the distribution of risks, collective financing and the responsibility of the State. He stressed the importance of worker contributions to the social security systems. The Worker member of Germany emphasized that Convention No. 102 was very flexible and that the standards it set were not too high. For example, the Convention required only a very low rate of coverage of the population by the old-age benefit system. Moreover, he warned that too much should not be expected of social security systems, and they should never be regarded as a replacement for active macroeconomic policy or training measures.
- 104.** A number of Government members (Belgium, Canada, Egypt, Italy and Lebanon) recognized the 50th anniversary of the Social Security (Minimum Standards) Convention, 1952 (No. 102), and emphasized that its provisions remained relevant. The Government member of Egypt emphasized the importance of providing a minimum level of social protection to everybody. The Government member of Lebanon stated that, although this Convention had not been ratified by Lebanon, much attention was given to its content in her country and many workers were covered.
- 105.** The analysis in the report provoked several other reflections. The Government member of Italy expressed his support for the cooperation between the Council of Europe and the ILO, and emphasized the importance of the Convention for decent work, for guaranteeing a better quality of work, and therefore for full access to social rights. In this respect, he stressed the importance of following up on the general discussion on social security at the 2001 session of the International Labour Conference, and of promoting the ratification of this Convention. The Government member of Canada encouraged ILO initiatives that would contribute to the development of social security throughout the world. While he appreciated the analysis of Convention No. 102 offered in the report, he felt it was incomplete in so far as it failed to acknowledge that Convention No. 102 included outdated gender stereotypes. The model of the male-headed household reflected in Convention

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No. 102 did not reflect current social and labour market realities and posed a significant barrier to ratification. He asked the Office to comment on this point.<sup>9</sup>

### ***Application of the Employment Policy Convention, 1964 (No. 122)***

- 106.** The Employer members noted that the Committee of Experts endorsed active labour market policies in relation to Convention No. 122. In reality such policies often involved state intervention and regulation. It was therefore necessary to evaluate all employment policies with regard to their success, a measure that had hardly been mentioned in discussions on this Convention. There were naturally interactions between promotion of employment and social protection. Yet, according to the Employer members, these interactions could also be negative: too high a level of social protection could increase costs and prevent the creation of employment.
- 107.** Taking into account the importance of this Convention and an efficient employment policy, the Worker members thought it regrettable that only 40 per cent of the member States had ratified this Convention. Although an increasing number of States had adopted active employment policies, only a few of them had undertaken an evaluation of the measures taken. The Office should play a role in this kind of evaluation as restructuring in both the private and public sectors was sometimes carried out without respecting standards on termination of employment. The Office should also devote an in-depth study to this issue and develop a compendium of good practices on the subject. The Worker members stated that as a matter of urgency decent and fulfilling work should be offered to unemployed youth and to unemployed women. Therefore, the effective application of the Minimum Wage Fixing Convention, 1970 (No. 131), also was necessary and, at the same time, the best way to combat poverty in an effective manner.
- 108.** The Government members of Belgium, Italy and Venezuela expressed support for the conclusions in the Committee of Experts' report in paragraph 57, and following, with respect to the need to promote an active and sustainable policy for the creation of freely chosen, secure, stable and high-quality employment. They also underscored the importance of tripartite consultation in this process. The Government member of Belgium hoped that discussion on the Report of the Director-General on *Working out of poverty* would raise interest in this Convention. Referring to the recent work of the Office and the Turin Centre on the restructuring process, he called upon the Committee of Experts to formulate brief practical indicators on good practice in the area of socially responsible restructuring. The Government member of Italy expressed his hope that the Global Employment Programme would attain results. His Government was in favour of promoting the participation of young persons, women and older workers in the labour market, as well as the adoption of means to bring disabled persons into the labour market, and the promotion of independent work to solve situations stemming from irregular work, in particular in the south of his country.
- 109.** The Government members of Venezuela and Lebanon provided details on their national efforts to promote employment. The Government member of Venezuela added that instead of indiscriminate privatisation and monopolistic practices of the past, his Government preferred to strengthen decent employment through small and medium-sized enterprises and cooperatives, with the important participation of workers. This implied the political will to adopt legislation that facilitated the participation of the social partners. In his

<sup>9</sup> See reply of representative of the Secretary-General, para. 165 of the report.

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country the laws on cooperatives, development of a microfinancing system and the promotion of small and medium-sized enterprises had been adopted in 2001. All these measures were part of an integrated strategy in accordance with the Promotion of Cooperatives Recommendation, 2002 (No. 193). He indicated that the technical assistance of the Office was necessary to assist countries in developing effective employment policies and programmes. The Government member of Lebanon spoke of a new fund to create work opportunities, especially for young workers, women and those who had suffered from restructuring and of the establishment of a new institute for agricultural workers. She also raised a question on what contribution the ILO could make to creating jobs in Arab countries.<sup>10</sup>

- 110.** Referring to paragraphs 57-67 of the Committee of Experts' report, several Worker members (Brazil, Germany, Pakistan, Trinidad and Tobago and Turkey) stressed the importance of Convention No. 122 in the current difficult global economic situation. The Worker member of Germany thought the Committee of Experts should pay particular attention to the relationship between employment objectives and other economic objectives. He emphasized the negative effects on employment of structural adjustment measures, stock-market speculation, and unnecessary tax and subsidy competition and stated that an integrated employment strategy was required which did not diminish the role of standards and their supervision. The Worker member of Pakistan recalled that we were living in a turbulent world and a globalized economy where more than 1 billion persons lived on less than 1 dollar a day, in poverty and unemployment. In this context, the ILO had an important role to play in addressing the lack of social protection provided to the workers affected by restructuring and deregulation of the public sector. The International Monetary Fund and the World Bank should collaborate in this effort. More international and national inputs were required for human resource development, training and retraining of youth, women and the rural poor to render them employable. More work was required on the poverty reduction programmes in countries and in the promotion of the concept of decent work. He hoped that the work of this Committee would result in alleviating the suffering of workers whose rights were being violated in many parts of the world.
- 111.** The Worker member from Turkey stated that Convention No. 122 was systematically violated almost everywhere, especially in the developing world. Transnational companies were imposing low wages and bad working conditions, or creating unemployment by shifting production to areas with lower labour costs. The International Monetary Fund and the World Bank were imposing policies on the developing countries that increased unemployment by cancelling agricultural subsidies, leading to the impoverishment and expropriation of agricultural workers, and by destroying productive capacity. The World Trade Organization, by liberalizing world trade, was inflicting harm on the economies of the developing countries. Privatization, subcontracting, the commercialization of the public sector and of public services were leading to increased unemployment. The Worker member of Trinidad and Tobago described the resulting effects of increasing poverty levels, unemployment, low wages, job insecurity, weakening trade union representation and other socio-economic factors when governments, such as his own, failed to implement effective employment policies and job creation schemes. The Worker member of Brazil supported the report emphasis on the creation of employment, the need to combat poverty and the capacity of governments and international organizations to influence national politics. She felt that the International Labour Organization should help countries formulate development policies based on the employment promotion and decent work.

<sup>10</sup> See reply of the representative of the Secretary-General, para. 165 of the report.

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## ***Application of the Tripartite Consultation (International Labour Standards) Convention, 1976 (No. 144)***

- 112.** The Worker members noted the valuable role of tripartite consultation and the existence of the ratification campaign on Convention No. 144. A number of Worker members considered Convention No. 144 to be of major importance. The Worker member of Colombia emphasized that tripartite consultation was a civilized method for the prevention of conflicts, especially in a world characterized by arrogance and the abusive of force. The Worker member of Pakistan stressed that respect for the tripartite principle was essential in order to develop and strengthen social dialogue on important issues concerning the world of work. The Worker member of Luxembourg noted that many States, such as his own, still needed to be convinced of the need to ratify this Convention, even when tripartism was very well established in practice. The Worker member of Kenya indicated that in some countries, such as his own, problems existed in the application in practice of the Convention.
- 113.** The Government members of Italy and Kenya drew attention to the necessity of promoting ratification of Convention No. 144. The Government member of Italy also underscored the resolution regarding tripartism and social dialogue adopted by the Conference in 2002. The Government member of Kenya mentioned that most States had already established tripartite bodies for ILO activities, so they should be able to ratify the Convention. The Government member of Lebanon indicated that although her Government had not ratified the Convention, its principles were highly recognized and respected.

### ***Technical assistance relating to standards***

- 114.** The Employer members appreciated the technical advisory services on standards-related questions supplied by the Standards Department and the standards specialists in the field offices. This work was essential to the member States and can contribute to the effective operation of the supervisory bodies.
- 115.** The Worker members highlighted the importance of the technical assistance work of the Standards Department. They hoped this would continue, believing that multilateral cooperation should not be progressively abandoned for the benefit of bilateral technical assistance offered by certain countries. They also emphasized the high importance they placed on the necessary resources being made available to carry out the standards-related technical assistance and cooperation.
- 116.** Further to the remarks made on technical assistance related to the fulfilment of obligations, several Government members (Japan, Namibia and Portugal) indicated the importance they placed on the role of standards-related advisory services. Noting that while the supervisory mechanism is an important pillar for compliance with international labour standards, the Government member of Japan believed that the ILO and the supervisory mechanisms should utilize technical assistance and advocacy more effectively in order to promote compliance with international labour standards. In order to assist in the promotion of the ratification and application of up-to-date standards, the Government member of Portugal highlighted the importance placed on the ILO preparing studies and reports on its promotional and cooperation activities concerning standards. She referred to the publication *Standards for the XXIst century: Social security* and indicated that it would be appropriate to translate it into other languages with a view to its wide distribution. The Office should produce this type of publication on other groups of standards. Publications should also be prepared on the impact of standards with a view to their ratification and raising awareness of their importance for the achievement of a balance between economic and social concerns.

