



Sixth item on the agenda: Migrant workers
(general discussion based on an integrated approach)

Report of the Committee on Migrant Workers

1. The Committee on Migrant Workers met for its first sitting on 1 June 2004. Initially, it consisted of 174 members (75 Government members, 39 Employer members, 60 Worker members). To achieve equality of voting strength, each Government member was allotted 52 votes, each Employer member 100 votes and each Worker member 65 votes. The composition of the Committee was modified six times during the session, and the number of votes attributed to each member was adjusted accordingly.¹

2. The Committee elected its Officers as follows:

Chairperson: Mr. Y. Dé (Government member, Senegal)

Vice-Chairpersons: Mr. J. de Regil (Employer member, Mexico) and
Ms. S. Burrow (Worker member, Australia)

Reporter: Mr. N. Kebbon (Government member, Sweden)

3. At its seventh sitting the Committee appointed a Drafting Group to draw up a draft resolution and draft conclusions based on views expressed during the plenary discussions, for consideration by the Committee. The Drafting Group was composed as follows:

Government members: Ms. R.D. Baldoz (Philippines), Ms. T. Koripamo-Agary (Nigeria),
Mr. R.G. Kramer (United States), Mr. E. Martinez (Mexico) and
Ms. A.-M. Ross (Ireland)

¹ The modifications were as follows:

- (a) 2 June: 218 members (97 Government members with 3,570 votes each, 51 Employer members with 6,790 votes each and 70 Worker members with 4,947 votes each);
- (b) 3 June: 226 members (109 Government members with 3,350 votes each, 50 Employer members with 7,303 votes each and 67 Worker members with 5,450 votes each);
- (c) 4 June: 234 members (112 Government members with 225 votes each, 50 Employer members with 504 votes each and 72 Worker members with 350 votes each);
- (d) 10 June: 189 members (119 Government members with 100 votes each, 50 Employer members with 238 votes each and 20 Worker members with 595 votes each);
- (e) 11 June: 171 members (119 Government members with 93 votes each, 31 Employer members with 357 votes each and 21 Worker members with 527 votes each);
- (f) 12 June: 137 members (119 Government members with 11 votes each, 7 Employer members with 187 votes each and 11 Worker members with 119 votes each).

Employer members: Mr. P. Anderson (Australia), Mr. J. de Regil (Mexico), Mr. V. Esselaar (South Africa), Mr. T. Manley (United States) and Mr. S. Rudeberg (Sweden)

Worker members: Ms. A. Avendano-Denier (United States), Ms. S. Burrow (Australia), Mr. J.M. Mutungi (Kenya), Mr. P. Palsterman (Belgium) and Ms. M. Phillips (Jamaica)

4. The Committee held 15 sittings.
5. The Committee had before it Report VI entitled *Towards a fair deal for migrant workers in the global economy*, prepared by the Office on the sixth item of the agenda of the Conference: Migrant workers (general discussion based on an integrated approach).

Introduction

6. In his opening statement, the Chairperson thanked the Committee for honouring him and his country with its confidence. He drew attention to the four issues for discussion, which the Committee formally adopted. He stressed that the success of the proceedings would depend on developing a common vision of existing problems and challenges, understanding each other's interests and concerns, reaching agreement on principles and values, and forging a consensus on a plan of action on what could be done by the tripartite constituents, under the auspices of the ILO, to ensure decent working conditions for all workers.
7. The representative of the Secretary-General introduced the Office report. He emphasized that this Conference presented an historic opportunity for the ILO to help shape the future of labour migration, based on its standards and principles, which could lead to mutually beneficial outcomes for the individual migrants, their host societies, and their countries of origin. The conditions that led to migration had widened over the years as a result of globalization. The rising mobility of people in search of decent work and human security had increasingly attracted the attention of policy-makers and prompted dialogues for multilateral cooperation. In this context, he referred to the report of the World Commission on the Social Dimension of Globalization and other processes such as the Berne Initiative and the newly established Global Commission on International Migration. He highlighted several salient points made in the report: the issue of irregular migration and its management; greater attention to the link between migration and development; the need for ensuring equitable sharing of benefits between origin and destination countries, especially in regard to skilled migration; helping middle-income countries which had recently become countries of immigration to better match their migration policies to current labour market realities; the lack of protection for migrant workers; and the additional disadvantages faced by women migrant workers. The speaker also stressed that the ILO Conventions and Recommendations still constituted the most important means to protect migrant workers at the international level, even if there were some gaps. In conclusion, the representative hoped that the Conference would adopt a comprehensive plan of action on migration, which might include, inter alia: promotion of the ILO migrant worker Conventions coupled with technical assistance; strengthening capacity of constituents for national policy and management of migration; monitoring long-term labour market developments and migration flows for formulation of appropriate policies; promotion of cooperative arrangements among States for a rights-based management of migration; and the establishment of an ILO forum on migration for work.
8. In his opening statement, the Employer Vice-Chairperson stated that discussion of migration should be placed in the context of general globalization, and should consider

what policies and structures were needed to ensure orderly migration, the role of international and bilateral relations, and which standards were needed to protect migrant workers. However, one had to recognize that States still had the sovereign right concerning admission of migrant workers.

9. The movement of people was a long-standing feature, but labour migration had increased since the 1990s. Today, labour migration affected all countries as places of origin, transit and destination of migrant workers. Benefits for sending countries included providing opportunities for migrants, the acquisition of new skills, and remittances which helped to support families. Likewise, destination countries benefited as migrants made significant contributions to the economy and skilled persons brought new ideas, technology and multicultural outlooks. Migrants also took up jobs that local workers refused.
10. However, one should not overlook the negative aspects of migration in the form of exploitation of labour, where it occurs, and smuggling or trafficking of human beings. Irregular migration also resulted from unemployment and poverty, and posed risks not only for workers in irregular status but also for employers. Furthermore, migration often led to significant losses of qualified young workers from developing countries, which could not match the opportunities offered by developed countries.
11. The Employers' group did not agree with the generalization implicit in the Office report that migrants generally encountered exploitation in the host countries. While there were situations of unfair treatment, these could be mostly traced to lack of appropriate policies, which affected local workers as well. The remedy lay in the promotion of suitable employment and migration policies that eliminated irregular migration and strengthened national labour markets.
12. The Employers' group also did not agree that ILO instruments concerning migration provided the full solution. They had been poorly ratified. UN Conventions and related Protocols also needed to be properly coordinated with ILO instruments. The ILO should provide technical assistance for the development of domestic policies consistent with specific country situations.
13. The Employers' group agreed with the Office views on the criteria of sound national policies. These policies should also be viable, flexible and adaptable and take into account the difference between temporary and permanent migrant workers. Technical assistance was needed for improving national policies and promoting bilateral agreements. Other forms of assistance could include: incentives and opportunities for people to remain in their home countries; promoting the return of skilled persons; and productive use of remittances. These policies should be formulated in collaboration with the social partners. Countries of destination should have appropriate channels for legal migration, including bilateral agreements, to minimize irregular migration. They should also give equal legal protection to migrant workers.
14. Lastly, the Employers' group drew attention to effective contributions from the ILO: to collaborate with other international and local agencies working in this area to ensure coordination; to help in coordination and standardization of administrative and entry procedures and documentation formats required by different countries; and to facilitate a constant and dynamic interchange of information on best practices. The ILO was the natural organization for dealing with labour issues because of its tripartite structure and its dynamic approach to migration and international instruments.
15. The Worker Vice-Chairperson recalled the ILO Director-General's observation that the greatest structural deficit of globalization was the failure to create jobs where people lived,

leading directly to the need to manage the movement of people in order to create prosperity for all. Migration had two critical interrelated elements: an economic dimension and a human rights imperative. Migration was significant, increasing, and not a North-South issue since about 40 per cent of all migration occurred between developing countries. The most vulnerable migrant workers were those in irregular situations because of the work they did and the absence of national legal protection.

- 16.** An increasing proportion of migration was temporary and the World Trade Organization (WTO) negotiations on Mode 4 (movement of natural persons) under its General Agreement on Trade in Services (GATS) would presumably accelerate this trend. Unions were concerned about the GATS Mode 4 discussion on temporary migration because the WTO was unfortunately not focusing attention on the protection of temporary migrant workers. To overcome these problems the ILO and WTO should be working more closely together to ensure that all migrant workers benefit from equal treatment.
- 17.** Concerning economic aspects, the main benefits to receiving countries came through increased aggregate demand and size of the domestic market. The economic impact on sending countries was equally important in the form of reduced labour market pressures and the positive impact of remittances on consumption and investment. A major cost of migration was the brain drain. Health care and education were particularly affected by the departure of well-educated and highly skilled workers. To offset such losses, industrialized countries should be required to compensate developing countries for the investments they had made in training and education of highly skilled workers who migrate to developed countries. Returning a proportion of taxes paid by migrant workers to their home countries was one option.
- 18.** Turning to the human rights aspects of migration, the Worker Vice-Chairperson implored employers to join the trade union movement in its attempt to eliminate the abuses of workers' rights, in their own long-term interest. She stressed that, for trade unions, human rights and labour rights went hand in hand. The Worker Vice-Chairperson rejected the Employers' group's statement that there was no exploitation in host countries, and cited a number of concrete cases of human rights abuses while underscoring that many cases went unreported, in particular as they concerned domestic workers. Existing ILO instruments provided essential direction on how to handle the human rights dimensions of migration and constituted a fundamental building block for any multilateral framework. Furthermore, all ILO Conventions, unless otherwise specified, and in particular core labour standards, applied to all workers – temporary migrants, permanent migrants, people in irregular situations, etc.
- 19.** The Workers' group noted with regret that the Migration for Employment Convention (Revised), 1949 (No. 97), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), lacked universal ratification. But she noted that all ILO instruments remained important, even in countries which had not ratified them, because they served as guidelines for legislation and practice. Although Conventions Nos. 97 and 143 needed strengthening to cover all migrant workers including frontier workers and workers in time-bound activities or projects ("posted" workers), the position of the Workers' group was that they did not wish to start revising the existing ILO Conventions at this point in time – they should rather be promoted. There was also an urgent need to better manage migration. The Workers' group endorsed the observations made by the World Commission on the Social Dimension of Globalization that the ILO should commence work on the establishment of a multilateral framework on migration. The purpose of the multilateral framework should be to maximize the benefits to both sending and receiving countries, and ensure that all migrant workers receive adequate protection and equal treatment. The Workers' group had identified best practice guidelines which

would be useful to facilitate bilateral, regional and global agreements. They also proposed that a series of tripartite expert meetings be convened by the ILO over the course of the next 12 months, which should also include other international organizations interested in the issues, with a mandate to deliver a report in late 2005. The Workers' group also called for the consideration of the establishment of a new permanent committee of the ILO Governing Body which would have responsibility for directing and monitoring the implementation of ILO policies and programmes on migration.

20. In concluding, the Worker Vice-Chairperson wished to allay any government fears that workers would attempt to interfere with the sovereign rights of States on migration. Workers would seek to build on the tools of the ILO and work with their social partners to identify pressing issues, map best practices, develop guidelines and build a multilateral framework that, while not binding, would carry the authority of workable solutions to strengthen economies, build social cohesion and eliminate the corruption that seeped through the gaps in the contemporary framework of globalization.
21. The Government member of Saudi Arabia, speaking on behalf of the Government members of the Committee Member States of the Gulf Cooperation Council (GCC) (Bahrain, Kuwait, Oman, Qatar, Saudi Arabia, United Arab Emirates) and Yemen, noted the substantial contribution migrants made to receiving States, while the Government member of the Philippines listed various contributions migrants made to local communities in their home countries. Other Government members noted the important role of remittances in local economic development, in supplementing foreign direct investment and, in the case of India, in contributing significantly to foreign exchange reserves.
22. On the other hand, several Government members drew attention to the substantial costs of migration. Costs to migrant workers and their families included a high level of stress due to poor working conditions, separation and vulnerability to physical and psychological abuse, with the most vulnerable workers bearing the greatest burden. The Africa group drew attention to the fact that the cost to the sending countries included the brain drain, which was particularly true of health-care workers just when the HIV/AIDS pandemic was placing increasing demands on health services.
23. Although all countries agreed that migration had the potential to benefit all concerned parties – migrant workers, sending countries and receiving countries – the Government member of the Islamic Republic of Iran considered that migration was a last resort for workers with few options. Some causes of migration noted by various Government members included: widening disparities between countries; poverty; high unemployment and the failure to create jobs where people lived; a lack of decent work in sending countries; poor governance; ageing populations combined with declining fertility rates in many developed countries; and large wage differentials. The Government member of Denmark stated that although migration had net benefits, governments should first ensure that existing migrants were well integrated. The Government member of the Philippines pointed out that the benefits of migration, particularly remittances, might tempt sending States to postpone efforts to develop the home economy and create jobs locally.
24. Numerous speakers stressed that migrants in irregular status were those most vulnerable to abuse and exploitation, and that it was to everyone's advantage to find a way to remedy the situation. In this respect, the Government member of the United States pointed out that, while unauthorized migration was an important concern in his country, all of the labour laws applied to all workers equally. At the same time, the Government members of Australia and Japan, among others, stressed that States must retain the right to decide who may enter their territory, on what basis and for how long. The Government members of Denmark and Saudi Arabia cautioned against creating more incentives for irregular

migration when proposing solutions for existing migrants in irregular status. The Government members of the Africa group, on the other hand, saw an inconsistency in advocating the opening of borders to the free flow of investment and trade while restricting the free movement of labour. The Government member of the Libyan Arab Jamahiriya also supported the free trade and mobility of jobseekers. The Government member of the Côte d'Ivoire explained that irregular migration brought both benefits and challenges to his country. In addition, it should not be forgotten that migrant workers in regular status also frequently faced numerous forms of discrimination, as had been noted by the Government member of Kiribati.