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- 117.** The Government member of the United Arab Emirates speaking on behalf of the Gulf Cooperation Council underscored the need for Arabic-speaking standards specialists in the regional offices in Cairo and Beirut, as well as in Geneva, to help these countries find appropriate solutions in the application of ratified Conventions. Supporting this statement the Government member of Saudi Arabia expressed the hope that the ILO would appoint an Arabic-speaking standards expert, with full knowledge of the region, in the International Labour Standards Department. He requested the translation of all Conference documents into Arabic. The Government members of the Libyan Arab Jamahiriya and the Syria Arab Republic also emphasized the need for translation of documents into Arabic, possibly with the collaboration of the Arab Labour Organization.
- 118.** The Government member of Egypt reiterated the need to appoint a standards specialist to the Cairo Office, as had been indicated in the previous report of the Committee of Experts. She regretted that this year's report only mentioned the need to appoint a specialist to the Dakar Office. Making a request for assistance, the Government member of the Libyan Arab Jamahiriya explained that many new staff in his country had now become responsible for complying with ILO reporting requirements and that the ILO had been requested to provide training for them. Given the Office's willingness to provide such training, he hoped that this request soon would be met.
- 119.** Noting the assistance that had been provided, the Government member of Lebanon thanked the ILO Regional Office in Beirut and hoped that further support would be available in future. She would also welcome participation of members of the Committee of Experts in future seminars on international labour standards, as better understanding would result from such contact. The Government member of Saudi Arabia described the various technical cooperation initiatives that had recently taken place in his country. In 2002, a high-level delegation from the ILO had visited Saudi Arabia to lay the foundations for technical cooperation. In cooperation with the ILO, the Ministry of Social Affairs had organized a tripartite seminar in 2003 on the obligations of member States under the Constitution and the Declaration. The Government member of Kenya, was pleased with the holding of several regional and subregional seminars and symposia on standards, technical assistance missions and training workshops that had been organized by the ILO in 2002 in countries such as Kenya. The advisory role of the ILO was of particular importance in view of the fact that infringements were often due to socio-economic and financial difficulties rather than a deliberate intention to violate standards. He noted with appreciation that standards specialists were in place in several offices, but not in Addis Ababa and Dakar. Indeed, he regretted that several of the offices had been without standards specialists on many occasions since 1994.
- 120.** The Worker member of Pakistan noted that technical assistance by the Office was an important means of promoting and defending international labour standards, that there was a need to publish and translate basic ILO standards into national languages, that there was a need for educational and training programmes including for the workers' organizations, and that there should be more contact with workers' organizations by the standards experts with the view to making standards more effective. The Worker member of Egypt stated that any reduction in the resources allocated to the Department should be categorically refused in order to enable it to continue the provision of services, and especially technical assistance to member States. In support of such assistance he cited the services provided to his country in the adoption of the Labour Code.

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**C. Reports requested under article 19  
of the Constitution**

***Protection of Wages Convention (No. 95) and  
Recommendation (No. 85), 1949***

**121.** The Committee devoted part of its general discussion to the examination of the first General Survey made by the Committee of Experts on the application of Convention No. 95 and Recommendation No. 85, 1949 concerning the protection of wages, and incidentally also Convention No. 173, 1992, concerning the protection of workers' claims in the event of the insolvency of their employer. In accordance with the usual practice, this General Survey took into account information supplied by 95 member States under article 19 of the ILO Constitution as well as information communicated by member States which have ratified the Convention, in their regular reports under articles 22 and 35 of the Constitution. Observations and comments received from 22 employers' and workers' organizations to which the government reports were communicated in accordance with article 23(2) of the Constitution were also reflected in the General Survey.

***General observations***

**122.** The Employer members thanked the Committee of Experts for its General Survey on Convention No. 95, and Recommendation No. 85. As the many Convention No. 95 cases considered by the Conference Committee in recent years had shown, ensuring the prompt payment of wages directly to workers was essential and remained a serious problem in some parts of the world. Convention No. 95 was a significant Convention, but it was not, as the Committee of Experts suggested in the concluding paragraph 511 of the General Survey, a "fundamental" Convention in the same sense as the eight fundamental workplace human rights Conventions that served as the basis for the Declaration on Fundamental Principles and Rights at Work. As the General Survey demonstrated, Convention No. 95 was an important technical and regulatory Convention that had been ratified by 95 nations, but it was in total less highly ratified and less basic than the eight fundamental ILO workplace human rights Conventions which were qualitatively different and less technical than Convention No. 95.

**123.** As the Committee of Experts pointed out in paragraphs 16-21 of the General Survey, Convention No. 95 was a complex, interrelated and well integrated instrument that was intended to provide comprehensive protection of wages. It had five main components that addressed: (1) the form and method of wage payment; (2) the freedom of workers to dispose of their wages; (3) the need to inform workers of the wage conditions before entering employment, and the calculation of earnings for each pay period; (4) the guarantee of total payment of wages due and protection from arbitrary decreases; and (5) the need for implementing laws to have adequate penalties or other appropriate remedies to prevent and punish infringements. Because of the complexity of Convention No. 95, the Employer members welcomed the references to the 1948 and 1949 technical Conference committees and the discussion of the negotiating history that led up to the adoption of the Convention and the Recommendation. This history provided a very useful baseline for understanding what these instruments meant. They therefore encouraged the Committee of Experts to make even greater efforts to illuminate the negotiating history of Conventions in future surveys to facilitate full implementation in law and practice.

**124.** A positive innovation this year was also the availability of the various Committee of Experts' reports, including this General Survey, in PDF format. The Employer members suggested that future and past surveys should be put in PDF form. They also took the view

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that the more transparent the work of the Committee of Experts was, the greater would be the understanding of the Conference Committee and the ILO constituency. For this reason, the Committee of Experts should consider making available on the ILO web site PDF copies of the reports submitted by governments under articles 19 and 22 as well as those of the social partners with respect to past, present and future General Surveys and ratified Conventions. These reports were, of course, available to the Conference Committee while here in Geneva, but were effectively unavailable once they had left; and they were available in bound paper form the previous two years. In this context, the Employer members recalled that the government reports submitted under article 19 for the annual review follow-up to the 1998 Declaration, and comments made by any interested person, had been posted this year on the ILO web site. Full implementation of ratified Conventions was based on the good intentions of ratifying member States to meet their international obligations undertaken as a result of ratification. These obligations were at least equal to, if not greater than, the commitment made under the Declaration. As this General Survey and the Report III of the Committee of Experts highlighted, sometimes ratifying States fell short. In such cases, an international spotlight and moral suasion were needed. These were the primary functions of the Conference Committee, which would be enhanced by greater public awareness and availability via the Internet of the substance of governmental and related reports.

- 125.** The Employer members noted that throughout this General Survey, the Committee of Experts described the wide diversity of law and practice that implemented the provisions of ILO standards. In Chapters V and VII, concerning the preferential treatment of workers' wage claims in case of the employer's bankruptcy and the duty to provide information on wages, respectively, the Committee of Experts quoted extensively the relevant European Union directives. While more than six pages were devoted to EU and related country practice in paragraphs 338 and 422-424, for no other country or region of the world was this done anywhere else in the General Survey. Because there were a variety of ways in which implementation of this wage protection Convention could be accomplished, this further highlighted the need for making publicly available on the ILO web site the article 19 and 22 reports as well as supplementary materials on which the Committee of Experts relied.
- 126.** In the view of the Employer members, the Committee of Experts was to be commended for focusing on central principles with respect to the meaning and scope of the various Articles of Convention No. 95, which had the effect of clarifying and simplifying the analysis, making it more understandable by highlighting the central policy goals of each provision. In terms of assisting member States to implement in law and in practice wage protection legislation and regulation, this was more helpful than focusing on a range of legal details in which the central principle might not be readily evident. It was also notable that, to a greater degree than in previous General Surveys, the Committee of Experts used less categorical and definitive language in assisting this Conference Committee in understanding what the Convention and Recommendation encompassed. The use of words such as "believes" and "seems", appearing frequently in the General Survey, was to be encouraged because it left room for more practical application in some instances in terms of acceptable alternative means of effective implementation rather than a "one-size-fits-all" approach. This kind of language was constructive and facilitated the Conference Committee's work. They noted that in one place the Committee of Experts stated (in paragraph 214) that Recommendation No. 85 "required" workers to be informed of any deduction which might have been made. Of course, the Recommendation could not "require" a particular action, but only recommend or provide guidance.
- 127.** The Employer members noted that, at 346 pages, this was the longest General Survey the Conference Committee had reviewed. Although well-written and very readable, when

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combined with the main report of the Committee of Experts that served as the basis for the general discussion and the cases to be addressed during the session's second week, the reading demanded of the Conference Committee for the three-week Conference now exceeded 1,100 pages, not counting the other material that was distributed to this Committee during the Conference as well as other Conference documents. In the Employer members' view, it would well be worth the Committee of Experts reflecting on whether they were assisting the Conference Committee in the best manner possible with such extensive reports. The report could have stood some serious editing that would have shortened it considerably and yet made it a more effective document. It was important to remember that when the Committee of Experts was established by the Governing Body in 1926, the Committee of Experts was intended to assist this Committee. With an overall ILO membership of less than one-third the size of the current membership, significantly less overall ratifications and far fewer reports to review than today, it had been not practical nor feasible, even in 1926, for this Conference Committee to review the reports of governments within the time frame of the Conference. Recognizing that the Conference Committee's function dealt with treaty obligations and national legal texts, the Committee of Experts could do far more to help it with more focused discussion identification and highlighting of the most important points without duplicating text already in the report, minimizing discussion of less critical points, and using desktop publishing technology to make its analysis less dense.

- 128.** The Employer members recalled that normally General Surveys were a synthesis of law and practice that implemented the Convention and a discussion of obstacles to ratification. This year's report, however, had a different character which they hoped was a one-time accident of drafting. One reason this General Survey was longer was that there was an extensive country-specific discussion of problems of compliance that were typically discussed under observations under Convention No. 95 in Report III (Part 1A). This had the potential of converting the General Survey into an unstructured discussion of cases, which was more appropriate in the third part of this Committee's work. They considered that for purposes of a General Survey it would have been sufficient to set out the law and practice policy and footnote situations where this did or did not occur.
- 129.** The Employer members found the inclusion of additional bibliographical references and web site indications at the end of Chapters II, V and VI of the General Survey curious and troubling as part of the analysis of the Committee of Experts. They wondered what significance constituents should give to these additional references, or whether the Committee of Experts could certify that these documents and web sites contained advice to which they fully subscribed. They also doubted whether the Committee of Experts could be certain about the future content of the numerous cited web sites and wondered whether all these sources had in fact been looked at. The Employer members suggested that such bibliographical references and related web site indications should not appear in future General Surveys. Furthermore, the Employer members disagreed with the view expressed in paragraph 371 of the General Survey, where it was stated, with respect to enforcement, that the Committee of Experts placed particular emphasis on the need for truly dissuasive penalties, such as "harsh monetary fines". The premise for this view was that the adequacy of the sanctions prescribed for violations of the legislation needed to be judged by tangible results. They pointed out, in this regard, that the requirement of Article 15 of the Convention was quite different, namely to "prescribe adequate penalties or other appropriate remedies for any violation thereof" and added that, if the remedial scheme was not simply symbolic, an adequate remedial scheme needed not be harsh. In any event, there would always be "outlaws" for whom no remedy would be effective.<sup>11</sup>

<sup>11</sup> See reply of the Chairperson of the Committee of Experts, para. 164.



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- 130.** The Worker members commended the Committee of Experts and the Office for the very detailed General Survey which touched upon a core element of labour law and employment relations. In view of the importance of its subject, they regretted that workers' and employers' organizations had not made sufficient use of the possibility offered under article 23 of the Constitution to submit their observations and comments. In future, it would also be desirable for governments to provide full information on time. The Worker members recalled that international labour standards concerning the protection of wages had a concrete practical objective, namely to guarantee workers the payment of their wages in due time, and stressed that the full significance of Convention No. 95 and Recommendation No. 85 might be better understood by measuring the threats hanging over the standards laid down by these instruments in both developed and developing countries. For instance, in Africa, Eastern Europe and Latin America, violations varied in nature and included the delayed payment or non-payment of wages, or payment in prohibited goods, manufactured products or demonetized units. In the Worker members' opinion, the General Survey showed that recent developments in the global economy and industrial relations tended to undermine in various ways the mechanisms for the protection of wages and that workers often had to have recourse to the labour courts. It was also the case that, contrary to the provisions of Convention No. 95, certain workers, especially casual, agricultural and home workers, were excluded from the scope of application of this instrument.
- 131.** The Worker members recalled that, in the interest of effectively protecting workers' wage income, Convention No. 95 contained a very broad definition of the term "wages", which was to be understood as the totality of real earnings. The Committee of Experts had nevertheless observed that certain national legislation had considerably diminished the scope of protection by giving a restrictive definition of the concept of wages. The General Survey drew attention to certain situations in which the national law itself impoverished the concept of wages by excluding certain benefits and allowances. Such legal niceties resulted in a considerable reduction in the protection of workers' earnings, a drastic cut in actual wages compared to the wages really due and the erosion of the social protection of workers. The Worker members noted that in recent years, the observations made with regard to Convention No. 95 had focused mainly on the problem of wage arrears and the failure to comply with Article 12 of the Convention, which established the principle of the regular payment of wages. This worrying trend affected in particular countries that were opening up to the market economy or which were in the process of liberalization. In the industrialized countries, the introduction of new forms of remuneration exposed workers to risks of a financial nature often related to the fluctuations of stock prices. Moreover, under pressure from the World Bank and the International Monetary Fund, certain countries were ready to modify their bankruptcy legislation, contrary to the terms of Convention No. 173, to give institutional creditors higher priority than workers in the distribution of liquidated assets. The Worker members emphasized that representative workers' organizations at the global and national levels could never accept the idea that workers' protection might change purely for reasons of economic expediency and competitiveness.
- 132.** The Worker members considered that the failure to comply with the principle of the payment of wages at regular intervals, set forth in Article 12 of the Convention, was absolutely inadmissible. However, this principle was seriously undermined in several countries, where one could notice the emergence of a trend whereby the payment of wages was gradually becoming more of an option than an obligation depending on the economic situation. The basic principles set out in the other provisions of the Convention, even if they were not flouted so openly, were nonetheless constantly under threat. In view of the challenges faced by workers in all parts of the world, this General Survey offered more than a soulless overview of national laws and practice. It provided a detailed analysis, carried out with rigour and flexibility, of the wages as a central element in the equilibrium

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of the employment relationship. This General Survey was a tool of inestimable value in view of the challenges that could arise at any moment as a result of the application of a purely liberal approach to the labour market. It should therefore be seen as a major contribution to social progress, without which it would be impossible to live in the world of tomorrow.

- 133.** In the Worker members' opinion, the General Survey also showed that other means of action available to the Organization should be used in a complementary fashion. Technical assistance should be provided wherever practical problems were identified to help governments take the necessary measures to improve the implementation of their legal instruments. The ratification of the Protocol of 1995 to the Labour Inspection Convention, 1947 (No. 81), which had as yet been ratified only by ten countries, should be promoted, as it required ratifying States to extend the application of the provisions of Convention No. 81 to activities in the non-commercial services sector. In reality, however perfect it might be, no Convention could be effectively implemented if its application was not ensured through labour inspection services endowed with sufficient human and financial resources. Far-reaching reforms were needed, in the interest of the workers, to facilitate access to an independent judicial system. Furthermore, in view of the importance of the issue, the defence of workers' rights in this field required powerful trade union organizations that were respected as partners not only by enterprises, but also by the courts and the judicial system.
- 134.** The Worker member of Pakistan recalled that a living wage was a basic right already recognized in the 1944 Declaration of Philadelphia and the 1948 Universal Declaration of Human Rights and emphasized that globalization had led to deregulation and precarious jobs. The situation in export processing zones (EPZs) and the working conditions of female workers were of particular concern. The denial of just wages to women was contrary to Conventions Nos. 100 and 111. He also referred to the importance of Convention No. 26 and stressed that those workers belonging to categories excluded from the application of Convention No. 95 under its Article 2 were also in need of protection. He underlined that trade unions were fighting for the elimination of bonded labour in agriculture, but action was required by all relevant actors, and he further drew attention to paragraph 29 of the General Survey which raised the question whether Convention No. 95 satisfactorily covered certain aspects of the payment of wages to migrant workers. The Government member of Kenya shared the view expressed by the Committee of Experts that the right to decent remuneration was corollary to the right to work as enshrined in article 23(3) of the Universal Declaration of Human Rights, which provided that everyone who worked had the right to just and favourable remuneration ensuring for himself and his family an existence worthy of human dignity, and supplemented, if necessary, by other means of social protection. His Government also endorsed the Committee of Experts' observation that the problem of persistent non-payment of wages could only be resolved through effective labour inspection, appropriate penalties and a solid basis for improved economic growth. Kenya had not as yet ratified Convention No. 95, but the necessary legislative framework to ensure compliance was already in place.
- 135.** The Government member of Cameroon recalled that his country had ratified Convention No. 95 and that it had taken all the necessary measures in order to reflect its provisions fully in the national laws or regulations, and in the collective agreements. In fact, all the provisions of Convention No. 95 relating to wage protection, including the payment of wages at regular intervals, the guarantee of payment of wage credits, and the protection against arbitrary deductions from wages, were reflected in the legal texts in force. On the basis of the ten collective agreements currently in effect, professional classification and salary scales by sector were established. However, certain branches of activity were still not covered, such as the small and medium-sized enterprises. It was also true that certain

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categories of workers such as domestic workers were often victims of low pay, while in the hotel and restaurants sector false wage slips were sometimes used to conceal exploitative pay practices. The Worker member of Senegal felt that the worker's wage constituted an integral and vital element of human dignity. The combined provisions in Conventions Nos. 95 and 173 demonstrated the will of the standard-setting bodies to guarantee the right of a worker to dispose fully and freely of his income. He commented on the evidential weight of wage statements and the presumptive significance of the acceptance of such documents and he regretted the abolition of the "super-privileged" protection of workers' wage claims in bankruptcy proceedings. He also observed that the unattachable portion of the wage, if calculated after the deduction of fiscal charges, which in some cases could amount to 30 per cent of the earnings, could nullify the very essence of protection of a minimum income necessary for the maintenance of the worker and his family.

- 136.** The Government member of the Dominican Republic stressed that wages were one of the fundamental elements in any working relationship. It was important to ensure appropriate levels of wages which afforded a reasonable standard of living in order to fight the prevailing social malaise among workers in a globalized economy. Governments had an important role to play in the struggle for the equitable distribution of wealth to ensure that workers received fair and decent wages which were appropriate for the work furnished. He recalled that his country had ratified Conventions Nos. 26 and 95, and that a culture of social dialogue and tripartism were the main basis for the establishment and protection of wages. In the same vein, the Worker member of Colombia recalled that the ILO had been dealing with the issue of wages since its foundation, as attested by the adoption of Conventions Nos. 26 and 95 and their respective Recommendations. He found it absurd that, in the twenty-first century, situations such as payment in kind, forced labour for the repayment of debts and widespread deficiencies in wage protection policies for workers, still existed. He concurred with all the views expressed by the Committee of Experts in its General Survey, and considered that wage policies based on scare tactics, which accompanied precarious forms of hiring practices, in both the private and public sectors, should be rejected. Privatization of assets and socialization of losses was bad policy and it had to be remembered that, without just and adequate wages, economic recovery in developing countries was impossible.
- 137.** The Government member of Lebanon indicated that, while Lebanon had ratified Convention No. 95, it had already promulgated the Lebanese Labour Code back in 1946. The latter included numerous provisions also reflected in Convention No. 95. She expressed the view that consideration should be given to adding Convention No. 95 to the list of the eight core ILO Conventions, as the subject of the protection of wages was intimately linked to workers' living conditions, and was a major concern in the life of every worker. She pointed out that Convention No. 95 was a framework Convention as it set down a framework for national policies, while leaving to the national authorities the responsibility to formulate the necessary implementing legal texts. She also stressed that it might be appropriate to adopt a Protocol to Convention No. 95 to cover some gaps in this Convention such as the payment of wage arrears in the event of sustained economic difficulties of the enterprise and the equality of treatment between men and women in the settlement of wage arrears in accordance with Convention No. 111.
- 138.** The Government member of Tunisia recalled that wages are an essential element of the employment relationship and also indispensable for the maintenance of the worker. The General Survey underscored the legal philosophy of the protection of wages. His country had ratified the Convention and the national legislation was in full conformity with its provisions. He added that there was need for consistency among all the legal texts dealing with the privileged protection of wages and the concept of attachment and assignment of wages.