- 25.** There was broad consensus on the need to promote respect for migrant workers' rights, including raising awareness among migrants of their rights and awareness among receiving States of their obligations, and that the Office should strive to promote equality of treatment and protection against exploitation. Some Government members pointed out that the objectives of any plan of action for the ILO must be clear and should be consistent with the mandate given to the Committee by the Conference. The plan of action should strive for consistency between international instruments and cooperation among various UN agencies. The Government member of Canada emphasized that a plan of action should include the promotion of employment in sending countries. The Government member of the Libyan Arab Jamahiriya stressed that countries benefiting from the brain drain caused by migration should recognize the right of countries of origin to receive compensation rather than aid, through the development of employment programmes aimed at preventing unemployment and alleviating poverty. Speaking on behalf of the Government members of the Committee Member States of CARICOM, the Government member of Jamaica stressed the importance of harmonizing social protection policies between sending and receiving States. The Government member of Mongolia pointed out that most countries could no longer be categorized as sending or receiving, and were faced with the challenges of both, creating common ground. The Government member of the Philippines and the representative of the Council of Europe both drew attention to the role of recognition and certification of skills in protecting the rights of migrant workers. The Government member of Saudi Arabia, speaking on behalf of the Government members of the Committee Member States of the GCC and Yemen, and the Government member of Lebanon emphasized that any plan of action should take into account the differences between temporary and permanent migration.
- 26.** The views of Government members concerning the ILO instruments varied substantially. Some Government members, such as the Government member of Mexico, believed it would be inappropriate to promote the ILO Conventions and Recommendations concerning migration because they were out of date in comparison with other instruments which were adopted more recently, such as the International Convention on the Protection of the Rights of all Migrant Workers and Members of Their Families (1990) (UN Convention on the rights of migrant workers). At the other extreme, the Government member of Brazil considered the ratification of existing instruments to be fundamental to managing migration effectively, although his country was also open to the adoption of an additional instrument. The Government member of Venezuela also fully supported a campaign to promote the ratification of Conventions Nos. 97 and 143, as did the Government member of Morocco who also called for the establishment of a non-binding multilateral framework. The Africa group considered that these instruments should be promoted, as proposed in paragraph 318 in the Office report, but at the same time recognized that some gaps existed, in particular for the most vulnerable workers, which might justify the adoption of a new instrument. The Government member of India also felt that the instruments needed to be updated to fit current market realities, such as the need to allow for charging of fees for services rendered. The Government member of the Philippines stated that many of these gaps could be filled by a more rigorous promotion of

the Decent Work Agenda, which was based on the fundamental principles and rights at work, as well as of international labour standards concerning public and private placement agencies (the Employment Service Convention, 1948 (No. 88), and the Private Employment Agencies Convention, 1997 (No. 181)). The Government member of Jamaica, speaking on behalf of the Government members of the Committee Member States of CARICOM, drew attention to the important potential contribution of the international labour standards concerning social security protection, including protection for migrant workers. The Government members of the Committee Member States of CARICOM also suggested the establishment of a Protocol on migration to address weaknesses in the existing instruments, including protection from arbitrary deportation and worker abuse, and elimination of abuse and exploitation of women and children.

27. Suggestions for the role of the ILO in protecting migrant workers included:

- providing technical assistance to support countries in implementing the existing international labour standards in law and practice;
- assisting in capacity building among member States to better manage migration nationally and regionally;
- promoting policies that enhance contributions of migration to development;
- promoting social dialogue nationally and regionally;
- promoting bilateral and regional discussions and cooperation;
- disseminating information on best practices;
- creating a database to provide reliable statistics, particularly from sending countries, including data disaggregated by sex, and to provide labour market data;
- involving regional and subregional offices in the dissemination of information;
- ensuring consistency between ILO standard-setting and technical activities and other UN agencies and international bodies;
- supporting institutional structures to facilitate the exchange and monitoring of migrant flows.

28. As to frameworks in particular, the Government members of the Committee Member States of the GCC advocated adopting a single transparent multilateral framework to regulate transboundary movements of persons, which would balance the interests of migrants with those of the sending and receiving countries. The representative of the International Organization for Migration (IOM) also agreed that there was a need for more managed migration at the international level and cited efforts in this direction such as the Geneva Migration Group and the Berne Initiative. Other Government members, such as the Government member of New Zealand, felt that national policies were the key to effective management of migration. The Government member of Australia stressed that variations in approach were inevitable because they reflected differences in national values placed on economic growth, population size, diversity and harmony, as well as humanitarian concerns. It was not for the ILO to adopt policies that would supersede national policies. The Government member of India agreed that different approaches must be allowed, but that all should have non-discrimination as a basis. The Government member of Venezuela mentioned regional efforts taking place between Andean countries to establish an international framework to protect migrant workers' rights concerning

social security and occupational safety and health. The representative of the Council of Europe also stressed the need for multilateral action as opposed to unilateral action. Other speakers, such as the Government members of Bangladesh, Morocco and the Philippines, suggested the creation of a forum, which would include governments, social partners, all relevant UN agencies and other multilateral organizations concerned with migration, to explore further the possibility of establishing a multilateral framework. In a similar effort, the representative of the Council of Europe mentioned that his organization had recently launched a political platform on migration in order to stimulate dialogue and was looking at creating a migration agency to promote the regular dialogue between countries of origin, transit and destination, both within Europe as well as with countries in Asia and Africa. Nonetheless, as the Government member of the United States noted, the issue of migrant workers' rights had an impact on all countries, and they must work together towards establishing better protections for migrant workers.

- 29.** Other proposals included the promotion of dialogue between sending and receiving States concerning: increasing the level of foreign direct investment in sending countries so that they could generate more decent work locally; and improving the conditions under which workers migrated, such as having States recruit workers to prevent them from falling prey to traffickers, and adopting strong anti-trafficking laws and providing assistance to victims.
- 30.** The Government members of the Committee Member States of the European Union (EU) observed that the ageing population in many EU countries implied that continuing migration flows could help to meet the future needs of the labour market. They agreed with the Office report that in order for migrant workers to receive effective protection, migration needed to be properly managed through increased dialogue and cooperation between both sending and receiving States. The EU framework for managing migration provided common basic principles for Member States while allowing for flexibility in application at the national level and as such could be useful as an example of best practice for countries wishing to set up regional agreements. One focus of the EU framework was to combat illegal immigration through the implementation of effective sanctions against persons responsible for trafficking or employing migrant workers illegally, information sharing and increased dialogue between States. It was important not to create unwarranted expectations of regularization of migrant workers in irregular status. It was crucial that the basic rights of workers in irregular status were respected and that they had effective recourse to legal proceedings. The ILO could make a major contribution to the management of migration through the wider promotion and application of ILO standards, in particular in countries developing migration frameworks, as well as through capacity building for countries most in need of support. Studies of long-term labour market developments would be better undertaken at the national and regional levels and with existing organizations in order to avoid duplication. The Government members of the Committee Member States of the EU fully supported cooperative arrangements among States. While any scheme for managing migration should be based on respect for basic labour standards, a rights-based approach was not to be understood as implying a right to admission per se. Lastly, they were not at this stage convinced of the need for an international forum on migration and before any decision was taken on the creation of such a forum, a clear mandate and specific focus needed to be established in order to avoid overlapping with the work of other international organizations or processes on migration. An alternative could be to strengthen the ILO contribution in existing forums.
- 31.** The Employer Vice-Chairperson noted that all Committee members had recognized that migration was a virtually universal phenomenon. The Employer members and the Worker members had agreed on a number of points, for instance the need for the ILO to seek as much information as possible about each country's needs, regulations and domestic markets. The Employers' group considered that Conventions Nos. 97 and 143 must be

viewed as references but that they no longer reflected existing circumstances. The ILO should therefore collect more information from individual countries in order to propose up-to-date solutions and the social partners should collaborate in the context of the ILO to that end. There was also a need to coordinate existing international instruments. Exploitation was clearly a phenomenon that went hand in hand with irregular migration. Workers in regular status enjoyed legislative protection in most countries but those in irregular status did not. Hence governments should be encouraged to facilitate their regularization. Employers needed a regulatory framework on which to base contracts, that ensured equal treatment for all. Unequal treatment also created unfair competition among workers themselves and among employers. Other forms of abuse fell outside the remit of the ILO but pointed to the importance of coordinating relevant international instruments.

- 32.** After listening to the Government interventions, the Worker Vice-Chairperson noted that there were many areas of convergence among the groups. There was no substantial opposition to the need for the ILO to promote the existing Conventions and related instruments as the basis for national legislation, policies and arrangements. The Workers' group agreed with the Government member of Bangladesh that remittances could be better managed to expand income and investment possibilities for workers and their families. Management of migration should feature best practices on the portability between countries of all workers' entitlements. They drew attention to the Government member of Canada's statement that all labour force growth by 2010 would come from migration, which was a salutary reminder of the economic and social risks of demographic changes in industrial countries. The Workers' group supported the statement by the observer for the Holy See lamenting the tendency to view migrants as a threat to national security, and urged governments to assign issues of labour migration, as was suggested by the Government member of Sudan, to labour ministries rather than ministries of the interior or of homeland affairs. They considered that ILO Conventions Nos. 97 and 143, together with the UN Convention on the rights of migrant workers, were complementary and offered a solid basis for a rights-based approach. Labour protection in the UN Convention on the rights of migrant workers might indeed be stronger but it would be wrong to waste time trying to update existing ILO instruments. The two sets of instruments were complementary.
- 33.** The representative of Coordination of Action Research on AIDS and Mobility (CARAM Asia) stressed that the application of ILO Conventions and Recommendations, in particular Conventions Nos. 97, 143 and 181 as well as other international instruments in this area, was the key to ensuring decent work for migrant workers. The representative of Migrants Rights International, together with Migrant Forum in Asia, stressed the principles of equality and non-discrimination with respect to the treatment of migrant workers, the importance of a rights-based approach, and the need to protect women domestic workers. The representative of the World Movement for Christian Workers, speaking also on behalf of the International Young Christian Workers, outlined some of the issues facing migrant workers, in particular those in an irregular situation, such as poor working conditions, recruitment malpractices, forced labour and lack of recourse to legal remedies. The representative of StreetNet International hoped that the Committee would not adopt any conclusions using language that would exclude own-account or informal economy migrant workers from its scope. Lastly, the representative of the European Civic Forum provided examples of abuse of migrant workers' rights due to irregular status, racism and xenophobia, or the structural demand for labour in certain industries.
- 34.** Most speakers giving opening statements praised the Office report *Towards a fair deal for migrant workers in the global economy*, and noted in particular its comprehensiveness and balanced approach to the topic.

Discussion of issues for a plan of action

Issue (a)

The report highlights the fact that migration for employment is a growing global phenomenon. Do you agree? If so, what dimensions should be of particular concern for the ILO and its constituents?

35. The Workers' group observed that, although detailed statistical information was not available, migration for employment was clearly a growing global phenomenon, with quite rapid increases in certain regions and countries. Growth in the migration of female workers was particularly significant; women now accounted for over half of total migration. Although women migrants often suffered serious human rights abuses, employment abroad contributed to their economic and social liberation.
36. Among the dimensions of migration of particular concern, the Workers' group highlighted a number of issues. First, a significant improvement in data gathering and dissemination was needed to remedy shortfalls in data on migration flows, job opportunities, skill requirements, employment practices and workers' rights in receiving countries. Accurate information on immigration and its economic impact on the receiving country would help to make public debate more rational and less open to political manipulation. National action by the State and the social partners was needed to ensure that migrants were fully integrated into society, and to develop policies aimed at countering racism and xenophobia.
37. A primary objective should be to eliminate infringements of migrant workers' rights, based on clear guidelines laid down in international labour standards for national legislation and practice. What was often missing was the political will for implementation. Commitments and practical measures that should be undertaken to ensure equality of treatment and opportunity with comparable national workers, including labour legislation reforms, social security reforms, improved labour inspection and new channels for filing complaints of abuse without intimidation or fear of job loss. Urgent reforms were required to better manage migration, such as: more transparent and consistent migration procedures; amnesty programmes to regularize the status of workers in irregular status; and an expansion of regular migration as a substitute for irregular flows. There was a need to promote the rule of law in respect of migration, including the establishment and enforcement of laws to counter trafficking and associated unlawful acts. The Private Employment Agencies Convention, 1997 (No. 181), and Recommendation No. 188 were relevant to the protection of migrant workers and should be actively promoted to regulate the activities of private recruitment agencies which often resorted to malpractices at the expense of migrants.
38. Lastly, the Worker Vice-Chairperson emphasized the value of social dialogue in migration management, and bilateral promotion of subregional and regional agreements between source and destination countries.
39. The Employer Vice-Chairperson agreed that migration for employment was a global phenomenon, which should serve as a starting point for developing a plan of action. Migration was generally a positive phenomenon; however, appropriate policies were needed to ensure these positive outcomes in countries of origin, transit and destination. Governments were responsible for ensuring the regulation of migration flows and for implementing best practices. He also highlighted the importance of discussing the situation of transit countries, which often faced serious social and other problems related to transit migrants.

-
40. It was necessary to clarify when and where migrant workers were needed and how to respond when workers moved to a country where they could not be accommodated, for example due to armed conflict or an inability to generate employment. The solution to the problem lay in the pursuit of appropriate policies by destination countries and in the development of clear guidelines by the ILO to ensure that workers entering a country in response to offers of lawful employment were protected by the general standards applicable in the host country. However, in many countries protective legislation for migrant workers only extended to their employment status and did not entail regularization of their overall situation as migrants or provide other protections. It was unacceptable for migrant workers in irregular status to receive all the benefits due to workers in regular status.
41. The ILO should seek to develop a non-binding multilateral framework to address problems in migration, focusing on guidelines and technical assistance and respecting the sovereign decision-making rights of States. The ILO should take account of relevant work under way in other international organizations, and focus on its own field of competence and the implementation of relevant labour standards. In that connection, he stressed the need for a database that provided information on labour markets, availability of workers, skills, qualifications, etc.
42. The Government members agreed that migration was an increasing global phenomenon. The Government member of Barbados, speaking on behalf of the Government members of the Committee Member States of CARICOM, thought that the increasing trend would continue in line with expanding globalization, and agreed with the Government members of Argentina and India that the increase could have a positive impact for sending, receiving and transit countries. The Government member of Canada highlighted the common interest to capitalize on the benefits of international migration and the need for a longer term vision in such a context. The Government member of Mexico stressed the dynamic and changing nature of the phenomenon. The Government members of Barbados and Israel underscored the need for national policies on migration issues.
43. The Government member of Egypt stressed that any discussion of the phenomenon should distinguish between migration for employment and other types of migration, and also between temporary, seasonal and permanent migration, since these various forms had different characteristics and implications. Government members broadly agreed that the ILO and its constituents should address the issue of migrant workers in irregular status, although different approaches were taken. The Government member of Argentina, among others, reported that in his country, migrant workers in irregular status were put on the same footing concerning legal protections as migrant workers in regular status. The Government member of Thailand stated that in his country migrant workers in irregular status enjoyed the same labour protections as national workers. The Government member of the Philippines considered it intolerable that workers performing legal work in host countries should be exposed to exploitation simply due to their irregular status. The Government member of Lebanon stated that migrant workers in irregular status could be given time to regularize their status. The Government member of Israel described how in her country migrant workers in irregular status were treated as victims and the employers and employment agencies were held legally responsible.
44. For the Government member of India, it was imperative to distinguish between migrant workers in regular status and those in irregular status, although the fundamental rights of all should be respected. The Government member of France considered that without such a distinction it would be impossible to control migratory flows; however, migrant workers in irregular status had rights and should have recourse to legal action to combat abuse. The Government member of the United Kingdom noted that illegal work situations were often

part of extensive breaches of the law concerning taxes, working conditions, etc., and needed to be tackled in a way that did not create incentives for criminal gangs to promote human trafficking. Furthermore, in his Government's view, regularization was not a viable route. The Government member of Japan felt that regularizing migrant workers in irregular status might undermine a country's migration system. The Government members of Egypt and Thailand described efforts of their countries to address the problem of vulnerability of migrant workers in irregular status through cooperation with other States and regional partners.