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**139.** The Government member of Cuba stated that the right of workers to enjoy fair remuneration for the fruits of their labour became more important every day. Wages directly influenced the life of workers and their families, especially in a world which was constantly chipping away at their social protection for neo-liberal political reasons. Convention No. 95 totalled 95 ratifications, which was insufficient given the importance of the instrument. She indicated that there were other Conventions with important provisions for the protection of wages, such as those providing for equal remuneration and minimum wage fixing. She underlined the necessity to promote and follow up the application of the Social Policy (Basic Aims and Standards) Convention, 1962 (No. 117). The Government member of the Syrian Arab Republic wished to preface his statement by referring to the fact that currently hundreds of thousands of Iraqi workers were not receiving their wages at all. He then referred to various provisions of the Labour Code of his own country, which laid down standards for the protection of wages.

### ***Developments in national law and practice***

**140.** Some members of the Committee in their interventions gave short accounts of the measures in force in their own countries for the protection of wages, and of recent developments at the national level regarding the protection of wages. The Government member of the United Kingdom recalled that, while no longer bound by Convention No. 95, the United Kingdom was firmly committed to ensuring that there was a statutory framework of fair minimum standards in the workplace.

**141.** The Government member of Egypt recalled that her country had ratified Convention No. 95 and stated that the General Survey's description of the situation in her country was based on the previous Code, and that a new Labour Code No. 12 of 2003 was recently promulgated and had entered into force at the beginning of June 2003. The Government member of Lebanon referred to a draft amendment of the Labour Code which was prepared by a tripartite committee, and which had been communicated to the ILO in April 2002. The draft legislation filled a few gaps that existed in the Code by taking due account of the provisions contained in Convention No. 95 and Recommendation No. 85. She also referred to the Determination and Protection of Wages Convention No. 15 of the Arab Labour Organization which had been ratified by Lebanon on 24 May 2000 and which prescribed, among other standards, that wages and sums due to a worker under a contract of employment had to be treated as a privileged debt ranking in priority over all other debts including those due to the State.

**142.** The Government member of Japan indicated that, although his country had not ratified Convention No. 95, it fully recognized the importance of securing wage payment as a means of workers' protection, and he referred to the Labour Standards Act. In view of recent financial and economic developments, his Government was in the process of allowing employees to receive direct deposits into their personal stock company accounts (MRFs). The Government member of the Syrian Arab Republic also described the provisions governing the payment of wages in his country.

### ***The payment of wages in lawful money and the partial payment of wages in kind***

**143.** Most of the members of the Committee who took part in the discussion articulated their comments around three main subjects: the payment of wages in money substitutes or benefits in kind, the delayed payment of wages, and the priority treatment of wage credits in bankruptcy proceedings. As was amply demonstrated in the General Survey, these were the most topical of all the issues arising out of the application of the Convention.

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- 144.** The Worker members noted that the principle that cash wages should be paid in legal tender did not raise any problems in most countries. However, in certain countries, this principle was being completely undermined by the possibility of the partial payment of remuneration by benefits in kind, which was still common in developing countries. The principle of the prohibition of payment in the form of promissory notes, coupons or vouchers left little room for interpretation. Nevertheless, its application in practice often gave rise to problems. In many transition countries, this method of payment offered a facile solution to the increasingly widespread problem of wage arrears. The payment of wages in kind was in itself already a potential source of abuse, as it allowed the employer to take advantage of the ignorance of workers. Even authorized forms of payment in kind raised problems with regard to the fairness or reasonableness of their valuation. Furthermore, the principle of the direct payment of wages to workers was under serious threat in certain countries. The importance that the Committee of Experts attached to this issue in its General Survey was fairly indicative of the complexity of the problem. In this respect, a firm but flexible approach was necessary, as required by the dictates of pragmatism and legal certainty. It should also take into consideration the role that payment in kind could sometimes play as a tool of international development policies, as illustrated by the position adopted by the ILO with regard to the World Food Programme (WFP) and its food-for-work projects.
- 145.** The Government member of Argentina, referring to paragraph 82 of the General Survey in which mention was made of the widespread use of local government bonds in place of national currency in several provinces of Argentina, indicated that her Government had recently informed the International Labour Office of a new programme aiming at the withdrawal of provincial bonds and the monetary consolidation through the establishment of a single legal national currency. Under the terms of Presidential Decree No. 743/2003 and resolution No. 266/2003 of the Minister of Economy, both concerning the Programme of Monetary Consolidation, the provinces concerned had to agree to discontinue issuing bonds. She explained that the provincial jurisdictions agreed not to issue any more titles and to eliminate the validity of the titles previously issued, beginning on the date of the signing of the agreement on monetary consolidation (April 2003). It was further stated that the use of bonds at the provincial level was an emergency measure of a transitory character in view of the grave problems of the national economy. The situation was now considerably improved and therefore such measures were no longer called for.
- 146.** The Worker member of the United Kingdom emphasized that the “truck system” and payment in kind remained a widespread problem especially in agriculture and recalled, in this connection, that still today half of the world’s working people were employed in that sector. Moreover, he highlighted that in this sector women workers were disproportionately affected, especially when only the “primary” male worker received the wage itself, even if the work was performed by other family members, and added that the truck system might also lead to forms of debt bondage. Turning to the specific question of wage payment in liquor, he emphasized that, even though at the time of the adoption of Convention No. 95 the employers argued that only strong alcohol should be prohibited, it was clear today that the payment of wages in alcoholic beverages of any sort and in any circumstances would be unacceptable, as had recently been pointed out by the ILO Governing Body in its conclusions concerning the representation made under article 24 of the Constitution against the Government of the Republic of Moldova. Referring to the specific case of the wine industry in South Africa, he explained that in that country the “dop system”, i.e. the payment in wine of part of the already meagre wage, was extensively used during the apartheid period to keep workers drunk and docile, and as yet another barrier to organization. Although the “dop system” was now prohibited under South African law, the practice still persisted in part, as did the legacy of alcoholism, poor public health and family violence. Finally, commenting on the view sometimes expressed that

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employers had no responsibility for the promotion and implementation of ILO standards, he stated that this view was not shared by the member companies of the British-based Ethical Trading Initiative (ETI), which together had a turnover of some US\$150 billion and sold most of the food consumed in Great Britain. The Trade Union Congress and the international trade union movement had been engaged in work in the wine sector with the ETI's member companies, their South African suppliers and South African trade union partners. They had examined ways in which the member enterprises could use contract-compliance mechanisms to promote the development of a culture of compliance with good law among the supplier companies, including the protection of wages and the complete elimination of the "dop system", and they had been watchful for the removal of barriers to freedom of association and to social dialogue.

- 147.** The Government member of Italy, referring to paragraph 121 of the General Survey, indicated that the payment of wages in kind was of rare occurrence nowadays and concerned mainly agricultural workers, domestic workers and workers in the fishing industry. With respect to the inconsistency between the requirements of Article 4 of the Convention and the Italian Civil Code which continued to allow for the payment of wages wholly in the form of benefits in kind, he stated that an amendment procedure had been initiated last year with a view to bringing the Civil Code into full conformity with the Convention. The Government member of Cuba stated that the national law and practice did not allow for the partial payment of wages in kind. Wages were paid only in the national legal currency. Allowances to defray costs of workers working away from their place of residence did not constitute wages and were granted in addition to money wages.

### ***The persistent phenomenon of the deferred payment of wages and wage arrears***

- 148.** The Worker member of Turkey referred to the problem of non-payment of wages experienced by local government employees. According to estimates of the largest trade union representing municipality workers, the total amount of wage arrears currently exceeded US\$100 million, in blatant violation of the principle of regular payment laid down in Convention No. 95. On the other hand, there had also been some positive developments such as the enactment of a new labour law (No. 4857 of 22 May 2003), which stipulated that in case workers' wages were not paid during the 20 days following the normal date of payment, the workers were entitled to stop work without resorting to any legal procedure, and that during the period of stoppage the labour contracts could not be terminated at the initiative of the employer and new workers could not be recruited in replacement of the striking workers.
- 149.** A Worker member of Venezuela drew attention to the particularly exploitative wage practices of certain transnational fast-food companies which had been avoiding wage regulation policies under Convention No. 95 and were establishing wages according to their own interests. Such franchising enterprises ignored and violated workers' rights by recruiting their staff as if they were family members, by paying wages at the rates most advantageous to themselves, and by denying workers the right to organize into trade unions in order to defend their interests. He urged the Committee to examine the current situation of franchising enterprises, considering the seriousness of the situation, and to prepare a special report on the problem. In another context, he denounced the situation faced by the audiovisual media workers in his country following the events of 11 April 2002 and the period of social unrest between December 2002 and January 2003. He indicated that enterprises in the communications sector had decreased the salaries of their workers by 30 per cent, and had abolished bonuses for night work and for productivity. He added that 700 workers had been fired from a television station, while the said enterprise maintained that these workers had left on their own accord. In his opinion, it was

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paradoxical that the announced measures received support from the trade union and federations covering these workers. He regretted that certain organizations misinterpreted their role of protecting workers and joined forces with employers against their members, whereas a decent salary was critical for the workers' subsistence.