45. Other issues for concern which various Government members believed called for action at the national, bilateral and regional levels included racism and xenophobia, compensation for the brain drain from developing countries, and the role of the diaspora in the economic and social development of both sending and receiving countries. The Government member of the Philippines also drew attention to the need to incorporate a gender dimension in the policies and programmes of both sending and receiving countries.
46. The Employer Vice-Chairperson noted a consensus on the specialized role of the ILO in the area of labour, as well as on the need for a coherent approach that drew upon ILO labour standards, the UN Convention on the rights of migrant workers and other pertinent instruments.
47. The Employers' group strongly supported the views of the Government member of Canada in identifying the need to promote decent work and development in countries of origin. When jobs were not available, migrants could easily be led into undesirable activities. They also agreed with the Africa group, the Government members of the Committee Member States of the EU and the Government member of Argentina that bilateral and regional agreements might be appropriate in some contexts. The protection of rights in countries of origin should be emphasized. The responsibility of the employer would differ between situations where the workers were accepted legally and where they were not. The application of sanctions to employers who employed migrant workers in irregular status was the responsibility of the immigration services rather than the labour services.
48. The Worker Vice-Chairperson stated that she found the Government members' views and the response of the Employers' group positive. She welcomed the statement of the Government members of the Committee Member States of the EU concerning the needs for a rights-based approach, and their support, along with that of the Africa group for a strengthened role for the ILO in international forums. She pointed out that the Workers' group's proposal for a multilateral framework was consistent with this approach, as it would not duplicate efforts of others and would be non-binding, focusing on best practices. Finally, she shared her concerns with the Employers' group on trafficking and organized crime. This obviously resulted from deficits in managed migration, which would make the case for a multilateral framework stronger.

Issue (b)

Under certain conditions the cross-border movement of workers can be mutually beneficial for countries of employment and origin, and to the migrants themselves. However, according to the report, substantial numbers of women and men migrants are working under exploitative conditions, deprived of their basic rights, and are often effectively excluded from social protection. What policies are needed to improve their condition? What should the ILO do in terms of international regulation to fill the gaps in protection and how should it develop and employ its various means of action in ways that enhance their complementarity and impact?

- 49.** The Worker Vice-Chairperson, in opening the debate on issue (b), highlighted the conclusions of the Office report that for many migrants working conditions were abusive and exploitative: lower wages and higher unemployment; absence of social security benefits; denial of basic rights, poor safety and health conditions; and discrimination and xenophobia. The most vulnerable workers included women workers (domestic workers), temporary workers and migrant workers in irregular status, as well as workers in the agriculture, construction, textile (sweatshops) and services (domestic work and hotels) sectors. The Workers' group believed that the solution for these abuses had to be based on recognition of workers' rights, equality of treatment and opportunity, and standards.
- 50.** The ILO pioneered standards in the field of migration. Conventions Nos. 97 and 143, along with the ILO Constitution, the Declaration of Philadelphia, and the more recent ILO Declaration on Fundamental Principles and Rights at Work and its Follow-up, 1998, provided the necessary framework to ensure the rights of migrant workers were respected. The results of the International Migration Survey, 2003, showed that Conventions Nos. 97 and 143 had had a significant impact on national laws and regulations, either directly through ratification or indirectly by being used as models for national law and practice. In addition, many member States indicated that they intended to ratify either one or other of the Conventions. The General Survey of 1999 on migrant workers suggested that the ILO should consider a "vigorous promotion campaign" of Conventions Nos. 97 and 143. This suggestion was still valid and should be considered for inclusion in the Committee's conclusions. The guidelines on time-bound workers produced by the Tripartite Meeting of Experts on Future ILO Activities in the Field of Migration, April 1997, were also useful in this context and the Committee should endorse these guidelines. These instruments together with the UN International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families should provide the basic principles needed to build a transparent and coherent multilateral framework, and States would greatly benefit from ILO technical cooperation to implement these principles.
- 51.** The Worker Vice-Chairperson noted that the entire Committee was concerned about working together "towards a fair deal for migrant workers in the global economy", and that there seemed to be convergence on a number of issues: receiving countries were concerned about irregular migration and labour market impact; and employers were concerned about establishing clear labour legislation that applied to all workers in order to avoid unfair competition. The answer to these converging concerns lay in an integrated approach through the ratification and promotion of the existing instruments directly and indirectly related to migration; strengthening the role of the ILO at the international level; increasing tripartite dialogue at the national, regional and international level; creating a framework for technical cooperation and assistance; and, not losing sight of the need to combat racism and xenophobia.

-
- 52.** The Employers' group had no doubt that many migrant workers experienced exploitative and abusive conditions, but they could not accept that as the general characterization of migrant work. Usually these cases related to the absence of rules and regulations and irregularities involving all workers including native workers and migrant workers in both origin and destination countries. Employers faced problems of unfair competition from unscrupulous operators, such as textile sweatshops which exploited migrant labour. The solution lay in the recognition of fundamental rights and the application of an equal treatment principle, as well as policies and procedures for regular migration. It was essential, first and foremost, to share information on labour demand on a bilateral, regional or multilateral basis. Employers could not be expected to act as labour inspectors, but they were prepared to offer good working conditions and to apply national standards and regulations. The value of bilateral and regional agreements had become increasingly clear in view of the tendency of migratory flows to concentrate in certain regions and border areas.
- 53.** Lastly, the Employers' group noted that certain ILO Conventions (that had been more widely ratified than the two migrant-specific Conventions) were also applicable to migrant workers. Governments stood to benefit from technical assistance in applying the relevant provisions of all existing instruments.
- 54.** The Government members broadly supported the existing international labour standards pertaining directly or indirectly to protection of the rights of migrant workers, although sometimes with reservations. The Government member of France viewed the ILO instruments as a solid basis for protecting migrant workers' rights, and stressed the value of the Conventions addressing fundamental and other rights, such as freedom of association and safe work, in developing a framework for addressing migration issues. However, certain ambiguities or vague provisions should be clarified, and a clear distinction should be made between the provisions applicable to migrant workers in regular status and those applicable to migrant workers in irregular status. The Africa group thought that Conventions Nos. 97 and 143 should be promoted through providing technical assistance.
- 55.** Some Government members noted the value of the principles underlying international labour standards, such as the need to place migrant workers in regular status on an equal footing with nationals, but placed more emphasis on national and regional approaches to addressing migration issues. The Government member of the United Kingdom stressed that beyond certain core commitments governments should have flexibility over migration policy.
- 56.** The Africa group stated that it was open to revision of some provisions of the existing instruments where they were at variance with current realities. The Government member of Argentina noted that international labour standards did not address migrant workers in irregular status where the worst abuses occurred. The Government member of Brazil pointed out the need for legal instruments to restrict the flow of emigrants leaving the country. The Government member of the United Kingdom expressed opposition to any new normative commitments and the Government member of Canada stated that a consensus needed to be reached before considering the adoption of any new instrument.
- 57.** Several Government members considered that a promotional campaign should go beyond ILO international labour standards to include instruments such as the UN Convention on the rights of migrant workers and the UN Convention against Transnational Organized Crime and its Protocols.

-
58. Concerning the means of ILO action identified by various Government members, it was repeatedly emphasized that the ILO should not duplicate the work of other organizations. Nonetheless, its tripartite structure placed the ILO in a unique position to address labour migration issues since, as the Government member of the United States noted, the views of both the suppliers and demanders of migrant labour were taken into account.
 59. The Government members of Mexico and New Zealand recommended focusing on the collection and dissemination of data and on providing information on skills demanded, opportunities available and workers' rights to potential migrants so that they could make a more informed decision. The Government member of Venezuela suggested the development of regional observatories to facilitate the collection of data on migration, if financially feasible.
 60. The Government member of India, among others, suggested that the ILO focus its efforts on facilitating the exchange of best practices on managing migration, and encouraging dialogue between sending and receiving States to identify areas of common concern. The Africa group, along with other speakers, recommended that the ILO facilitate dialogue concerning bilateral, regional and multilateral agreements. The Government member of Barbados, speaking on behalf of the Government members of the Committee Member States of CARICOM, urged an integrated approach involving tripartite dialogue on migration issues with the departments responsible for labour, social security, immigration and health in each country.
 61. In the opinion of the Government member of Canada, the ILO should encourage countries to establish systems to regulate migration and promote decent work in the countries of origin, to diminish the need to migrate in search of employment. The Africa group shared this view and added that the ILO should also address the issue of compensation to sending States for the loss of skilled labour.
 62. The Government member of Mexico considered it very important to promote the legal protection of all migrant workers, regardless of status, and the Government member of Argentina suggested focusing on positive measures to address the issue of irregular status rather than on penalties.
 63. The Employer Vice-Chairperson noted the request for a system of technical assistance by a large number of countries. The ILO should carry out surveys on technical assistance needs, covering issues relating to workers in both regular and irregular migration. His group supported the emphasis placed by the Workers' group on the principles of international labour standards, but would not support a campaign for their ratification, given the existing instruments of other agencies, and the possibility of new instruments from other concerned organizations. His group also supported the statement of the Government member of the United Kingdom that all migrant worker, both in regular and irregular status, were entitled to a certain level of protection, and he underlined the need for countries to have flexibility in their regulatory policies on migration. However, bilateral agreements were important. The ILO's work should not duplicate that of other organizations. Instead, the ILO should use its expertise in the world of work to provide technical assistance to countries.
 64. The Worker Vice-Chairperson supported the Employers' group's view that exploitation of migrant workers undermined fair competition, and she welcomed the positive comments by the Employers' group concerning the importance of international labour standards. This provided a strong basis for the two groups to work together to ensure the conditions of sustainable enterprises and decent work for migrant workers. She also gave support to the Employers' group's call for governments to use ILO standards as a basis for national legislation that would provide necessary protection for migrant workers, as well as

conditions to minimize irregular migration, which required the ILO to promote the ratification of these standards, especially Conventions Nos. 97 and 143, and fundamental labour rights, as a minimum. She noted areas of agreement with numerous Government members, but she also pointed to the fact that several Government members' statements stressed that migration policies must remain a national matter. She pointed out that many governments had demonstrated a willingness to sacrifice national sovereignty over policy in areas like international trade, investment, competition policy and even macroeconomic policy, yet they continued to insist upon the importance of national sovereignty over migration policy. She noted that the report from the World Commission on the Social Dimension of Globalization had emphasized the disadvantages faced by developing countries because of the existence of global rules with respect to trade and investment, but the non-existence of equivalent rules in the field of migration.

Issue (c)

The key to effective protection of migrants' rights is the effective, rights-based management of migration. To achieve this, one needs coherent, transparent and comprehensive national policies that enjoy broad public support, as well as greater cooperation between and among origin and host States. Apart from normative action, what can the ILO do to promote such policies and best practices in the overall management of labour migration?

- 65.** With reference to issue (c), the Workers' group stressed that the key to effective protection of migrants was rights-based management of migration, and that existing ILO standards provided the appropriate framework. Transparent and comprehensive national policies that enjoyed broad public support and greater cooperation between host and origin countries were also needed. These considerations had led the Workers' group to support a new multilateral framework on migration in line with the conclusions of the World Commission on the Social Dimension of Globalization. This multilateral framework would not call into question national sovereignty to determine the magnitude of, or criteria for, migration; rather it would aim to guide policy and promote best practice on migration in both sending and receiving countries.
- 66.** While the Workers' group did not propose a definitive or exclusive list of issues to be covered in the framework, they proposed to include the following: exchange of information on labour market needs and employment practices; highlighting best practice measures, particularly with regard to expanding regular migration; measures for stronger protection of migrants through strengthening national legislation, anti-discrimination practices, upgrading labour inspection, licensing and monitoring of recruitment agencies, and introduction of joint liability provisions for private employment agencies and the end users of migrant labour; measures to reduce the transaction costs associated with remittances; policies to encourage return migration, the transfer of technology and investment in the home country; financial compensation for developing countries to offset the impact of brain drain; and other measures to promote migration-development linkages. The framework should focus on issues broadly falling within the ILO mandate, including the protection of migrant labour rights and the promotion of economic benefits of migration for both sending and receiving countries.
- 67.** The Workers' group proposed that the ILO convene a series of tripartite expert meetings over the course of the next 12 months to develop and refine the concept of a multilateral framework for managing labour migration, which would also involve other relevant international organizations and forums, with a view to achieving harmonization of international action on migration and the elimination of overlap. In addition, the Workers'

group recommended the establishment of a new permanent committee of the ILO Governing Body which would have responsibility for directing and monitoring the implementation of ILO policies and programmes on migration.

- 68.** The Employers' group saw more agreement than disagreement with the Workers' group. The objective of policy should be to achieve effective protection of workers' rights, consistent with labour market needs, while looking after rights of workers and employers in the destination country. Therefore, it was necessary to have coherent, transparent and integrated policies in each country for social balance, and to achieve greater cooperation between countries of origin and destination to ensure mutual benefits for both parties. The framework of guidelines would need to contain elements that would help to develop national policies, improve bilateral and regional agreements and guarantee that migration flows were useful for everyone involved. At the same time, the Employers' group agreed with the Government members' view that immigration policy was the sovereign right of States.
- 69.** The Employers' group proposed the following elements for inclusion in the framework of guidelines: access to information on job opportunities, including duration of employment; availability of labour by occupation, skill and education levels; clear and easy-to-implement bilateral or regional agreements; and information concerning the host country situation, available protection measures, and the rights and obligations of workers and employers in the destination countries. The Employers' group stressed that ILO technical cooperation activities should take into account the fact that protection levels varied from country to country. In many cases, migratory flows were not necessarily linked to concrete employment opportunities in host countries, but to unemployment in origin countries. In such cases, technical assistance should be coordinated with the activities of other organizations working in the relevant field.
- 70.** The Government member of Canada advocated that the ILO focus on worker rights and protection issues to ensure that they were appropriately addressed in discussions in various forums. The Government member of the Czech Republic supported a rights-based approach to management of migration. She said her country had a transparent admission system offering migrant workers permanent residence after two-and-a-half years working in the country. The Government member of Tunisia emphasized that migrant workers' rights were indivisible and, therefore, no distinction should be made between cultural and economic rights. The Government member of Nigeria, speaking on behalf of the Africa group, expressed particular concern for the rights of women migrant workers.
- 71.** Concerning national policies, the Government member of the Philippines suggested that States implement the Decent Work Agenda as a strategy for economic and social development in countries of origin, which could include: national policies concerning the flow of remittance, the brain drain, the social costs of migration to families and communities, the reintegration of returning migrants, and easy access of workers to legal migration as a deterrent to irregular migration; and greater empowerment programmes for migrant workers, especially women. The Government members of Greece and Italy provided examples of how their national policies promoted the integration of migrant workers for social cohesion. The Government member of China described their national regulations for recruitment agencies and for combating trafficking. The Government member of Australia provided examples from the comprehensive national migration policy of his country that included legislation, monitoring, dialogue, information sharing, transparent selection criteria, settlement services and access to citizenship. The Government member of Mauritius also described his country's policies, including a special migrant unit to conduct inspections, payment of wages direct to workers (instead of to recruitment companies), and a coordination committee of the various government agencies

dealing with migrant workers. The Government member of Pakistan stressed the importance of such an integrated approach at the national level.

- 72.** The Government member of Australia considered that the ILO had an important role to play in sharing information and promoting an appropriate national legislative framework in member States. The Government representative of Mauritius proposed that the ILO focus on the following areas for national policy: (a) help member States to formulate a coherent national policy on migrant labour; (b) strengthen labour inspection and enforcement mechanisms; (c) produce guidelines for national legislation regulating migrant labour; and (d) develop a code of practice on national recruitment policies, including protection of rights, remittances and repatriation. The Government member of the Republic of Korea hoped that the ILO would provide consultative services to countries that were in the initial stages of formulating and implementing migration policies; the Government members of Lebanon, Mauritius, New Zealand and the Philippines recommended that the ILO document and disseminate best practices of sending and receiving States and the creation of an up-to-date database on labour migration.
- 73.** The Government member of the Republic of Korea urged the ILO to organize seminars to provide opportunities for exchanging views on migration policies, and to establish a network on international migration based on the geographical regions and centred in the ILO regional offices. Similarly, the Government member of Nigeria, speaking on behalf of the Africa group, held the view that the ILO should continue to promote, coordinate and facilitate the organization of international, regional and national forums on migrant workers, to review, assess and revise labour standards to protect migrant workers, in cooperation with the constituents, and other multilateral partners and NGOs dealing with migration issues and concerns. The Government member of Spain stated that it valued the ILO's work in the area of technical cooperation and the promotion of social dialogue. The Government member of Mongolia agreed with other Government members that the ILO should conduct training programmes and workshops on migration issues, and suggested that the countries that benefited most from labour migration should finance such programmes. The Government member of Spain supported continuous discussions within the ILO on the protection of migrant workers' rights and the diffusion of best practices on migration management. The Government member of Nigeria, speaking on behalf of the Africa group, stated that the ILO should coordinate and intensify the monitoring of multilateral agreements by developing specific monitoring mechanisms that would include ILO tripartite constituents, and provide continuous technical assistance to upgrade the capacity of labour ministries in the area of labour inspections. The Government member of China thought that more resources should be allocated to capacity building for migration management.
- 74.** The Government member of Italy affirmed the view expressed in the Office report that unilateral approaches to migration were inadequate, and expressed support for cooperative arrangements, especially bilateral agreements, between countries of origin and receiving countries, as an effective way of managing migration. The Government member of Côte d'Ivoire also agreed that bilateral agreements were useful in managing migration. The Government member of India stressed that interstate coordination was particularly important for protecting migrants who were most vulnerable, such as domestic workers. The Government member of Spain thought that, in an era of globalization, migration had to be tackled at international or at least regional level.
- 75.** The Government member of India thought that the ILO should: assist in the formulation and implementation of bilateral, multilateral and regional agreements; provide technical assistance to ensure the protection of migrant workers; and create a permanent forum on migration to facilitate discussion between the social partners, and between countries of

origin and countries of destination. The Government members of Greece and the Philippines advanced similar suggestions. The Government member of Lebanon thought the ILO could formulate a model form for bilateral agreements to serve as a guide. The Government member of Sweden noted that efforts already undertaken by the EU could assist the international community.

- 76.** Some topics for bilateral and multilateral agreements were mentioned. The Government member of Italy cited a number of good practices within these frameworks in exchanging information about labour markets, providing language and vocational training to would-be migrants in countries of origin, and better matching of labour market needs. The Government member of Pakistan considered that bilateral agreements should include the issue of minimum standard wages. The Government member of Jamaica, speaking also on behalf of Barbados and Suriname and reflecting the views of the Government members of the Committee Member States of CARICOM, highlighted the need to reduce the cost of transfer of remittances, and to assess how managed migration could offset the expected impact of the rapid ageing of many societies.
- 77.** The Government member of Canada proposed a follow-up programme composed of seven aspects, which received substantial support, in part or in whole, from numerous other Government members, as well as from the Employers' group and Workers' group. First, with a view to the effective development and implementation at the domestic level of labour protection for migrant workers on a basis of equality with non-migrants, ILO technical cooperation should aim to: (a) ensure that labour legislation provided equal protection and protected labour principles and rights set forth in ILO instruments; (b) strengthen the capacity of labour authorities, including inspection services and tribunals, to secure compliance with labour laws by building transparency, knowledge and professionalism and sharing best practices; (c) promote awareness of worker rights; and (d) combat racism and xenophobia.
- 78.** Second, with a view to promoting policies and programmes that encouraged the creation of decent and productive employment as a matter of priority in all countries, but especially in less developed countries, the ILO should: (a) build on current ILO initiatives to promote such policies and programmes, inter alia by strengthening labour ministries' capacity to implement key aspects of their mandates that supported the effective use of human capital and to participate actively in the formulation of national economic strategies; and (b) engage in further dialogue with other international organizations to enhance policy coherence.
- 79.** Third, with a view to promoting the use of managed national migration and immigration programmes to provide legal status and access to protections and to promote social inclusion, the Government member of Canada suggested: (a) engaging in further dialogue with other international organizations to enhance policy coherence; and (b) building on current ILO initiatives, including offering technical advice or assistance to member States and facilitating exchanges of information on workable solutions in conjunction with other international organizations regarding the establishment or improvement of: (i) national emigration and immigration policies; and (ii) bilateral or regional agreements on migration. Such programmes and agreements should promote social inclusion, especially for longer term migrants and permanent residents, and enable migrant workers to exercise the labour rights and protections enshrined in national legislation and in relevant ILO instruments.
- 80.** Fourth, the Government member of Canada suggested that the ILO, in carrying out its technical cooperation and assistance activities aimed at ensuring effective protection for migrant workers, refer to the desirability of ratifying the Protocols, on trafficking and

smuggling, to the United Nations Convention against Transnational Organized Crime, building on ILO initiatives and offering technical information and assistance to member States, in conjunction with other international organizations, regarding the steps required for such ratification and implementation.

- 81.** Fifth, in order to promote policies that maximized the contribution of migration to development, he suggested facilitating exchanges of information and technical cooperation focusing on policies and programmes that would: (a) promote the productive investment of remittances; (b) promote skills circulation and the return of skilled workers to developing countries; and (c) reduce the average cost of remittance transfers by promoting competition among remittance service providers or eliminating obstacles and other restrictive practices that affected the cost of such transfers, while retaining effective financial oversight.
- 82.** Sixth, the Government member of Canada suggested supporting improved collection of key statistics, including the collection and sharing of sex-disaggregated data by: (a) building and expanding on existing ILO studies; (b) providing technical assistance to developing countries to build capacity to analyse such data at country level; and (c) coordinating with other relevant international organizations to track international migrant flows.
- 83.** Lastly, the speaker suggested supporting social dialogue on all those initiatives by establishing appropriate follow-up processes within the ILO to review progress in implementing the plan of action on the basis of a tripartite approach. He noted numerous points of overlap with the Workers' group and the Government member of Mauritius. The Government members of Australia, Japan, New Zealand, the United States, and the Government members of the Member States of CARICOM supported the proposal. Furthermore, proposals by a number of other Government members, such as the Government member of Mauritius and the Government member of Nigeria, speaking on behalf of the Africa group, contained similar points. He stated that if this proposal were accepted, the financial implications would need to be considered. The Government member of Japan also stressed the need to bear in mind financial considerations.
- 84.** There was no response by the Employers' group or Workers' group on this point because they decided to move on to the discussion of issue (d).

Issue (d)

What other action should the ILO consider in order to facilitate a regular international exchange of information and views on international migration and to contribute to the development of good governance of international migration?

- 85.** The Employer Vice-Chairperson reiterated that the ILO should focus on promotion of technical assistance rather than on a promotion campaign of ILO Conventions, given the clear demand from all groups for more technical assistance. The Employers' group supported the view of the Government member of Canada that it would be premature for the ILO to promote new standards, and the view of numerous Government members that the ILO should wait for the results of other initiatives already under way. In particular, migrant workers' problems as human beings had to be taken into account, which required coordination with other agencies working on non-labour issues of migrants.
- 86.** The Employers' group suggested that in countries where migrant workers enjoyed labour protection independent of their legal status, governments should apply Conventions and

fundamental rights at work without penalizing employers. In this respect, they drew attention to Article 6 of Convention No. 143, which provided for sanctions on employers for illegal employment of migrant workers. It was important for governments to make a distinction between migrant workers in regular and irregular status in national legislation, and regional agreements should be set up to clarify this problem, since employers faced problems when employing migrant workers because national legislation differed in this area. ILO technical assistance could help countries make their migration and labour legislation more flexible and up to date.

- 87.** Technical assistance on other ILO instruments, concerning issues such as women's work, child labour, minimum wages and social security, would also help migration workers. Lastly, the Employers' group reiterated that the ILO's work in various forums and expert meetings should always be tripartite and focus on labour issues if it was to make a real contribution. He requested the Workers' group to clarify their views on the creation of an international forum on migration.
- 88.** The Worker Vice-Chairperson was happy to note that many Government members had endorsed the rights-based approach to migration advocated by the Workers' group. Existing migration Conventions formed the foundation of this approach and needed to be promoted through an information campaign and the regular review of their application. The ILO should assist governments in reforming their labour legislation, particularly concerning the denial in some countries' legislation of freedom of association in sectors with a concentration of migrant workers, such as agriculture and construction. The downgrading of labour inspection in many countries affected enforcement of labour legislation, and it was important for the ILO to expand technical assistance for labour inspection.
- 89.** The Worker Vice-Chairperson supported the establishment of an ILO forum on migration which would be consistent with the decent work, employment and economic development mandate of the ILO. The Workers' group identified a number of other areas for ILO action: establishment of a global knowledge base on migration, through research, expansion of the International Labour Migration Database, and dissemination of information to member States; support to programmes combating racism and xenophobia; establishment of structures and mechanisms to facilitate tripartite consultations on migration policies, and practice at national and regional levels; promotion of the ILO's Global Employment Agenda (GEA) at country level to expand decent work opportunities in origin countries and reduce migration pressures; inclusion of migration issues in ILO national-level decent work programmes; involvement of the International Training Centre of the ILO in capacity building on migration policies and management; development of special action programmes to ensure protection of domestic and temporary workers; and support to the organization of migrant workers. The Workers' group urged the ILO to allocate resources for these activities, including appropriate resources for the Bureau for Employers' Activities and the Bureau for Workers' Activities.
- 90.** The Government member of Finland recalled that the World Commission on the Social Dimension of Globalization highlighted in its report *A fair globalization: Creating opportunities for all*, the need for a multilateral framework to: facilitate mutually beneficial ways of increasing migration opportunities; make the migration process orderly, predictable and legal; eliminate trafficking and other abuses; protect the rights of migrant workers; facilitate the integration of migrants; and maximize the development benefits. The ILO had taken up the challenge and it was important that this tripartite discussion continue in the future at both the national and international levels in cooperation with other appropriate international organizations to avoid any duplication. The Government member of the Philippines thought that a non-binding multilateral framework for orderly

management of labour migration and exchange of information was important; however, such a forum should not be a rule-making body, as the current ILO and UN instruments provided sufficient standards and principles to ensure a rights-based approach for the framework. The Government member of Argentina, holding the temporary Presidency of MERCOSUR and thus also speaking on behalf of the Government members of Argentina, Brazil and Uruguay, supported a multilateral framework to develop guidelines and best practices on various aspects of migration, and proposed establishing a tripartite committee on migrant labour to follow up the proposal, which the Government member of Morocco endorsed. The Government members of China and Pakistan also spoke in favour of a multilateral framework.

91. The Government member of Sweden supported the idea of a multilateral framework, but felt that before such a framework could be created, a clear international consensus was needed on its contents, which might go beyond the mandate of the ILO; however, the Global Commission on International Migration might also provide a good basis for a more informed debate on the wider issue of migration, including labour migration, and the ILO and the social partners had an important role to play in contributing to the report it would produce. The Government member of Australia did not believe that the ILO mandate extended to the creation of a multilateral framework on labour migration; and the Government member of the United States remained sceptical of the usefulness of a multilateral framework, which could prove duplicative and expensive. The representative of the International Organization for Migration drew the Committee's attention to the activities undertaken by the Swiss Government in the context of the Berne Initiative.
92. The Worker Vice-Chairperson who was a member of the Global Commission on International Migration, said that the Commission aimed to bring international coherence to the subject. If the Commission was going to work effectively, it needed the ILO as a partner and as a source of guidance. The same principle applied to the promotion of instruments such as the United Nations Convention on the rights of migrant workers, which complemented ILO instruments. Cooperation between ILO, the United Nations, the Global Commission on International Migration, IOM, WTO and the Bretton Woods institutions was essential for policy coherence, and was in everyone's interest. A non-binding multilateral framework based on best-practice guidelines would give employers greater certainty, ensure that workers' rights were respected and give a boost to economies all over the world.
93. The Employer Vice-Chairperson welcomed the vibrancy of the debate in the Committee and the broad convergence of views on basic issues. The creation of employment opportunities in countries of origin was a vital point, and ILO guidelines were clearly needed to enable member States to improve their legislation and regulations pertaining to migrant workers. However, the Employers' group felt that Conventions Nos. 97 and 143 contained provisions relating to employment that could be prejudicial to employers' interests and should not be promoted. It was preferable to concentrate on technical assistance and information gathering and to defer the discussion of norms and standards until a later date. The Employers' group also stressed the need for convergence between different organizations in discussing issues of relevance to migrants, and urged that the concept of a multilateral framework be based on appropriate guidelines.

Discussion on the draft conclusions on migrant workers

94. The Chairperson thanked the Drafting Group for its work and opened the discussion on the amendments to the draft conclusions.