### ***The privileged protection of workers' wage claims in case of bankruptcy or insolvency***

- 150.** The Employer members noted that, although the request by the Governing Body was for a survey on the implementation of Convention No. 95 and Recommendation No. 85, the General Survey devoted nearly 40 pages to Convention No. 173 and income security as it was affected by bankruptcy law. They suggested that, given this level of attention, it would have been very helpful to have had Convention No. 173 included as an appendix. The Committee of Experts had pointed out in paragraph 31 of the General Survey that the Governing Body and the Working Party on Policy regarding the Revision of Standards set up by the Governing Body in 1995 had concluded that Convention No. 95 was an up-to-date Convention. It was surprising, therefore, to read in the header over paragraph 331 that there was a need for revision of Convention No. 95 when ratification of Convention No. 173 would seem to address the issues described in paragraphs 331-333.
- 151.** The Worker members welcomed the Committee of Experts' finding that most of the member States had incorporated into their legislation the principle of the priority of wage claims in the event of the employer's bankruptcy. They endorsed the point of view expressed in the General Survey that Convention No. 173 was undoubtedly the most effective legal framework for the protection of workers' service-related claims in an insolvency situation. This protection had to be combined with a system of privileges offering effective and unlimited guarantees for the recovery of wage debts in the event of the insolvency of the employer. It was only in this manner that it would be possible to break with what was described in the General Survey as the vicious circle of the non-payment of wages.
- 152.** The Government member of France stated that the privileged protection of workers' wage claims had become a standard feature of the labour or bankruptcy legislation of numerous member States of the Organization while some of those States had given effect to the prescriptions of the more recent Convention No. 173. He stressed the importance of safeguarding the principle of preferential treatment of workers' wage claims and added that, although his country had not as yet ratified Convention No. 173, it had already integrated a number of its provisions, particularly through the establishment of a wage guarantee institution which made payments to workers for unpaid salaries and then recovered any sums advanced through ordinary bankruptcy or insolvency proceedings. He further indicated that a new Directive 2002/74/EC adopted by the European Parliament and the Council in September 2002 extended the scope of wage guarantee protection in cases of cross-border insolvencies. He recognized that, in a globalized economy that favoured the fast restructuring or reorganization of enterprises, the priority of workers' claims was called into question. However, from a strictly financial viewpoint, the claims of wage creditors were of little significance compared to those of institutional creditors, whereas the elimination of statutory privileges covering such claims would have serious social consequences and would also destabilize the wage guarantee institutions in the countries operating such schemes. He explained that the latter were financed in part by sums successfully recovered from insolvent employers through ordinary proceedings and added that increasing the dues paid by the enterprises only shifted the problem and made the operation of a responsible market economy more difficult.

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**153.** The Government member of Portugal concurred with the Committee of Experts' conclusion that it was necessary to reaffirm the relevance of the principle of the privileged protection of workers' wage claims in the event of the insolvency of their employer. The bankruptcy of companies and the resulting cessation of payment of wages constituted a direct threat to the survival of workers and their families. In these conditions, the Committee of Experts' appeal for the ratification of Convention No. 173 was very appropriate, as this Convention reinforced the protection guaranteed by Convention No. 95 in this area and introduced a better-designed mechanism of protection. The Worker member of Turkey referred to a new labour law, enacted in May 2003 but not yet entered into force, which provided for the establishment of a wage guarantee fund under the scope of the unemployment insurance scheme. He hailed this measure as a major improvement in workers' protection achieved through social dialogue.

**154.** The Government member of Kenya indicated that there was an urgent need to update the existing legislative framework in his country in order to ensure protection of wages or workers' claims in the event of the insolvency of the employer. A Task Force appointed in May 2001 to review all the labour laws in the country, had carefully studied Convention No. 173 with a view to incorporating the relevant provisions into Kenyan labour laws. The Worker member of Senegal noted that until recently, the notion of preferential treatment of workers' wage claims in case of bankruptcy of the employer was a reality which justified quite well the use of the term "super-privilege". However, a more recent trend could be noted which pushed back workers' claims to such an extent that they often experienced a violation of their rights. He added that in spite of their position as creditors, they did not participate in the restructuring process, along the same trend which apparently coincided with the views and policies of the World Bank.

### ***Realities and challenges of wage protection in modern employment relations***

**155.** Some members of the Committee addressed in their comments two facets of wages protection and income security in the present-day labour environment: first, the question of modern remuneration arrangements such as stock option plans and other remuneration packages which might carry substantial risk for employees; and, secondly, the proliferation of atypical forms of employment which were often synonymous with wage irregularities and inadequate protection. The Employer members noted that, pursuant to Article 1 of the Convention, "wages" were money earnings mandated by law or by written or unwritten agreement of the employer and the employee for current or future performance of work or services. Wages were thus money that the worker could spend immediately to pay for goods and services. Nothing in Convention No. 95 or in its negotiating history suggested or implied that it would encompass non-wage benefits of any kind, including pensions, profit-sharing, gain-sharing or stock options. These were typically not part of the wage bargain and certainly were not in 1949 when the Convention was adopted. Today, profit-sharing, gain-sharing and stock options were usually discretionary decisions on the part of the employer for the purpose of sharing the success of the business with the workers. These discretionary reward systems were qualitatively different from wages which were direct payments for work and services. Indeed, the Committee of Experts recognized in paragraph 299 of the General Survey that the employees did not normally share in the profits of the enterprise. These discretionary reward systems were an attempt to do that. When this occurred, workers were just as subject to market forces as were employers. However, the General Survey at paragraph 26 discussed these benefits as if they had the same status as "wages" and implied that they were or should be entitled to the same treatment under Convention No. 95. To a far greater degree than wages, these benefits were subject to market forces over which the employer had no or, at best, limited control. In an increasingly competitive world, the employer could not guarantee future benefits



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because future business conditions could not be guaranteed. For these reasons, the Employer members found the Committee of Experts' suggestion in paragraph 503 that such reward systems linked to the business' performance and profit could be protected from market forces by future ILO regulation to be unrealistic and impractical.

- 156.** The Government member of France indicated that profit-sharing schemes and stock options or other wage packaging arrangements were very common in his country with around 34 per cent of all employees being covered by such agreements. Referring to paragraph 503 of the General Survey and the Committee of Experts' observation that this was an area where further study was needed since the legal framework provided by the Convention was clearly not suited to the regulation of such practices, he expressed his Government's interest in undertaking a detailed examination of the issues connected with modern forms of remuneration in a framework other than the one provided by Convention No. 95. Echoing the same view, the Government member of Portugal endorsed the Committee of Experts' conclusion that an in-depth study of wage packaging and similar remuneration arrangements was necessary.
- 157.** The Worker members considered that one of the major lessons to be drawn from the General Survey was the extent to which history repeated itself, with the re-emergence in recent times in the form of additional perks of certain practices which were not far removed from the philosophy underlying the truck system in the nineteenth century. In the industrialized countries, as the economy became more service-oriented, new pressures were emerging which also influenced forms of remuneration and tended to deliberately devalue the wages payable, thereby increasing the vulnerability of workers. These new phenomena confirmed that wage protection standards were more topical than ever in a situation in which the threats were far more complex, subtle and difficult to identify, but still very real. The Worker member of India drew attention to the all too frequent cases where workers were paid less than what they were entitled to. He expressed the view that unfortunately there was hardly any international standard on wage determination. Wages were entirely subjected to market forces with the employers treating labour as a commodity. Contrary to the letter and the spirit of the Declaration of Philadelphia, this was a reality in the globalized economy. Exploitation and joblessness were the order of the day, while those who actually had work were often not paid. If wages were demanded, workers were either thrown out or the factories closed. In cases of insolvency, it was often impossible to get wages already earned due to the length of court proceedings, which sometimes took up to a decade. He urged that Convention No. 95 should be reinforced by setting out an international standard for wage determination and effective sanctions for non-payment.
- 158.** The Worker member of Turkey recalled that Convention No. 95 was devised as a protective instrument at a time when the majority of workers were employed under permanent and full-time contracts whereas new employment patterns tended to exclude large groups of wage earners, such as the self-employed, home workers, workers in the informal sector or clandestine workers, from the coverage of the Convention. He considered the simultaneous discussion of Convention No. 95 in the context of this year's General Survey and the scope of the employment relationship under the fifth item of the Conference agenda to be a most fortunate coincidence and expressed the hope that Convention No. 95 could be revised in the near future taking into consideration the profound changes in the nature and form of the employment relationship. The Worker member of Guatemala indicated that the General Survey reflected the magnitude of the problem of protection of wages in a considerable number of countries. Wages and decent jobs constituted a permanent theme in the struggle of the trade union movement, due to the fact that the employers in the public and private sector had contributed to their precarious character. He expressed his concern at the rise of practices in flagrant disregard of the

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principles set forth in Convention No. 95, such as multi-level subcontracting, non-wage payments, the failure to declare to the social security the real amount of wages paid or the non-observance of statutory minimum wage rates.

### ***Difficulties of application and prospects for ratification***

- 159.** The Employer members recalled that within five years of the adoption of Convention No. 95, ten countries had ratified it. Fifteen years later, 61 countries had ratified the Convention, while over 30 years later there had been 34 more. However, the rate of ratification had clearly slowed. The last ratification had been registered in 2001 and just eight ratifications had occurred in the past ten years. Since 1992, there had been 15 ratifications of Convention No. 173. Based on the information provided in the General Survey, the Employer members estimated that the possibility of substantial additional, near-term ratifications of either Convention seemed quite limited.
- 160.** The Worker member of the United Kingdom, while recalling that his country had been the first member State to ratify Convention No. 95 in 1951, expressed his displeasure over the fact that the Government of the United Kingdom had been the only one to have denounced the Convention so far, and encouraged the Government to enter into tripartite negotiations for the purpose of re-ratifying the Convention as soon as possible. If Governments of member States were to insist that every last element of law and practice had to be in total conformity before ratifying a Convention, the ratification rate would be low indeed. The Government member of the United Kingdom, referring to her Government's denunciation of the Convention, explained that when it was proposed to introduce up-to-date legislation concerning wages deductions in the early 1980s, the Government was unable to anticipate how far the new legislation would be in conformity with the terms of the Convention and it was therefore decided to denounce the Convention. She stated that while the current United Kingdom legislation continued to offer protection of wages, her Government was at present not in a position to re-ratify Convention No. 95. In fact, in her Government's view, terms and conditions of employment above statutory minima were best left to negotiation and agreement between employers and employees. Employers and employees were best served by a flexible labour market and therefore questions such as the periodicity of payment of wages should not be a matter for government intervention and unnecessary regulation.
- 161.** The Government member of Portugal noted with satisfaction that the General Survey confirmed the conclusions of the Working Party on Policy regarding the Revision of Standards according to which Convention No. 95 continued to respond to current needs and its ratification should therefore be encouraged. She further indicated that the protection of wage claims in her country was ensured through the intervention of an independent guarantee institution and that her Government was examining the possibility of ratifying Convention No. 173. Similarly, the Government member of France indicated that the ratification of Convention No. 173 was being considered.