Paragraph 1

- 95.** The Government member of New Zealand introduced an amendment to insert the words “opportunities and” after “in search of” in the third sentence, explaining that in many cases migrants were looking not just for decent work and human security but also for opportunities to increase their skills and experience. There being no objections from the Employer and Worker members, the amendment was adopted.
- 96.** The Government members of Australia, Canada, Japan, Switzerland, Turkey and the United States introduced an amendment to replace the words “entrust it with special responsibilities” in the fourth sentence with “give it a defined role” because they considered that the text needed to be clarified and tightened. The ILO had a unique tripartite structure and its major strength lay in such areas as capacity building. The focus of action should be on what the ILO did best and not on undefined special responsibilities. The Worker Vice-Chairperson pointed out on the other hand that the ILO Constitution entrusted the Organization with special responsibilities, among others for migrant workers, in the context of its Conventions and related instruments. The Employer Vice-Chairperson agreed with the Workers’ group. He stated that the proposed amendment might be construed as indicating that the ILO’s responsibilities were defined solely in terms of migrant workers. The Government member of Australia withdrew the amendment.
- 97.** The Government members of Canada, New Zealand, Turkey and the United States introduced an amendment to replace the last sentence with the following text: “The ILO can make a value-added contribution to maximizing the benefits and minimizing the risks of work-based migration.” The amended text was a fair and accurate reflection of the Committee’s general discussion, was more concise and focused directly on the possible risks of migration and the need to complement and maximize its benefits.
- 98.** The Worker Vice-Chairperson said that the reference to a value-added contribution narrowed the scope of the ILO’s role in regard to work-based migration. The Workers’ group believed that the ILO’s central role should be stressed in the first paragraph. A reference to minimizing risks would be acceptable alongside the existing reference to reducing the role of identifiable detriments. The Employer Vice-Chairperson stressed that the ILO’s role was sensitive because it depended on the policy of each country; the ILO could help governments to modify these policies in dialogue with the social partners, in particular employers who generated employment for migrant workers. Therefore, the Employers’ group preferred the existing wording and considered that the proposed amendment did not add anything different.
- 99.** The Government member of Canada asked for clarification of the difference between the terms “reduce and control identifiable detriments” and “minimizing risks”. The Worker Vice-Chairperson said that, for the Workers’ group, “to reduce” and “to minimize” were synonymous and they could consider accepting the change. But they found the original wording “detriment” and “control” to be stronger and clearer than the proposed amendment.
- 100.** The Government member of Canada asked for clarification of the intended meaning of the term “control” from the secretariat. The representative of the Secretary-General explained that he understood that “control identifiable detriments” would include efforts to deal with trafficking, which could also be covered in the concept of minimizing risk. However, “minimizing risks” did not provide the active sense of dealing with such a problem as trafficking. The ILO could promote a comprehensive package of measures to deal with new problems of criminal aspects of labour migration. As to other examples of

“detriments”, it could, for instance, refer to the large number of workers employed through subcontractors or contractors, where the employment relationship was not established.

- 101.** The Government member of Canada found the wording “minimizing the risks” broader and clearer. The Government member of New Zealand said that the problem with the wording “control identifiable detriments” was that it only focused on the results and that “risk management” was broader and includes the ability to manage a risk before it arose. The Workers’ group found it important to recognize the central role that the ILO could play.
- 102.** The Government member of Canada proposed a subamendment with the following wording: “The ILO can play a central role in promoting policies to maximize the benefits and minimize the risks of work-based migration”. The Government member of the United States had originally supported the first amendment because the “value-added” language better reflected the discussion of the group, focusing heavily on avoiding duplication with other organizations. However, in a spirit of cooperation, she seconded the subamendment.
- 103.** The Worker Vice-Chairperson suggested further subamending the subamendment of the Government member of Canada, adding the following sentence at the end: “... and can work towards controlling identifiable detriments of labour migration”. The Employer Vice-Chairperson supported this subamendment from the Workers’ group. The Government member of Canada understood that control meant a somewhat oblique reference to controlling trafficking in persons and other clearly identifiable problems of that specific nature. He could accept that focus, but not if it had wider implications. The Worker Vice-Chairperson said that detriment for working people of course included trafficking, in particular of women and girls, but it was widely recognized that issues like child labour, forced retention of identity documents, physical abuse and sexual harassment also had to be faced in providing a better world for workers.
- 104.** The Government member of Canada accepted the subamendment from the Workers’ group with the exception of one word. He suggested the following subamendment: replacing the word “controlling” with “reducing” because it was not clear who could control while everybody could take action to reduce. The Worker Vice-Chairperson suggested a final subamendment: to replace “reducing” with “towards eliminating”. The Employers’ group and the Government member of Canada both accepted this subamendment. The amendment was adopted in its final subamended form.
- 105.** The Government member of Japan introduced an amendment submitted by the Government members of Canada, Japan, Turkey and the United States to add the words “with the collaboration of other international organizations” at the end of the last sentence. The rationale for the amendment was to stress the need for collaboration with other international organizations, as several speakers had mentioned. The ILO had a long history in the area of migration and had developed sound knowledge on the subject, which had to be respected. However, other international organizations also worked on certain aspects of migration, such as the IOM, the Organisation for Economic Co-operation and Development (OECD) and the World Bank. The ILO’s budget and human resources were limited and duplication of work should be avoided. The Employer and Worker members supported the amendment and it was adopted.
- 106.** Paragraph 1 was adopted as amended.

Paragraph 2

- 107.** The Government members of Australia, Canada, Japan and the United States introduced an amendment to insert the words “thought to be” after the words “Of the 175 million people” in the third sentence, stating that there were uncertainties about the exact numbers. The Worker Vice-Chairperson was happy with the qualification proposed in the amendment as she considered that the actual numbers involved were probably even larger. The Employer Vice-Chairperson also accepted the amendment, which was consequently adopted.
- 108.** An amendment was submitted by the Government members of Australia, Canada, Japan and Switzerland to insert in the fourth sentence the words “thought to be” before the words “in developing regions” with the intention of again reflecting the uncertainty about the exact number. Both the Workers’ group and the Employers’ group accepted the qualifications introduced by the amendment, which was therefore adopted.
- 109.** The Government members of Australia, Canada, Japan, New Zealand, Turkey and the United States introduced an amendment to replace the last sentence with the words “Many people choose to migrate to improve their living standards and may migrate due to a lack of decent work opportunities at home.” The Government members felt that the new wording was clearer and more accurate, and focused the discussion on migration for labour. The Worker Vice-Chairperson accepted that the amendment provided better wording than the current text. However, she proposed a subamendment to reinstate part of the original text at the end of the sentence: “however, other forces driving migration are poverty, wars, famine and repression as well as population pressures and income inequalities”. It was important to keep this clause, as the reality was that millions of people were forced to migrate for such reasons. The Government member of Canada, in a spirit of consensus, suggested a further subamendment to replace “forces driving migration are” with “factors contributing to migration include ...”. The Worker and Employer Vice-Chairpersons accepted the text as proposed by the Government member of Canada. The amendment was adopted in its final amended form.
- 110.** The Worker Vice-Chairperson introduced an amendment to add the following sentence at the end of the paragraph: “There are also instances of forced migration that should be eliminated.” Forced migration was often driven by the factors listed in the amendment previously discussed. It was important that Members recognized the human aspect in these circumstances. The Employer Vice-Chairperson felt that the amendment fitted in well with the meaning in paragraph 2. It was important that human beings were respected, and that forced migration should be eliminated. The Government member of the United States believed that the term “forced migration” was unclear. If this referred to refugees, the responsible organization was the Office of the United Nations High Commissioner for Refugees (UNHCR), and thus was not appropriate in a text of the ILO. The Worker Vice-Chairperson replied that the sentence was not making a reference to the role of the ILO, rather it was stating a principle. No government could accept forced migration. The intention of the sentence was thus broad. The Government member of the United States proposed subamending the amendment by adding the words “for work” after the words “forced migration”. While agreeing that UNHCR was the appropriate body responsible for refugees, the Worker Vice-Chairperson stressed that forced migration was a wider concept than refugees and therefore the ILO had a role in these issues. The Workers’ group would prefer that the Government member of the United States withdraw his subamendment; however, if they insisted, the Worker members would agree to it. As the Government member of the United States insisted on keeping the subamendment, the Worker Vice-Chairperson accepted the text as subamended. The Employer Vice-Chairperson also accepted the subamendment. The modified text was therefore adopted.

111. Paragraph 2 was adopted as amended.

Paragraph 3

112. The Government members of Denmark, the Netherlands and the United Kingdom introduced an amendment in two parts. The first part was to replace the words “provide today” in the first sentence with “today provide”, which was adopted. They withdrew the second part of the amendment, namely to replace the words “are mainly” in the second sentence with “might be”.

113. The Government members of Australia, Canada, Japan, New Zealand, Switzerland, Turkey and the United States introduced an amendment to delete the third sentence. A number of empirical studies had been carried out on the impact of migrant workers on the domestic labour market but their results had been varied. It was not necessarily the case that perceptions of such impacts were most often unfounded or exaggerated. Further studies of the issue were needed. Furthermore, there was a lack of evidence for the statement that sectors such as the construction industry had experienced declines in wages and working conditions.

114. The Worker Vice-Chairperson, rejecting the amendment, insisted that much of the public debate on immigration was negative and tainted by misconceptions. She stressed the need to combat such exaggerated views with rational debate. The Employer Vice-Chairperson also rejected the amendment, stating that there was a tendency to distort the impact of migration by spreading dangerous myths. However, he agreed that there should not be any reference to the situation in particular sectors of the economy.

115. The Government member of Australia agreed with the Workers’ group that there should be some mention of the fact that adverse comments about migration were often unfounded, but the second half of the third sentence was not based on fact. The evidence from econometric studies indicated that an inflow of migrant labour resulted, in the vast majority of cases, in increased wages. He therefore proposed a subamendment to delete the word “most” in the third sentence as well as the text following “exaggerated”. The Worker Vice-Chairperson did not agree, as there needed to be some recognition that the impact of migrant labour on wages and conditions in some sectors of the economy, such as construction and agriculture, was not always positive, and she cited some examples. The amendment was withdrawn.

116. The Government members of Algeria, Benin, Botswana, Burkina Faso, Cameroon, Côte d’Ivoire, Democratic Republic of the Congo, Egypt, Ghana, Kenya, Lesotho, Liberia, Libyan Arab Jamahiriya, Malawi, Morocco, Namibia, Niger, Nigeria, Senegal, South Africa, Sudan, Uganda, Zambia and Zimbabwe introduced an amendment to delete the word “most” in the third sentence because there was not enough evidence to indicate that perceptions of adverse immigration impacts were most often unfounded or exaggerated. The Employer and Worker Vice-Chairpersons accepted the amendment, stating that they thought it did not change the substance of the paragraph and the amendment was adopted.

117. The Employers’ group submitted an amendment to delete in the fifth line the words “such as construction” because it could be misleading to pinpoint one sector that was also a major source of employment. They referred to surveys from European and other countries showing that salaries were not reduced in all cases, making such a generalization inaccurate. The Worker Vice-Chairperson accepted the amendment. The Government member of Australia suggested a subamendment to insert the word “may” instead of “such as construction” because there was not enough evidence that particular sectors had experienced a decline in wages. The Government member of Canada seconded the

subamendment. The Worker Vice-Chairperson did not accept the subamendment because the word “may” did not recognize the observed reduction of wages in some sectors; the Workers’ group could not support the exploitation of migrant workers. The Government member of Australia stressed that his subamendment was a call for evidence but he withdrew it.

118. The Government member of Australia introduced another subamendment to insert “relative” before “wages”, which the Government member of Kiribati seconded. The Worker Vice-Chairperson thought that this subamendment was not clear and did not reflect the reality for many sectors. The second subamendment was then withdrawn, and the initial amendment was accepted.

119. Paragraph 3 was adopted as amended.

Paragraph 4

120. The Government members of Australia, Canada, Japan and the United States proposed to replace in the first sentence the words “It is recognized” with the words “It is believed”. Given the uncertainty about the facts and the hotly contested discourse about migration, more nuanced language was needed. The Employer Vice-Chairperson did not agree because it was quite important to highlight the positive sides of migrant labour. Therefore, the Employers’ group preferred the original text and rejected the amendment. The Workers’ group agreed with the Employers’ group. The amendment was therefore withdrawn.

121. The Government members of Denmark, the Netherlands and the United Kingdom submitted a proposal to delete the sentence beginning “Demographic trends in some ...” because they thought that the wording of the sentence suggested that immigration had only positive effects. While migration may help some countries in regard to ageing, generalizations could not be made. However, following the discussion of previous amendments, the Government member of the Netherlands proposed a subamendment to keep the sentence but to add “in some instances” after “immigration will be”. Both the Workers’ group and the Employers’ group accepted the amendment as subamended.

122. The Government members of Australia, Canada, Japan, New Zealand, Switzerland, and the United States suggested deleting the last sentence since they did not think that the ILO’s GEA had been mentioned during the general discussion. Furthermore, the sentence did not fit with the rest of the paragraph. The Worker Vice-Chairperson said that the issue had been an important part of the Workers’ group’s commitment to the whole issue of balance between sending and receiving States, and quoted the Secretary-General’s statement that the major structural deficit of globalization was the inability to create jobs where people lived. The Worker members had referred to the GEA several times in their interventions in the general discussion. They also recalled the important role played by the United States in the GEA process. The Government member of France agreed with the Government member of the United States that the placement of the sentence was inappropriate. The Employer Vice-Chairperson found the discussion on the GEA interesting and held that it was not governments who created jobs for migrants but employers. Employers needed to be linked to employment because they were subject to the impact of globalization. A reference to this was important to the Employer members and they wanted to retain the initial text. The Government member of the United States withdrew the proposed amendment, stressing that it did not reflect the positive opinions concerning the GEA.

123. Paragraph 4 was adopted as amended.

Paragraph 5

- 124.** The Government members of Australia, Canada and Japan suggested replacing the word “many” with “some” in the first line, stating that while “some” migrant workers obviously faced undue hardships, the Committee needed to strike a careful balance with the many positive aspects of migration. The Worker Vice-Chairperson considered “a significant number” to be an acceptable formulation but not the word “some” and proposed a subamendment to that effect. Apart from the Office report, she recalled that many Government members from developing countries had reported poor working conditions and treatment of their nationals in receiving countries. The Employer Vice-Chairperson supported this proposal as a balanced one. The Government member of Canada accepted the subamendment made by the Workers’ group, and the amendment was accepted in this final form.
- 125.** The Employers’ group suggested replacing the words “trade unions” in the third line with “workers” because standards and Conventions of the ILO always referred to workers or persons. The Worker Vice-Chairperson agreed, although she would have preferred that both “workers” and “trade unions” were mentioned. The amendment was accepted.
- 126.** The Government members of Canada, New Zealand and Turkey sought to add in the fourth line the word “wages” after the words “working conditions.” The Worker Vice-Chairperson accepted the addition of the word “wages”. With the agreement of the Employer Vice-Chairperson, the amendment was accepted.
- 127.** The Government members of Canada, New Zealand and Turkey considered the last sentence unnecessary and confusing since migrant workers often had to be employed by virtue of their migrant status. Furthermore, the term “native workers” could be confused with indigenous or aboriginal persons. The Worker Vice-Chairperson rejected the proposed amendment stating that migrant workers were as vulnerable as any other workers to unemployment, and referred to paragraph 3.3(a) of the Office report and the data cited there. The term “native” was a typing mistake and it should read “national”.
- 128.** The Employer Vice-Chairperson proposed a compromise solution in a subamendment: the third sentence should be preceded by the words “In some cases”. The Government member of Canada supported the subamendment. The Worker Vice-Chairperson proposed a further subamendment to replace “In some cases” with “In a significant number of cases”. This was accepted by the Employer members and the Government members. One Government member pointed out that the word “often” became redundant as a result of the subamendment, which was accepted.
- 129.** Paragraph 5 was adopted as amended.