### ***Concluding remarks concerning the General Survey***

- 162.** In their concluding observations, the Worker members took the view that the debate on the General Survey had been very fruitful. This was heartening given the importance of the subject. Wages were one of the most vital elements in the employment relationship and also of essential importance for the daily life of workers. Certain governments had indicated that they were taking, or envisaged taking, measures to remedy the situations that were highlighted in the General Survey. It was hoped that in future the Committee of Experts would be able to note the effectiveness of the progress achieved. However, despite

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these positive commitments, the Worker members expressed their concern about persistent violations of the obligations spelled out in Convention No. 95, notably the obligation to pay wages on a regular basis, the prohibition to pay wages partly in the form of alcohol or manufactured products and the protection against the abusive payment of wages in kind. They further considered that Convention No. 173 provided a regulatory framework which was better adapted to the protection of workers' wages in the case of the insolvency of their employer. This protection should accompany a system of statutory privileges allowing workers to recover their wages in an effective manner in the case of the insolvency of the employer. In a number of countries, including the most industrialized ones, social pressures had changed and impacted on the concept of "wages" and workers had been exposed to new and more complex and subtle risks, as evidenced, for instance, by the "desalarization" policies and other legislative techniques designed to deform or render meaningless the notion of wages. This new situation confirmed the relevance of standards in this area. In conclusion, the Worker members suggested that future action in the field of wage protection should be aiming at three main objectives: (1) to ensure technical assistance to governments in response to established needs; (2) to promote the ratification of the Protocol of 1995 to the Labour Inspection Convention, 1947 (No. 81), since independent labour inspection services with adequate resources were indispensable for supervising the application of Convention No. 95; and (3) to guarantee workers easy and affordable access to an independent justice.

- 163.** The Employer members concluded their comments on the General Survey and the discussion that followed by stating that it was more than self-evident that Convention No. 95 and the legislation and regulations that implemented its provisions filled a critical function in ensuring that workers were paid for the work they performed. They appreciated the careful attention paid by the Chairperson of the Committee of Experts to the points raised during the discussion on the General Survey. They noted the interesting debate on the payment of wages, in particular as regards the payment of wages in kind especially in developing countries. They considered that this confirmed the conclusions of the Committee of Experts that many countries had moved well beyond what was required under the terms of Convention No. 95. On the other hand, they noted that several Government statements indicated that there were problems of implementation in this regard. The Employer members referred to the relatively low number of speakers on the General Survey, given the importance of Convention No. 95, and they felt that the size and packaging of the Committee of Experts' report might have been intimidating. They indicated that it was clear, important and relevant that the primary purpose and need for Convention No. 95 was to assure prompt payment of wages. The new forms of remuneration, such as profit-sharing, were not within the scope of Convention No. 95 because these were not wages but additional windfalls provided by generous employers. They were not payments in kind but benefits linked to a company's performance and profit. Market forces meant that profits and the value of stock could not be guaranteed. As the report of the Chairperson of the Committee of Experts to the Conference Committee on the changes relating to the working methods of her Committee indicated, the general discussion highlighted that the Committee of Experts should consider making the General Surveys even better and meaningful to constituents as well as addressing obstacles to ratification. In the final analysis, what was involved in terms of the methods of work of the Committee of Experts was rendering the General Surveys and their underlying information more transparent and accessible.

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- 164.** In her reply the Chairperson of the Committee of Experts thanked the Committee for its comments. She recalled the practice of the Committee of Experts in their use of footnotes. She noted that footnotes were more often linked to technical Conventions which had

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longer reporting cycles (five years, and up to seven years during the current period of transition) than fundamental or priority ones, for which reports were due every two years. Information was therefore requested more often in cases where reporting was less frequent. She recalled that footnotes simply highlighted certain cases and were in no way a formal request by the Committee of Experts for the Conference Committee to examine a particular case. With regard to the absence of a footnote in the 2003 report regarding Convention No. 29 and Japan, she recalled that this particular case, which was historical in nature, had been treated in numerous instances in the past, and that no new substantive information had been supplied to the Committee. Since no new information was requested, a different formulation was used to flag the case for the Committee's attention. Turning to the General Survey, she clarified that the final paragraph of the survey (paragraph 511) did not imply that the Committee of Experts viewed Convention No. 95 as a fundamental Convention in the official sense, but rather "fundamental" in a more conventional sense in that it provided protection in relation to the official fundamental Conventions. With regard to paragraph 503, she clarified that the Committee of Experts had intended to highlight the fact that wage packaging existed, which often involved trade-offs between a flat salary and benefits which were linked to a company's performance and profit. The benefits in wage packages were not always add-ons or windfalls, and sometimes workers had no choice in accepting such wage packages. With regard to the citation of web sites in the General Survey, she noted that these were listed as a convenience for those looking for further information. Finally, with regard to paragraph 371, she indicated that the use of the word "harsh" in relation to monetary fines might not have been entirely judicious.

- 165.** The representative of the Secretary-General, replied to a number of questions raised by the members of the Committee during the general discussion. With reference to a question raised by the Government member of Canada concerning the terminology employed by Convention No. 102 to define a standard beneficiary, he indicated that the reference to a skilled manual male employee or an ordinary adult male labourer should not be considered discriminatory. Convention No. 102 referred to the concepts of skilled manual male employee or ordinary adult male labourer because, in practice, men's wages were higher than those of women. This situation was still broadly prevalent today and it was for this reason that the use of terms, which did not refer to the male sex, would in practice have the consequence of reducing the minimum and maximum amounts of benefits, as appropriate, as well as decreasing the number of persons benefiting from adequate protection. These concepts were therefore designed to ensure a higher level of benefits and did not mean that male beneficiaries were the only models in society. The same question had been raised in the Governing Body in March 2002 and had been the subject of clarifications in a footnote to the General Survey. In reply to the request for clarification by the Worker member of the Netherlands with regard to the fact that the Committee of Experts had not examined the application of the Radiation Protection Convention, 1960 (No. 115), by Norway, it was explained that this was an involuntary omission which would be made up by the Committee of Experts at its next session. It was added that the 2001 observation by the Committee of Experts had been accompanied by a footnote requesting the Government to provide a detailed report in 2003. In response to another request for clarification from the Worker member of the Netherlands on the current procedure for the selection of individual cases, it was recalled that their choice was the result of negotiation between the Employer and Worker members, in which neither the Government members nor the secretariat participated. He further clarified that the Committee established the list of cases in accordance with its own working methods, obviously without it being necessary to obtain the consent of the government concerned. Replying to a question raised by the Government member of Lebanon concerning ILO assistance for the creation of employment, it was recalled that this matter had been examined by the Committee on Employment and Social Policy of the Governing Body at its session in March 2003 in relation to the implementation of the Global Employment Agenda. The specialists in

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Sector II and in the subregional offices should be contacted in this respect. Furthermore, the General Survey next year would cover Convention No. 122 and other related instruments on employment policy. While agreeing with the Employer members that the report of the Conference Committee was not easily accessible to the reader, the Standards Department undertook to examine measures to improve its presentation. Furthermore, the comments of the Committee of Experts and the report of the present Committee were accessible on the ILOLEX database and modern technology was employed in the same way for all documents. Finally, the representative of the Secretary-General assured the Committee that the discussion on working methods would be continued, and that the secretariat would make every effort to assist in the continuation of this debate.<sup>12</sup>

#### **D. Compliance with specific obligations**

- 166.** In examining individual cases relating to compliance by States with their obligations under or relating to international labour standards, the Committee applied the same working methods and criteria as last year.
- 167.** In applying those methods, the Committee decided to invite all governments concerned by the comments in paragraphs 89 (failure to supply reports for the past two or more years on the application of ratified Conventions), 96 (failure to supply first reports on the application of ratified Conventions), 100 (failure to supply information in reply to comments made by the Committee of Experts), 130 (failure to submit instruments to the competent authorities), and 136 (failure to supply reports for the past five years on unratified Conventions and Recommendations) of the Committee of Experts' report to supply information to the Committee in a half-day sitting devoted to those cases.

#### ***Submission of Conventions and Recommendations to the competent authorities***

- 168.** In accordance with its terms of reference, the Committee considered the manner in which effect is given to article 19, paragraphs 5-7, of the ILO Constitution. These provisions require member States within 12, or exceptionally 18, months of the closing of each session of the Conference to submit the instruments adopted at that session to the authority or authorities within whose competence the matter lies, for the enactment of legislation or other action, and to inform the Director-General of the ILO of the measures taken to that end, with particulars of the authority or authorities regarded as competent.
- 169.** The Committee noted from the report of the Committee of Experts (paragraph 123) that considerable efforts to fulfil the submission obligation had been made in certain States, namely: **Burkina Faso, Costa Rica, Eritrea and Mauritania.**
- 170.** In addition, the Committee was informed by various other States of measures taken to bring the instruments before the competent national authorities. It welcomed the progress achieved and expressed the hope that there would be further improvements in States that still experience difficulties in complying with their obligations.

<sup>12</sup> See also statement of the Chairperson of the Committee, para. 40 of the report.