Paragraph 6

- 130.** The Government members of New Zealand, Turkey and the United States proposed replacing the first sentence with “In a number of countries the number of migrants in an irregular situation is rising. The absence of formal management for migration and national policies contributes to this”. The discussions on the plan of action had highlighted the importance of formal migration management to reduce irregular migration, which the amendment acknowledged. The Worker Vice-Chairperson rejected the amendment because it was not as comprehensive as another proposed amendment, with which the Employer Vice-Chairperson agreed.

-
- 131.** The Government member of New Zealand proposed a subamendment to the effect that the first sentence should remain intact but be supplemented by the sentence “The absence of formal management for migration and national policies contributes to this”. This was further subamended by the Government member of the United States who wished to add the words “in some countries” so that the last sentence would then read: “The absence of formal management for migration and national policies in some countries contributes to this”. The Employer Vice-Chairperson agreed to this proposal. The Workers’ group also agreed, but proposed a further subamendment: to replace the words “to this” at the end with “to the increasing number of irregular workers” which was accepted. The amendment was accepted as modified.
- 132.** The Government members of Australia, New Zealand and the United States proposed to replace in the third sentence the words “Trafficked migrant workers” with “Victims of trafficking” to make the text clearer. The Worker and Employer Vice-Chairpersons agreed and the amendment was accepted.
- 133.** An amendment was proposed by the Government members of Denmark, the Netherlands and the United Kingdom to insert the word “may” after the words “Trafficked migrant workers”. In introducing the amendment, the Government member of the United Kingdom proposed to withdraw the word “may” and add “often” before the words “without access”, in line with other amendments which had been accepted. All parties agreed to this change and the modified amendment was accepted.
- 134.** The Workers’ group proposed to insert after the third sentence the following text: “Some irregular migrant workers face abusive and exploitative situations, including sexual and physical harassment, debt bondage, retention of identity documents and threats of denunciation to the authorities, without effective access to legal protection.” The objective was to give visibility to the conditions faced by migrants in irregular situations and to stress that these conditions were unacceptable. The Employer Vice-Chairperson proposed to qualify the amendment by adding at the beginning “In some countries, ...”. The subamendment was agreed and the amendment was accepted.
- 135.** The Government member of New Zealand, seconded by the Government member of Australia, introduced an amendment to replace “and” with “which may” after “unethical practices” in the last sentence. The Worker and Employer Vice-Chairpersons agreed to the amendment and it was accepted.
- 136.** Paragraph 6 was adopted as amended.

Paragraph 7

- 137.** The Government member of New Zealand withdrew an amendment to replace the word “multiple” with “other”.
- 138.** Paragraph 7 was adopted without amendment.

Paragraph 8

- 139.** The Government member of Canada introduced an amendment to replace the text after the first sentence with the following text: “While the benefits of circular migration, cross-fertilization of skills and ideas and technology exchange have been recognized, there is a need for further studies and analyses of the effects of the movements of highly skilled migrant workers and those with advanced education on economic and social development

in developing countries.” This would better reflect agreed consensus language, and would serve to emphasize that migration was a two-way process with mutual benefits such as cross-cultural exchanges and skills development in a global context.

- 140.** The Worker Vice-Chairperson did not deny the need for further studies of the movement of highly skilled workers; however, the impact of the brain drain on developing countries could not be ignored. She solicited the views of developing countries on the issue. The Government member of Nigeria, speaking on behalf of the Africa group, indicated that she could not accept the amendment, as it did not reflect the serious problems developing countries were facing due to the exodus of highly skilled workers, in particular in the health-care sector. The Government member of Canada, in view of the previous intervention, introduced a subamendment to insert “This involves the loss of national economic resources which have been invested in education and training”. The Employer Vice-Chairperson felt that the question would be more adequately addressed in the discussion of the next amendment. The amendment was therefore not accepted.
- 141.** The Government member of Australia introduced an amendment, seconded by the Government member of Canada, to insert “some” after the words “critically skilled workers in” as the text wrongly implied that the issue was universal. There was strong evidence that this was the case in some but not all countries.
- 142.** The Worker Vice-Chairperson proposed a subamendment to this to replace “some” with “many”, and requested the Government members of developing countries to share their opinions, as this was an issue that concerned them. The Government members of Barbados and India, and the Government member of Nigeria, speaking on behalf of the Africa group, supported the subamendment. The Government member of Australia stated that he was happy with the replacement of “some” with “many”. Following the agreement of the Employer Vice-Chairperson on the wording, the amendment was accepted as subamended.
- 143.** The Worker Vice-Chairperson introduced an amendment to replace the third sentence with the following: “This involves the loss of scarce national economic resources that have been invested in education and training.” The sentence was a stronger formulation of the original.
- 144.** The Government member of Canada proposed a subamendment to insert after the new sentence the words “However, there is a need for further studies and analyses of the effects of the movements of highly skilled migrant workers and those with advanced education on economic and social development in developing countries.” The Worker Vice-Chairperson stated that she would agree with the proposed text if the word “However” were deleted from the sentence. The Government member of Canada agreed to the proposed deletion. The Employer Vice-Chairperson agreed with the amendment as subamended and it was accepted as modified.
- 145.** The Worker Vice-Chairperson introduced an amendment to add the following sentence at the end of the paragraph: “In addition to the economic costs, there are social costs to families of migrant workers.” She elaborated that it was important that the social costs of migration be recognized, in particular family dislocation, children living without their father or mother, etc. The Employer Vice-Chairperson agreed but called for a subamendment to clarify what the social costs of migration were. After consultations between the Employers’ and Workers’ groups and the Government members, the Worker Vice-Chairperson proposed inserting the following text at the end of the sentence: “such as including family dislocation, children growing up without parents, disrupted schooling and the spread of HIV/AIDS”. The amendment as subamended was accepted.

146. Paragraph 8 was adopted as amended.

Paragraph 9

147. The Government members of Denmark, the Netherlands and the United Kingdom introduced an amendment with two parts. The first was to replace in the second line the words “depend on” with “can be enhanced by” as the wording in the original text did not recognize that benefits existed even in the absence of appropriate and equitable conditions.

148. The Employer and Worker Vice-Chairpersons had no objections to the first part of the amendment. The amendment was accepted.

149. The second part of the proposed amendment was to delete the last sentence in paragraph 9. The Government member of the United Kingdom explained that the last sentence as it stood could not be accepted since it might conflict with national policy on official development assistance (ODA). For instance, poverty reduction was the main objective of the United Kingdom’s aid policy. The Worker Vice-Chairperson was of the view that the second part of the amendment should be rejected. There was no doubt that a substantial increase in ODA was required to help establish decent work in developing countries. The overwhelming majority of industrialized countries fell well short of the UN target for ODA, which had stood at 0.7 per cent of GDP for about 20 years. The Employer Vice-Chairperson also disagreed with the second part of the amendment for different reasons. ODA was intended to foster decent work and reduce poverty in developing countries. This should not be confused with the remittances sent back to their countries by migrant workers, which were destined to assist their families and not to be given to governments to assist development. It would be giving the wrong message to imply that ODA could disappear since there were remittances.

150. The Government member of the United States believed that the last sentence was inappropriate since it had normative implications as it called for additional ODA, and supported its deletion. The Government member of Nigeria did not support the second part of the amendment. She introduced a subamendment to insert “some” or “many” before “developing” in the last sentence.

151. The Government member of the United Kingdom proposed as a subamendment of the amendment he had originally sponsored the following rewording of the last sentence: “Effective and targeted ODA could assist developing countries expand decent work and thereby mitigate the push factors driving migration.” The Government member of Nigeria opposed that subamendment. She supported the original amendment to delete the last sentence but proposed as a subamendment adding the following sentence at the end of the paragraph: “Improved policies and increased ODA are also required to reduce poverty in developing countries and to promote decent work as a central objective of national and international economic policies.” The Worker and Employer Vice-Chairpersons and the Government member of India supported the subamendment.

152. The Government member of the United States proposed a further subamendment to replace “are also required to” by “may” on the grounds that it was beyond the purview of the ILO to order nations to increase ODA and that an increase would not necessarily achieve the results referred to. The Worker Vice-Chairperson objected to the suggestion that these conclusions would result in any country being “ordered” to increase ODA but it should be recognized that most countries were failing to meet the UN target on ODA and that increased ODA and more appropriate international economic policies were required to promote economic development and decent work in developing countries. The Government member of the United States then stated that if the words “increased ODA”

were replaced by “effective and targeted ODA”, he would be prepared to accept the words “are also required”. The Government members of Japan and Nigeria and the Worker and Employer Vice-Chairpersons supported the last subamendment. The amendment was adopted in its final form.

153. Paragraph 9 was adopted as amended.

Paragraph 10

154. The Government members of Australia, Canada, Japan, New Zealand, Switzerland, Turkey and the United States introduced an amendment to insert the phrase “Although it is clearly the sovereign right of all States to develop their own migration and labour policies” at the beginning of the first sentence. The Government member of the United States stressed that acknowledgement of that right was of critical importance for ensuring that the conclusions were well received by governments and served as a useful document in the future. The Government members of Australia, Canada and Switzerland endorsed that view and the Government member of the United Kingdom added that the balance between sovereign rights and the role of international guidelines was the crux of the matter. The Worker Vice-Chairperson, while acknowledging governments’ sovereign right to determine matters of entry, stay and deportation, said that the wording was too broad to be acceptable. However, to allay governments’ concerns, she proposed the following subamendment: “Although it is clearly the sovereign right of all States to develop their own admission, residency and deportation policies”. The Employer Vice-Chairperson supported the subamendment. The Government member of the United States pointed out that immigration law was complex and covered far more than just admission, residency and deportation issues.

155. The Government member of Nigeria appealed to the Government members from developed countries to show flexibility and understanding for the untold difficulties experienced by migrant workers. The Worker Vice-Chairperson then proposed the following subamendment consisting of two sentences: “Although it is the sovereign right of all States to develop their own migration policy, it is accepted that multilateral rules, standards or guidelines, as appropriate, are required to make policies coherent, effective and fair. In that context, coherent, comprehensive, consistent and transparent policies are required to effectively manage migration.” The Government member of Nigeria proposed the following modification of the first sentence: “Although it is the sovereign right of all States to develop their own migration and labour policies, it is accepted that multilateral rules, standards or, as appropriate, guidelines play an important role to make policies coherent, effective and fair.” The second sentence would remain unchanged. The Worker Vice-Chairperson accepted the amended wording in a spirit of consensus. The Government members of Barbados, Brazil, Colombia, Dominican Republic, India, Mexico, Nicaragua, South Africa, Suriname and Venezuela, and the Employer Vice-Chairperson also supported the subamendment.

156. The Government member of the United States proposed a further subamendment to read: “Acknowledging the sovereign right of all States to develop their own migration and labour policies, it is accepted that multilateral rules, standards and guidelines, as appropriate, play an important role in developing coherent, effective and fair policies.” The Government member of Switzerland supported this proposed subamendment but could also go along with the subamendment proposed by the Government member of Nigeria. The Government member of Indonesia found the latter subamendment more acceptable. The Worker Vice-Chairperson objected to any watering down of the subamendment proposed by the Government member of Nigeria.

-
- 157.** The Government member of Canada proposed as a compromise subamending the beginning of the subamendment proposed by the Government member of Nigeria to read “Acknowledging the sovereign rights of States” and leaving the remainder unchanged. The Government member of Nigeria and the Worker and Employer Vice-Chairpersons accepted the proposal. The amendment was adopted in this modified form.
- 158.** The Government members of Denmark, the Netherlands and the United Kingdom introduced an amendment to replace the words “Labour ministries” with “Government ministries” in the second sentence since in many countries labour ministries were not responsible for migration policies. The Worker Vice-Chairperson said that the point of the sentence was to ensure that labour ministries played a key role rather than a minor role in developing and implementing policies. The Employer Vice-Chairperson and the Government members of Barbados, Nigeria and Suriname supported that view.
- 159.** The Government member of the United Kingdom proposed revising the amendment to replace “Government ministries” with “All relevant ministries, and in particular labour ministries”. The Employer and Worker Vice-Chairpersons and the Government member of Canada expressed support for the revised version, which was adopted.
- 160.** The Government members of Barbados, Jamaica and Suriname introduced an amendment to replace “policy elaboration and administration” in the third sentence with “policy formulation, elaboration, management and administration”. The purpose of the amendment was to strengthen the role of labour ministries. The Government member of the United States and the Employer and Worker Vice-Chairpersons supported the amendment, which was adopted.
- 161.** The Government members of Algeria, Benin, Botswana, Burkina Faso, Cameroon, Côte d’Ivoire, Democratic Republic of the Congo, Egypt, Ghana, Kenya, Lesotho, Liberia, Libyan Arab Jamahiriya, Malawi, Morocco, Namibia, Niger, Nigeria, Senegal, South Africa, Sudan, Uganda, Zambia and Zimbabwe introduced an amendment to delete the words “and administration” in the sentence beginning “Structural and regular mechanisms ...”. While the social partners could assist in the formulation of policies, only governments were responsible for their administration. The Worker and Employer Vice-Chairpersons supported the amendment, which was adopted.
- 162.** The Government members of Australia, Canada, Japan, Switzerland, Turkey and the United States introduced an amendment to replace the words “are required” with “can provide” in the second to last sentence on the ground that the proposed guidelines were to be non-binding. The Government member of Nigeria pointed out that a non-binding text could be ignored. Hence there was no reason to weaken the wording of the sentence. The Worker Vice-Chairperson agreed. It was to be hoped that the tripartite model, which had proved so successful in the ILO, would be exported to the wider world to ensure consensual policy development.
- 163.** The Government member of Canada proposed replacing “are required” with “are important”, the Government member of India with “should provide” and the Government member of Australia with “are necessary”. The last subamendment, which required no amendment of the French and Spanish versions of the text, was adopted.
- 164.** Paragraph 10 was adopted as amended.

Paragraph 11

- 165.** The Government members of Denmark, the Netherlands and the United Kingdom introduced an amendment to insert the words “national and international” between “rule of” and “law” in the first sentence. The amendment was adopted.
- 166.** The Employer Vice-Chairperson introduced an amendment to delete the words “men and women” before “migrant workers” in the second sentence. The amendment was adopted.
- 167.** The Government members of Australia, Canada, Japan, Switzerland and the United States introduced an amendment to replace the last sentence with the following text: “They contain principles of equal human rights and labour protections for all workers, including migrant workers, as well as participation of social partners in national policy formulation.” They found the original version of the sentence vague, especially the term “equality of treatment”. The new wording was more focused.
- 168.** The Worker Vice-Chairperson pointed out that the original wording reproduced the terms used in Conventions Nos. 97 and 143. The Employer Vice-Chairperson and the Government members of Barbados, India, Nigeria and Suriname expressed a preference for the original text. The Government member of France strongly supported the original version which made an important distinction between migrant workers in regular and irregular status. The Government member of Mexico supported the amendment. It was important to take a broad view that encompassed not just labour rights but all human rights of all migrant workers regardless of their situation or migration status. The Worker Vice-Chairperson said that, while she shared the sentiments of the Government member of Mexico regarding human rights, the paragraph under discussion reflected the legal basis of the Conventions. The Government member of Switzerland found the original text ambiguous. In particular, the scope of equality of treatment between non-nationals and nationals was unclear.
- 169.** The Government member of Canada withdrew the amendment on behalf of the sponsors, noting that there would be other opportunities to address the concerns raised by the Government members of Mexico and Switzerland.
- 170.** Paragraph 11 was adopted as amended.