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### ***Failure to submit***

171. The Committee noted with regret that no indication was available that steps had been taken in accordance with article 19 of the Constitution to submit the instruments adopted by the Conference at the last seven sessions at least (from the 82nd to the 88th Sessions) to the competent authorities, in the cases of **Afghanistan, Armenia, Cambodia, Comoros, Haiti, Kyrgyzstan, Lao People's Democratic Republic, Latvia, Sao Tome and Principe, Sierra Leone, Solomon Islands, Somalia, Turkmenistan and Uzbekistan.**

### ***Supply of reports on ratified Conventions***

172. In Part B of its report (General questions relating to international labour standards), the Committee has considered the fulfilment by States of their obligation to report on the application of ratified Conventions. By the date of the 2002 meeting of the Committee of Experts, the percentage of reports received was 64.5 per cent, compared with 65.4 per cent for the 2001 meeting. Since then, further reports have been received, bringing the figure to 71.8 per cent (as compared with 72.2 per cent in June 2002, and 76.6 per cent in June 2001).

### ***Failure to supply reports and information on the application of ratified Conventions***

173. The Committee noted with regret that no reports on ratified Conventions had been supplied for the past two or more years by the following States: **Afghanistan, Armenia, Denmark** (Faeroe Islands), **Equatorial Guinea, Kyrgyzstan, Liberia, Sierra Leone, Solomon Islands, The former Yugoslav Republic of Macedonia, Turkmenistan and Uzbekistan.**

174. The Committee also noted with regret that no first reports due on ratified Conventions had been supplied by the following countries: since 1992 – **Liberia** (Convention No. 133); since 1995 – **Armenia** (Convention No. 111), **Kyrgyzstan** (Convention No. 133); since 1996 – **Armenia** (Conventions Nos. 100, 122, 135, 151), **Uzbekistan** (Conventions Nos. 47, 52, 103, 122); since 1998 – **Armenia** (Convention No. 174), **Equatorial Guinea** (Conventions Nos. 68, 92), **Uzbekistan** (Conventions Nos. 29, 100); since 1999 – **Turkmenistan** (Conventions Nos. 29, 87, 98, 100, 105, 111), **Uzbekistan** (Conventions Nos. 98, 105, 111, 135, 154); since 2000 – **Chad** (Convention No. 151); and since 2001 – **Armenia** (Convention No. 176), **Belize** (Conventions Nos. 135, 140, 141, 151, 154, 155, 156), **Cambodia** (Conventions Nos. 105, 111, 150), **Cape Verde** (Convention No. 87), **Congo** (Conventions Nos. 81, 98, 100, 105, 111, 138, 144), **Kyrgyzstan** (Convention No. 105), **Tajikistan** (Convention No. 105), **Zambia** (Convention No. 176). It stressed the special importance of first reports on which the Committee of Experts bases its first evaluation of compliance with ratified Conventions.

175. In this year's report, the Committee of Experts noted that 42 governments had not communicated replies to most or any of the observations and direct requests relating to Conventions on which reports were due for examination this year, involving a total of 379 cases (compared with 437 cases in December 2001). The Committee was informed that, since the meeting of the Committee of Experts, 13 of the governments concerned had sent replies, which would be examined by the Committee of Experts at its next session.

176. The Committee noted with regret that no information had yet been received regarding any or most of the observations and direct requests of the Committee of Experts to which replies were requested for the period ending 2002 from the following countries: **Afghanistan, Azerbaijan, Cambodia, Cape Verde, Chad, Comoros, Congo, Denmark**

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(Faeroe Islands), **Djibouti, Equatorial Guinea, Ethiopia, France (New Caledonia), Guinea, Haiti, Iraq, Kyrgyzstan, Latvia, Liberia, Libyan Arab Jamahiriya, Malaysia, Niger, Papua New Guinea, Paraguay, Sao Tome and Principe, Sierra Leone, Solomon Islands, Tajikistan, Uganda, United Kingdom (Gibraltar, Montserrat), Viet Nam and Zambia.**

177. The Committee noted the explanations provided by the governments of the following countries concerning difficulties encountered in discharging their obligations: **Cambodia, Chad, Denmark (Faeroe Islands), Djibouti, Equatorial Guinea, Ethiopia, Fiji, France (New Caledonia), Guinea, Haiti, Latvia, Libyan Arab Jamahiriya, Malaysia, Mongolia, Niger, Papua New Guinea, Paraguay, Sierra Leone, United Republic of Tanzania, United Kingdom (Gibraltar, Montserrat), Viet Nam and Zambia.**

178. The Committee stressed that the obligation to transmit reports is the basis of the supervisory system. It requests the Director-General to adopt all possible measures to improve the situation and solve the problems referred to above as quickly as possible. It expressed the hope that the subregional offices would give all due attention in their work in the field to standards-related issues and in particular to the fulfilment of standards-related obligations. The Committee also bore in mind the reporting arrangements approved by the Governing Body in November 1993, which came into operation from 1996, and the modification of these procedures adopted in March 2002 which came into force in 2003.

### ***Supply of reports on unratified Conventions and on Recommendations***

179. The Committee noted that 141 of the 255 article 19 reports requested on the Protection of Wages Convention (No. 95) and Recommendation (No. 85), 1949, had been received at the time of the Committee of Experts' meeting, and a further five since, making 58 per cent in all.

180. The Committee noted with regret that over the past five years none of the reports on unratified Conventions and on Recommendations requested under article 19 of the Constitution had been supplied by: **Afghanistan, Bosnia and Herzegovina, Democratic Republic of the Congo, Equatorial Guinea, Georgia, Grenada, Guinea, Iraq, Liberia, Mongolia, Saint Vincent and the Grenadines, Sao Tome and Principe, Sierra Leone, Solomon Islands, United Republic of Tanzania, The former Yugoslav Republic of Macedonia, Turkmenistan, Uganda and Uzbekistan.**

### ***Communication of copies of reports to employers' and workers' organizations***

181. Once again this year, the Committee did not have to apply the criterion "The Government has failed during the past three years to indicate the representative organizations of employers and workers to which, in accordance with article 23(2) of the Constitution, copies of reports and information supplied to the ILO under articles 19 and 22 have been communicated".

### ***Application of ratified Conventions***

182. The Committee noted with particular interest the steps taken by a number of governments to ensure compliance with ratified Conventions. The Committee of Experts listed in paragraph 107 of its report new cases in which governments had made changes to their law and practice following comments it had made as to the degree of conformity of national

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legislation or practice with the provisions of a ratified Convention. There were 30 such cases, relating to 24 countries; 2,342 cases where the Committee has been led to express its satisfaction with progress achieved since the Committee of Experts began listing them in 1964. These results are tangible proof of the effectiveness of the supervisory system.

**183.** This year, the Committee of Experts listed in paragraph 109 of its report, cases in which measures ensuring better application of Conventions had been noted with interest. It has noted 143 such instances in 84 countries.

**184.** At its present session, the Conference Committee was informed of other instances in which measures had recently been or were about to be taken by governments with a view to ensuring the implementation of ratified Conventions. While it is for the Committee of Experts to examine these measures, the present Committee welcomes them as fresh evidence of the efforts made by governments to comply with their international obligations and to act upon the comments of the supervisory bodies.

### ***Specific indications***

**185.** The Government members of **Cambodia, Chad, Denmark** (Faeroe Islands), **Djibouti, Equatorial Guinea, Ethiopia, Fiji, France** (New Caledonia), **Guinea, Haiti, Latvia, Libyan Arab Jamahiriya, Malaysia, Mongolia, Niger, Papua New Guinea, Paraguay, Sierra Leone, United Republic of Tanzania, United Kingdom** (Gibraltar, Montserrat), **Viet Nam** and **Zambia** have promised to fulfil their reporting obligations as soon as possible.

**186.** The Government member of **Ethiopia** expressed her gratitude for technical assistance on reporting requirements provided by the Office. Further, the Government members of **Cambodia, Denmark** (Faeroe Islands), **Equatorial Guinea, Fiji, Libyan Arab Jamahiriya, Mongolia, Sierra Leone** and the **United Republic of Tanzania** requested technical assistance by the Office in order to better fulfil their reporting obligations.

### ***Cases of progress***

**187.** The Committee noted with satisfaction that in a number of cases – including some involving basic human rights – governments have introduced changes in their law and practice in order to eliminate divergences previously discussed by the Committee. It considers the highlighting of these cases a positive example to encourage governments to positively respond to comments of the supervisory bodies.

### ***Special sitting concerning the application by Myanmar of the Forced Labour Convention, 1930 (No. 29)***

**188.** The Committee held a special sitting concerning the application by Myanmar of Convention No. 29, in conformity with the resolution adopted by the Conference in 2000. A full record of the sitting appears in Part Three of the report.

### ***Special cases***

**189.** The Committee considered it appropriate to draw the attention of the Conference to its discussions of the cases mentioned in the following paragraphs, a full record of which appears as Part Two of this report.



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**190.** As regards the application by **Belarus of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**, the Committee noted the oral and written information provided by the Government representative and the discussion that followed. The Committee noted that the comments of the Committee of Experts referred to a number of divergences between law and practice and the Convention. In particular, the Committee noted that the law and various legislative decrees placed important restrictions upon the right of workers and employers to establish organizations of their own choosing without prior authorization and the right of such organizations to operate without interference by the public authorities, including the right to receive foreign financial assistance for their activities. The Committee also noted with deep concern the conclusions of the Committee on Freedom of Association in Case No. 2090 concerning the interference by the public authorities in trade union elections, in violation of Article 3 of the Convention, and deeply regretted to note the statements made before the Committee to the effect that its interference in the internal affairs of trade unions was continuing. In this respect, the Committee firmly urged the Government to take all the necessary measures in the near future to bring an end to such interference with a view to ensuring full compliance with the provisions of the Convention in both law and practice. While noting the Government's statement that it was paying particular attention to the comments of the Committee of Experts and that it had invited a high-level official from the Office to visit the country, the Committee regretted to recall that the Government had been referring for several years to the need for changes in the legislation and that up to now it had not been able to note real progress in this regard. It therefore expressed the firm hope that all the necessary measures would be taken in the very near future to guarantee in full the rights afforded by the Convention to all workers and employers, particularly with regard to the right of their respective organizations to organize freely their internal affairs and to elect their leaders without interference by the public authorities. The Committee urged the Government to provide detailed information in the report due so that it could be examined by the Committee of Experts at its next session and expressed the firm hope that next year it would be in a position to note real progress achieved in relation to this case. The Committee decided to include its conclusions in a special paragraph of its report. It also decided to mention this case for continued failure to implement the Convention.

**191.** As regards the application by **Cameroon of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**, the Committee noted the statement by the Government representative and the discussion that followed. The Committee emphasized with concern that for many years serious divergences had been noted between national law and practice and the Convention. These grave problems of application related in particular to the requirement of prior authorization to establish a trade union, the right of organization of public servants and the limitations placed upon affiliation to an international organization by organizations of workers in the public service. The Committee recalled that this case had been discussed on many occasions and regretted to note that no progress had been achieved in practice in the application of the Convention despite the technical assistance provided in 2001. The Committee emphasized that full respect for civil liberties was essential for the application of the Convention and that the Government had to refrain from any interference in the internal affairs of trade unions. It urged the Government to amend its legislation on an urgent basis in order to ensure that workers in both the private and the public sectors could establish and freely administer their organizations without the intervention of the public authorities. The Committee also urged the Government to provide a detailed report on all the matters raised by the Committee of Experts and expressed the firm hope that the Government's next report to the Committee of Experts would reflect concrete and positive progress. The Committee decided that its conclusions would be included in a special paragraph of its report.

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**192.** As regards the application by the **Libyan Arab Jamahiriya of the Equality of Treatment (Social Security) Convention, 1962 (No. 118)**, the Committee took note of the statements made by the Government representative as well as the discussion that followed. The Committee regretted to note that despite the severe terms of its conclusions formulated on this case in 1992 and 1999, and the assurances offered by the Government on these occasions, the Government had still not given any indications that it had adopted any particular measures since 1992. It was the opinion of the Committee that the verbal explanations presented by the Government representative during the discussions did not reflect the Government's intention to modify the legislation in accordance with the requirements of the Convention. In these circumstances, it was important to recall that, although the Government's intention to maintain a fruitful dialogue with the supervisory bodies was imperative, it still had the obligation to comply with the obligations resulting from a ratified Convention. The Committee expressed the hope that, on the basis of the assurances offered by the Government representative, the Government would soon re-initiate a substantive dialogue. It urged the Government, once again, to adopt specific and concrete measures with a view to achieving full conformity of the legislation with the provisions of the Convention, ensuring as such full observance of the principles of equality of treatment in the area of social security. It also requested the Government to provide a detailed report to the Committee of Experts at its next session in November-December 2003. The Committee expressed the firm hope that the Government would accept the technical cooperation offered by the ILO in order to solve the problems. The conclusions will be included in a special paragraph of the General Report. The Employer members, supported by the Worker members, agreed with the conclusions of the Committee in this case and requested that they be placed in a special paragraph of its report.

**193.** As regards the application by **Mauritania of the Forced Labour Convention, 1930 (No. 29)**, the Committee noted the information provided by the Government representative and the discussion that followed. The Committee shared the concern expressed by the Committee of Experts at the absence of legal provisions penalizing the exaction of forced labour and regretted that the mission which had been accepted by the Government had not taken place. The Committee noted the statement of the Government representative concerning the adoption at the first reading of the Labour Code and draft legislation to suppress the trafficking of persons. The Committee expressed deep concern at the persistence of situations which constituted grave violations of the prohibition of forced labour. It urged the Government that a technical assistance mission should take place in the form of a direct contacts mission to the country to help the Government and the social partners with a view to the application of the Convention. The Committee hoped that progress would be made in practice in the near future in this case. The Committee decided to place its conclusions in a special paragraph of its report.

**194.** As regards the application by **Myanmar of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**, the Committee noted the statements by the Government representative and the discussion which followed. It recalled that the Committee had discussed this serious case on many occasions in the last ten years and that its latest conclusions had been included in a special paragraph because of the continued failure of the Government to apply the Convention. Notwithstanding, the Committee was once again obliged to note the lack of real progress towards the establishment of a legislative framework for the creation of free and independent organizations. The Committee profoundly deplored the persistence of serious discrepancies between national legislation and the provisions of the Convention which had been ratified almost 50 years ago. The Committee regretted that the information provided by the Government on the existence of workers' associations had not solved the problems raised by the Committee of Experts towards implementing the Convention. Concerned about the total lack of progress towards implementing this Convention, the Committee strongly insisted once again that

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the Government urgently adopt the necessary measures and mechanisms for guaranteeing, both in law and in practice, the right of workers and employers to affiliate themselves with the organizations of their own choosing, without previous authorization, and the right for these organizations to affiliate themselves with federations, confederations and international organizations without the interference of state authorities. The Committee emphasized that respect for civil liberties was crucial for the exercise of freedom of association and therefore urged the Government to take the necessary measures so that workers and employers could exercise the rights guaranteed by the Convention in a climate of full security and in the absence of threats or fear. Furthermore, the Committee urged the Government to provide the Committee of Experts, next year, with all relevant draft legislation and existing legislation so that it could be studied, and to provide a detailed report on the concrete measures taken to ensure improved compliance with the Convention. The Committee expressed the firm hope it would be able to note significant progress next year. The Committee decided to include its conclusions in a special paragraph in its report. It also decided to mention this case as a case of continued failure to apply the Convention.

- 195.** As regards the application by **Zimbabwe of the Right to Organise and Collective Bargaining Convention, 1949 (No. 98)**, the Committee took note of the written information submitted by the Government, the oral statement made by the Government representative and the ensuing discussion. The Committee noted once again that the comments of the Committee of Experts dealt with problems relating to the application of Article 2 (protection against acts of interference), Article 4 (promotion of collective bargaining) and Article 6 (scope of application) of the Convention. The Committee noted the Government's statement that in the context of the ongoing reform of the labour legislation, the amendments to the Labour Relations Act adopted on 7 March 2003 and that the statutory instrument on the protection of workers' organizations against acts of interference by employers' organizations and vice versa had been adopted in 2003. Noting that the Committee of Experts had made certain comments on the provisions of the draft amendments transmitted with the Government's report, the Committee considered that it would be appropriate for the Committee of Experts to examine the conformity of the amended legislation with the provisions of the Convention. The Committee nevertheless noted with concern the allegations made concerning the persistent violations of the Convention in law and in practice. The Committee expressed firm hope that in the very near future the necessary measures would be adopted to guarantee that the rights set out in the Convention were effectively applied to all workers and employers, and to their organizations. The Committee requested the Government to provide detailed information in this regard in its next report so that it could be examined by the Committee of Experts. The Committee noted that the Government was willing to accept technical assistance and requested it to accept a direct contacts mission to examine the whole situation *in situ* and to inform the Committee of Experts on legislative developments and on the outstanding issues. The Committee decided to include its conclusions on this case in a special paragraph of its report.

### ***Continued failure to implement***

- 196.** The Committee recalls that its working methods provide for the listing of cases of continued failure over several years to eliminate serious deficiencies, previously discussed, in the application of ratified Conventions. This year the Committee noted with great concern that there had been continued failure over several years to eliminate serious discrepancies in the application by **Belarus of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**, and by **Myanmar of the Freedom of Association and Protection of the Right to Organise Convention, 1948 (No. 87)**.

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197. The governments of the countries to which reference is made in paragraphs 190 and 194 are invited to supply the relevant reports and information to enable the Committee to follow up the abovementioned matters at the next session of the Conference.

### ***Participation in the work of the Committee***

198. The Committee wished to express its gratitude to the 67 governments which collaborated by providing information on the situation in their countries and participating in the discussions of their individual cases.

199. The Committee regretted that, despite the invitations, the governments of the following States failed to take part in the discussions concerning their countries' fulfilment of their constitutional obligations to report: **Afghanistan, Azerbaijan, Bosnia and Herzegovina, Cape Verde, Congo, Democratic Republic of the Congo, Georgia, Sierra Leone, Somalia, Tajikistan, Uganda and Zambia**. It decided to mention the cases of these States in the appropriate paragraphs of its report and to inform them in accordance with the usual practice.

200. The Committee noted with regret that the governments of the States which were not represented at the Conference, namely **Armenia, Belize, Comoros, Grenada, Iraq, Kyrgyzstan, Lao People's Democratic Republic, Saint Vincent and the Grenadines, Solomon Islands, The former Yugoslav Republic of Macedonia, Turkmenistan and Uzbekistan**, were unable to participate in the Committee's examination of the cases relating to them. It decided to mention these countries in the appropriate paragraphs of this report and to inform the governments, in accordance with the usual practice.

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201. The Committee wishes to draw the Conference's attention to the essential role international labour standards have to play in the effort to alleviate poverty and foster social justice for all. The implementation gap, between the commitments made by ratification and the application in practice of ratified Conventions, was again demonstrated and addressed through the supervisory mechanisms. In this regard the Committee would like to highlight the value placed on tripartite dialogue which seeks to find realistic and well-founded solutions to promote the application of the standards in practice. The Committee was pleased that it could report on several cases of progress. In these cases, the supervisory system has contributed to making real improvements in social and working conditions at the national level. At the same time, it examined a number of cases in which very serious concerns on the non-application of fundamental and technical Conventions were raised. The Committee hopes that its tripartite discussions will bear fruit and have a positive influence on developments in those cases. It must stress the importance it places on the technical assistance provided by the Office to follow up its work. The Committee remains committed to further enhancing the functioning of the supervisory system, including continuing discussions on its working methods.

Geneva, 17 June 2003.

*(Signed)* Mr. Sergio Paixao Pardo,  
Chairperson.

Ms. Erlien Wubs,  
Reporter.

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