Paragraph 12

- 171.** The Government members of Denmark, the Netherlands and the United Kingdom withdrew a proposed amendment to insert the word “regular” in the second sentence after the words “cover all” and to delete the words “regardless of status”.
- 172.** The Government members of Australia, Canada, Japan and Switzerland introduced an amendment to insert the word “may” in the last sentence before “also provide”, to delete the word “necessary” and to insert the word “help” before “ensure protection”. All the modifications were designed to reflect more accurately the true state of affairs.
- 173.** The Worker Vice-Chairperson was unable to see why the Government members wished to qualify a word such as guidance, which was not a binding term. The Government member of Canada, noting that the paragraph referred to a long list of ILO instruments, said that they might provide guidance in some situations but not in others. The Employer Vice-Chairperson expressed a preference for the original text. The Government member of Nigeria said that strong wording was needed to guide countries that had not ratified the ILO instruments in enacting legislation and formulating policies. She was therefore in

favour of the original text. The Government member of Barbados concurred with that view.

174. The Government member of Canada proposed a subamendment to maintain the original text except for the addition of the word “may” before “also provide”. Guidance might not be required in respect of some national laws and policies that already conformed with the relevant standards. The Worker Vice-Chairperson pointed out that freedom of association was denied in three provinces of Canada to workers in the agricultural sector. The Government member of United States proposed a further subamendment that would involve retaining the original text but inserting the word “help” before “ensure”. The Worker Vice-Chairperson stressed the need for strong wording to assist developing countries. The Government member of Canada withdrew the amendment on behalf of the sponsors.

175. Paragraph 12 was adopted as amended.

Paragraph 13

176. The Government members of Canada and the United States introduced an amendment to replace “social cohesion” with “social inclusion” in the first sentence. The term social inclusion was clearer and had been used throughout the discussion. The Worker Vice-Chairperson proposed subamending the text to read “social inclusion and cohesion”. The Employer Vice-Chairperson supported the subamendment, which was adopted.

177. The Government members of Australia, Canada and New Zealand introduced an amendment to replace the words “are required” in the first sentence with “should be promoted”. There had been no consensus in the discussion on a requirement for comprehensive national approaches to improving social welfare and social cohesion. The Worker Vice-Chairperson proposed a subamendment to replace “should be promoted” with “are necessary and should be promoted”. The subamendment was adopted.

178. The Government members of Denmark, the Netherlands and the United Kingdom introduced an amendment in two parts. The first part proposed to insert the word “regular” after “social security coverage and benefits to” explaining that social security in general did not apply to migrants in irregular status. Access to health care was granted in many cases but not unemployment benefits as these would also imply tax payment and being in a recognized employment situation. Provision of all benefits to migrant workers in irregular status was likely to increase irregular migration and trafficking. The Worker and Employer Vice-Chairpersons accepted this part of the amendment, and it was adopted. The second part proposed to insert the words “national and” before the words “international standards and practices”. The Workers’ group rejected this part of the amendment because it would detract from the value of having international guidelines. To arrive at a compromise solution, they proposed a subamendment to include the words “and, as appropriate, to migrant workers in irregular situations,” in place of “migrant workers” in the sentence.

179. The Employer Vice-Chairperson supported this subamendment and refined it further by proposing a change in the punctuation. The text as subamended should read “Important measures may include: entering into bilateral or multilateral agreements to provide social security coverage and benefits to regular migrant workers and, as appropriate, to migrant workers in irregular situations, in conformity with relevant international standards and practices; ...”.

180. The Government member of the United Kingdom stated that the word “national” was actually implied in the subamended text and he was therefore willing to drop it. The

Government members of Mexico and the Netherlands supported the amendment as subamended. The Government member of Nigeria would accept the amendment in either its original or subamended forms. The Government member of France preferred the original text and considered that the new text was more ambiguous concerning which international standards and practices were relevant. At least the word “practices” at the end of the sentence should be dropped.

- 181.** The Worker Vice-Chairperson did not agree with the latter suggestion. “Practices” was not a strong term as it allowed more flexibility for countries to shape policies and agreements. The Government members of Canada and France agreed to the text as subamended. The second part of the amendment was adopted as subamended by the Workers’ group and further refined by the Employers’ group.
- 182.** The Government member of Canada withdrew an amendment to delete the reference to the Programme of Action adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban, 2001), in the context of the next proposed amendment.
- 183.** The Government members of Canada, New Zealand and the United States proposed to replace the word “following” with the words “taking into account” before the phrase “recommendations in the Programme of Action ...”. The Employers’ group, the Workers’ group and the Government member of Nigeria agreed with the amendment.
- 184.** The Government member of Canada introduced an amendment to replace the words “facilitating economic, social and cultural integration” with “promoting social inclusion”. The term “social inclusion” had a broader application in Canada as it covered both permanent and temporary migrant workers, whereas “integration” was used to refer to permanent migrant workers only. In addition, “social inclusion” was a term that was often used by the ILO. The Worker Vice-Chairperson stressed that “economic, social and cultural integration” was less ambiguous and was in line with the principles of the ILO. Therefore, the original text should stand. The amendment was withdrawn.
- 185.** Paragraph 13 was adopted as amended.

Paragraph 14

- 186.** Paragraph 14 was adopted without amendment.

Paragraph 15

- 187.** The Government members of Denmark, the Netherlands and the United Kingdom introduced an amendment to the first sentence to replace the words “men and women” with “regular” because the terminology was more generic and broad in scope. The Worker Vice-Chairperson could not accept the amendment because it was for trade unions to decide whom they could organize or not. She stressed that under the relevant ILO Conventions, freedom of association applied to all workers without distinction whatsoever. She also noted that the right of everyone to organize was contained in the European Convention on Human Rights, which had been ratified by the Government members who were presenting the amendment. The Employer Vice-Chairperson agreed with the Workers’ group and noted that the text that the amendment addressed was relevant to workers’ organizations and should apply to migrant workers in both regular and irregular status. The amendment was rejected.

-
- 188.** The proposal of the Government members of Australia, Canada, Japan, Turkey and the United States to delete the words “men and women” before “migrant workers” in two places in paragraph 15 was accepted.
- 189.** The Government members of Argentina, Brazil, Costa Rica, Ecuador, Mexico and Nicaragua proposed to replace “organizing them in trade unions” with “encouraging them to join trade unions” to improve the meaning of the sentence. The spokesperson explained that it was not a question of organizing migrant workers into trade unions, but about recognizing their basic right to join trade unions; the Workers’ group appreciated this view, but suggested replacing “and organizing them into trade unions” with “and unionizing them” to emphasize that trade unions had not done enough to reach migrant workers. This was accepted by the Government member of Mexico. However, the Employers’ group preferred not to use the term “unionize” and proposed a second subamendment: to replace the phrase “and organizing them into trade unions” with “in order to affiliate them into workers’ organizations” to cover all possible situations. The Workers’ group objected to the use of the term “affiliate” as it did not reflect common terminology. For them, “unionize” was a compromise, while “organize” was the most frequently used term. After consultations with the other countries having submitted the amendment, the Government member of Mexico proposed a third subamendment: “and organizing them into trade unions”, which was acceptable to both Employer and Worker members. The amendment was adopted in this final form.
- 190.** The Workers’ group proposed to add, at the end of the paragraph, the sentence: “Workers’ organizations in countries of origin can assist migrant workers in obtaining accurate and comprehensive information about employment opportunities and workers’ rights in destination countries.” This was to draw attention to the fact that not only trade unions in countries of destination but also trade unions in countries of origin could be of assistance to migrant workers. The Employer Vice-Chairperson supported the amendment proposed by the Workers’ group, as did the Government members of Nigeria and the United States. It was adopted.
- 191.** Paragraph 15 was adopted as amended.

Paragraph 16

- 192.** The Government members of Australia, Canada, Japan, New Zealand, Switzerland, Turkey and the United States proposed to replace paragraph 16 with the following text: “Measures to combat trafficking in persons should be strengthened. These measures should include provisions for the prosecution of persons engaged in trafficking, protection of and assistance to victims, coordination between domestic and international investigations, as well as efforts to address the root causes of the problem in countries of origin.” The intention was to be more specific on the issue of trafficking. The Worker Vice-Chairperson supported the amendment subject to a subamendment that would add at the end the words “including provision of access to regular labour migration channels and to decent work and social protection alternatives in origin countries”, since greater access to regular job opportunities would make trafficking less attractive and improve protection. The Government member of Belgium supported the amendment, and also the subamendment proposed by the Workers’ group.
- 193.** The Government member of the Netherlands did not support the subamendment of the Workers’ group. Quoting from the Office report, he stressed that the relevant United Nations and ILO instruments aimed to discourage and eventually eliminate irregular migration. He therefore proposed another subamendment to add to the end of the original text of the amendment: “Countries can also contribute to these measures by developing

policies to combat and prevent irregular migration.” The Government member of the United States supported both the subamendment proposed by the Workers’ group and that proposed by the Government member of the Netherlands. She suggested a further subamendment that would combine both previous subamendments plus the words “in origin countries” at the end of the Workers’ group subamendment, and take out the words “provision of” before “access to regular labour migration”. The Government member of Nigeria supported this formulation, and the Government member of the Dominican Republic suggested that it was equally important to provide information on options for regular migration and decent work opportunities in potential host countries. Both the Worker Vice-Chairperson and the Employer Vice-Chairperson agreed with this proposal, and the amendment was adopted in this final amended form.

194. Paragraph 16 was adopted as amended.

Paragraph 17

195. The Government members of Denmark, the Netherlands and the United Kingdom withdrew their amendments to replace the words “urgent required components” with “the options to be considered” and to delete the fourth sentence in the light of the previous amendments. The Government members of Australia and New Zealand withdrew their amendment to delete the word “required” in the second sentence.

196. The Government members of Australia, Canada, Japan and Switzerland proposed to delete the word “Equitable” from the third sentence because it was not clear what “equitable” measures meant in this context. The Employer Vice-Chair felt that the amendment did not change anything. The amendment was withdrawn.

197. The Government members of Australia, Canada and Japan wished to replace the words “Allocations of development assistance should be targeted to projects” by “Consideration may be given to allocating development assistance to projects” to reflect the fact that development assistance was a complex issue with competing priorities. The ILO could not determine the ODA policies of governments, it could only provide directions. The Employer members and Worker members agreed and the amendment was adopted.

198. Paragraph 17 was adopted as amended.

Paragraph 18

199. The Government members of Australia, Japan, Switzerland and the United States introduced an amendment to add at the beginning of the paragraph the words “While recognizing the sovereignty of States in determining their own migration policy.” The Government member of the United States explained that this was to use the same language that the Committee had reached consensus on in paragraph 10. The word “need” was strong while the term “cooperation” was very broad. Given that the Berne Initiative and the Global Commission on Migration were yet to complete their work, it was critical to recognize the sovereignty of States. The amendment was accepted.

200. The Government members of Denmark, the Netherlands and the United Kingdom proposed inserting the words “, and in particular labour migration” after the word “migration” in the first sentence. This amendment was adopted.

201. Paragraph 18 was adopted as amended.

Paragraph 19

202. Paragraph 19 was adopted without any amendment.

Paragraph 20

203. The Government members of Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and the United Kingdom proposed to replace paragraph 20 with the following text:

A fair deal for all migrant workers requires a rights-based approach, in accordance with existing international labour standards and ILO principles, which recognizes labour market needs and the sovereign right of all nations to determine their own admissions systems. As part of the broader commitment to promoting decent work, the ILO and its constituents agree on the desirability of maximizing the benefits to all that can flow from: (i) promoting policies that give priority to economic growth and employment in countries of origin; and (ii) encouraging regular labour migration. It is recognized that this goal requires a commitment to adopt national policies aimed at effective protection of migrant workers, combating the exploitation often associated with migrants in irregular status, and the promotion of basic human rights for all migrants. It is clear that closer cooperation among sovereign States and the tripartite constituents can contribute towards more effective labour migration processes and protection systems. Many countries have requested technical assistance in improving their policies and legislation. In order to advance this agenda, the ILO and its constituents will carry out a plan of action in partnership with other relevant international organizations. The Office shall keep the ILO Governing Body and any other relevant ILO Committees informed of the progress of its implementation.

204. The Government member of Ireland, introducing the amendment, said that it had been put forward by the Government members of the 25 Committee Member States of the EU because of the need for clarification of the wording. It was an important paragraph because it set out the basic principle of fair treatment for migrant workers. The same Government members introduced two subamendments with a view to securing agreement on the text by the Workers' and Employers' groups. The first was to delete the words "in countries of origin" to take account of the broader will and commitment to stimulate growth and employment in both sending countries and receiving countries. The second subamendment was to replace the words "effective protection of migrant workers" with "equal treatment of regular migrant workers with nationals with respect to labour standards and access to applicable social protections".

205. The Worker Vice-Chairperson stated that Worker members could accept the amended text if the Government members had inserted the words "in line with relevant ILO Conventions". The Government member of Ireland, speaking on behalf of the Government members of the Committee Member States of the EU, clarified that those words had not been incorporated in the text. The Chairperson pointed out that the opening sentence of the amendment covered the point referred to by the Worker Vice-Chairperson. The Worker Vice-Chairperson said that the text would be acceptable if that clarification could be placed on record. Otherwise the Workers' group would insist either on inserting the words that related to ILO Conventions or propose a subamendment; they subsequently agreed with the subamendment of the Government members of Canada and New Zealand, which read: "in accordance with the provisions of relevant ILO Conventions".

206. The Government member of Mexico proposed two subamendments: first the phrase "and other relevant international instruments" should be added to the end of the text proposed by the Workers' group. Second, "basic human rights" should be changed to "basic human

rights and labour rights for all migrants regardless of their migrant status”. This proposal was not seconded.

207. The Government member of Ireland proposed a further subamendment to remove the word “regular” in the proposed subamendment “equal treatment of regular migrant workers ... social protection”. The Government member of New Zealand supported this subamendment and proposed to replace “admissions systems” with “migration policy” in the first sentence. The Workers’ group accepted the proposal of the Government member of New Zealand and consequently withdrew their subamendment “in accordance with the provisions of relevant ILO Conventions”. However, the Workers’ group rejected the subamendment proposed by the Government of Mexico because it qualified basic labour law, and also was not standard ILO terminology.

208. The Government member of Australia supported the amendment and the subamendments proposed by the Government members of the Committee Member States of the EU, and of New Zealand. He proposed a further subamendment to the first sentence to replace the term “rights-based approach” with “comprehensive” approach because the former term was too open-ended. The Employer Vice-Chairperson supported the first subamendments, but not the further subamendment proposed by the Government member of Australia. The Government members of Switzerland and the United States supported the latter subamendment. The Government member of the United Kingdom stressed that the dropping of the term “regular” should not be interpreted as implying the right to regularization. The Government member of Japan, in supporting the latter subamendment, stated that the meaning of “rights-based” was not clear – did it mean protection of migrant workers’ rights as well as the right to migrate? The Government member of Canada agreed on the need for clarity. The secretariat clarified that the amendment under discussion did not concern the issue of regularization. The Government members of the Dominican Republic and Mexico did not support the subamendment of the Government member of Australia. The Government member of Nigeria did not understand the need for an explanation of the term “rights-based approach”, which was a well-known term, and the first sentence recognized the sovereignty of all States over their own migration policy. The Worker Vice-Chairperson stressed that the term “rights-based approach” was based on the ILO principles and international labour standards and did not go to the question of the right to migrate; rather, it underlined that workers in all countries were entitled to rights regardless of whether they were migrants. She asked for a straw vote if the Government member of Australia insisted on his subamendment.

209. The Government member of the United States, referring to other speakers, insisted that the understanding of the term “rights-based approach” varied from country to country so it was important to clarify the meaning. She proposed to include a second sentence which would then read as follows: “A rights-based approach does not imply any rights of any persons to enter a country, to remain in a country with irregular status, or to work in a country without employment authorization”, which the Government of Switzerland supported. The Government member of Australia also supported this subamendment and offered to withdraw his subamendment.

210. The Government members of India and of the Philippines supported the term “rights-based approach” which was based on ILO standards and principles; the subamendment of the Workers’ group referring to international labour standards, and the subamendment of Australia. The Government member of Barbados, also speaking on behalf of the Government members of Jamaica and Suriname, pointed out that that the first sentence provided for the sovereign right of nations on migration policies. Free movement was very much a part of globalization. The subamendment of the Government member of the United States attempted to define in national law what a “rights-based approach” should mean,

which was not acceptable because persons who wanted to move should have a fair deal. The Workers' group pointed out that the subamendment proposed by the Government member of the United States violated United States' domestic law, which provided protection under law to all migrant workers. The Industrial Relations Council of New South Wales, Australia, also had ruled that workers in irregular status were entitled to protection under labour legislation. The Employer Vice-Chairperson noted the differences between the arguments of receiving and sending countries, but recalled that some countries, like Mexico, had both elements.

211. The secretariat clarified the meaning used by the term “rights-based approach”. It was in accordance with international labour standards and principles, and existing instruments did not imply any right of persons to enter, the right of migrants to remain in a country in an irregular status, or the right to work in an irregular status. The Workers' group asked for a straw vote. The Government member of the United States asked for a record vote. During a lengthy discussion on procedural issues, the Legal Adviser pointed out that the third point of the text proposed by the Government member of the United States, namely “to work in a country without employment authorization”, was somewhat ambiguous. The Worker Vice-Chairperson, in order to come up with a consensus, agreed on the first two points of the subamendment. The Government member of the United States, after consulting with the other countries concerned, withdrew her first subamendment and proposed a new one which would insert at the end of the first sentence the words “, including determining entry into their territory and under which conditions migrants may remain”. The Government member of Ireland requested that for clarity another subamendment should be considered to replace “with respect to national labour standards” with “in respect of national labour laws” after “migrant workers” in the text of their subamendment to the amendment. The Worker and Employer Vice-Chairpersons agreed with both subamendments. The amendment as finally subamended was adopted.

212. Paragraph 20 was adopted as amended.

Paragraph 21

213. The Worker Vice-Chairperson pointed out that paragraph 21 simply reproduced in index form the content of individual sections of the plan of action. She therefore suggested deferring consideration of the amendments until the corresponding substantive paragraphs had been discussed. It was so agreed.

214. The Committee returned to the discussion of amendments to paragraph 21 after completing discussion of paragraphs 22 to 36.

215. The Government member of Canada pointed out that as a consequence of the extensive discussions on paragraphs 22 to 36, it was no longer necessary to discuss the proposed amendments to paragraph 21. There was general agreement on this position by the Employer and Worker delegates and by the Government member of Ireland, speaking on behalf of the Government members of the Committee Member States of the EU.

216. Paragraph 21 was adopted as amended.

Paragraph 22

217. The Government members of Japan, Switzerland, Turkey and the United States proposed to insert a new paragraph after paragraph 21 that would read “The following action items shall be given the highest priority: (i) capacity building and technical assistance; and

(ii) improving the knowledge base on global trends in labour migration, conditions of migrant workers, and effective measures to protect their labour and human rights.”

218. The Worker Vice-Chairperson said that the amendment could imply a very serious curtailment of the Office’s future work. She recalled that the Director-General and the World Commission on the Social Dimension of Globalization had emphasized the need for more coherence within the internal system and greater consistency between the policies of international organizations. It was imperative also to place a high priority on these aspects of the plan of action that would advance these objectives. She wondered in any case whether the Committee should establish priorities about the different aspects of the plan of action without very careful consideration and further debate. The Committee would therefore require more time to study the final text of the conclusions and conduct further deliberations at another sitting. The Government member of Colombia pointed out that it was for the Programme, Financial and Administrative Committee (PFA) of the Governing Body to address this matter. The Government member of Nigeria agreed with the Workers’ group that any attempt to draw up a list of priority issues would need more time for discussion. The Employer Vice-Chairperson pointed out that extra-budgetary resources were also available through the ILO. He stated that it was premature and a tactical mistake to identify priorities now and urged the sponsors to withdraw the amendment.

219. The Government member of the United States subamended the amendment to read “The highest priority should be given to capacity building and technical assistance.” The Worker Vice-Chairperson said it was quite unacceptable for one group of States to determine priorities. The developing countries had called for a great deal more than just capacity building and technical assistance. The Government member of Canada proposed replacing the term “The highest priority” by “A high priority”. The Employer Vice-Chairperson and the Government members of Nigeria and the United Kingdom supported the latter subamendment. The Worker Vice-Chairperson suggested a further subamendment to add at the beginning of the sentence “A high priority should be given to capacity building and technical assistance, in line with the plan of action adopted by the Committee”. The Government member of the United States agreed with that subamendment. The amendment was adopted in this final form.

220. Paragraph 22 was adopted as amended.

Heading before paragraph 23

221. Two proposed amendments to the section heading were withdrawn.

Paragraph 23

222. The Government members of Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and the United Kingdom introduced an amendment to replace the text of paragraph 23. The Government member of Ireland said that the amendment to insert the words “labour migration” in the first line before “policies and measures” was intended solely for clarification. It was proposed to delete the words “which takes account of labour market needs” in the third line since that point had been covered in paragraph 20, and because the whole purpose of labour migration was to fulfil an existing need. The word “existing” had been inserted before “proposals” in the second sentence to make it clear that the framework would not be drawn from new but from existing proposals. Lastly, the word

“guidelines” had been replaced with “framework” in the second last line for the sake of consistency with the wording of paragraph 21.

- 223.** The Employer Vice-Chairperson said he could accept the amended version of the paragraph except for the proposed deletion of the reference to labour market needs. He proposed a subamendment to insert “including labour market needs” after “a rights-based approach to labour migration”. The Worker Vice-Chairperson shared the view of the Employers’ group. She suggested subamending the subamendment to read “including national labour market needs”. The Government member of Ireland said that the sponsors were prepared to accept the latter subamendment.
- 224.** The Government member of the United States, supported by the Government members of Australia and Canada, proposed a subamendment to replace “a non-binding multilateral framework for a rights-based approach” with “a non-binding comprehensive approach”, arguing that “comprehensive” was a stronger and less ambiguous term than “framework”. The Government member of Nigeria opposed the latter subamendment and commended the Government member of Ireland for displaying flexibility in accepting the subamendment put forward by the Workers’ group. The Worker Vice-Chairperson pointed out that governments would have a chance to oppose any unacceptable aspect of the guidelines to be developed under the multilateral framework when the matter was referred to the ILO Governing Body. The Government member of the United States acknowledged that her subamendment had not obtained the requisite support.
- 225.** The amendment was adopted as subamended by the Employers’ group and the Workers’ group.
- 226.** Paragraph 23 was adopted as amended.

Paragraph 24

- 227.** The Government members of Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and the United Kingdom introduced amendments to a number of the bullet points listing areas in which international guidelines on best practices would be developed.
- 228.** The Government member of Ireland explained that the sponsors had amended the first bullet point to read “Having regard to labour market needs and demographic trends in the various countries, expanding avenues for regular labour migration” because the aim was not necessarily to increase the volume of migration but to expand appropriate vehicles and instruments in various circumstances. The amendment to the first bullet point was adopted.
- 229.** Turning to the fourth bullet point, the Government member of Ireland explained that the proposal to replace the words “and the provision of clear and enforceable contracts” by “with the provision of clear and enforceable contracts by recruitment agencies” was made in order to address well-documented abuses by such agencies. The Government member of Nigeria proposed subamending the beginning of the bullet point to read “Licensing and supervision of recruitment and contracting agencies.” After the secretariat pointed out that contracting agencies were covered by Recommendation No. 188 but not by Convention No. 181, the Worker Vice-Chairperson proposed a further subamendment to add the words “and Recommendation No. 188” after “Convention No. 181”. The Government member of the United States noted that this would imply amending the end of the bullet point to read “clear and enforceable contracts by those agencies”. The bullet point, as subamended, was adopted.

-
- 230.** The Government member of Ireland said that the sponsors proposed inserting the word “Promoting” before “Decent work” in the fifth bullet point to indicate that governments should promote an economic environment in which decent work was available. The amendment was adopted.
- 231.** The sponsors of the amendment further proposed inserting a new bullet point after the sixth point that would read “Protecting and promoting the human rights of all migrant workers.” The Government member of Costa Rica proposed subamending the text to insert “Preventing”. The Government member of Hungary suggested as an alternative subamendment the following: “Protecting and promoting the human rights of all migrant workers and preventing abuses thereof”. The Employer and Worker Vice-Chairpersons expressed a preference for the original amendment, which was adopted.
- 232.** The sponsors’ proposal to insert a new bullet point after the eighth point that would read “Promoting awareness of migrant workers’ rights” was adopted.
- 233.** The sponsors proposed an additional new bullet point to follow the previous one that would read “Preventing and combating irregular labour migration”. The Government member of Mexico found the addition unwarranted in view of the general direction of the proposed text, which should in any case be aimed at dealing with the causes of irregular migration. He specified that a punitive approach was inappropriate and short-sighted because it did not address the true causes of irregular migration. The Government member of the United Kingdom, on the other hand, thought that the framework for a best-practice model should be as inclusive as possible. It was important to address the needs of victims of irregular migration. The Worker Vice-Chairperson pointed out that the ILO had no mandate to police abuses or organized crime. The amendment was adopted.
- 234.** The sponsors proposed replacing the words “labour legislation and applicable labour laws” in the fourteenth bullet point with “national labour legislation and applicable social protections”. The Employer Vice-Chairperson said that he could accept the amendment if the Spanish translation was brought into line with the English version and the word “protections” was replaced with “laws”. The amendment, as subamended, was adopted.
- 235.** The sponsors proposed replacing the text after the word “exploring” in the sixteenth bullet point with “mutually beneficial approaches to ensure the adequate supply of skilled health and education personnel that serve the needs of both sending countries and receiving countries, including through bilateral and multilateral agreements”. The Government member of Ireland said that brain drain was not a simple issue. Some developing countries were building an export market in the services of skilled personnel, hence the need to explore mutually beneficial approaches, including support or assistance from receiving countries. The amendment was adopted.
- 236.** The Government members of Barbados, Jamaica and Suriname introduced an amendment to insert a new bullet point after the second point that would read “Promoting managed migration to address the impact of an ageing population on national economies.” The Government member of the Netherlands proposed a subamendment to add the words “where appropriate” after “economies” since not all countries were affected by the ageing phenomenon. The subamendment was adopted.
- 237.** The Government member of France introduced an amendment to broaden the scope and content of the second bullet point by adding the following text at the end: “in particular broad multilateral agreements between host countries and countries of origin addressing different aspects of migration such as admission procedures, flows, social security, family reunification possibilities, integration policy and return”. The amendment was supported

-
- by the Workers' group. The Employer Vice-Chairperson proposed a subamendment to delete the word "multilateral" since the original text referred to "bilateral and multilateral agreements". The Government member of United Kingdom proposed as an alternative subamendment deleting the first five words of the amendment. The Government member of Canada supported the latter subamendment, which was adopted.
- 238.** The Government members of Algeria, Benin, Botswana, Burkina Faso, Cameroon, Côte d'Ivoire, Democratic Republic of the Congo, Egypt, Ghana, Kenya, Lesotho, Liberia, Libyan Arab Jamahiriya, Malawi, Morocco, Namibia, Niger, Nigeria, Senegal, South Africa, Sudan, Uganda, Zambia and Zimbabwe introduced an amendment to replace the words "Upgrading of" with the word "Improving" in the seventh bullet point because of the cost implications of any upgrading of labour inspection skills. The amendment was adopted.
- 239.** The Worker Vice-Chairperson introduced an amendment to insert the words "or fear of expulsion" at the end of the seventh bullet point, which the Employer Vice-Chairperson supported. The Government member of Ireland proposed subamending it to read "or fear of arbitrary expulsion". The Government member of Denmark supported the subamendment on the ground that States had to retain the option to return migrants in irregular status. The Government members of Australia, the United Kingdom and the United States supported the subamendment. The Worker Vice-Chairperson withdrew the amendment, since its purpose had been to prevent intimidation and to give migrants in irregular status the confidence to come forward with complaints of abuse.
- 240.** The Government members of Argentina, Brazil, Costa Rica, Ecuador, Mexico and Nicaragua proposed an amendment to insert in the eleventh bullet point the words ", reintegration into the country of origin" after the words "return migration" as it was important to reintegrate returning workers to the home economy. The amendment was adopted.
- 241.** The Government member of the United States withdrew an amendment to replace in the twelfth bullet point the end of the sentence from "measures by receiving" with the words "mutually beneficial approaches to ensure the adequate supply of skilled health and education personnel that serve the needs of both sending and receiving countries, including through bilateral and multilateral agreements".
- 242.** The Government members of Argentina, Brazil, Costa Rica, Ecuador, Mexico and Nicaragua proposed an amendment to replace in the thirteenth bullet point the words "women in domestic service" by "migrant workers with 3-D jobs" as it was important to highlight the situation of these workers and the risks they faced. The Worker Vice-Chairperson proposed to insert "migrant workers with 3-D jobs and" as an additional category to "women in domestic service" since women domestic workers were among the most vulnerable as they were often subject to abuse and exploitative conditions as well as often falling outside of formal regulation. The Government member of the United States suggested that "3-D" be replaced by "dirty, demeaning and dangerous" in order to keep it consistent with the terms used in the discussion. The amendment was adopted as subamended.
- 243.** The Government members of Argentina, Brazil, Costa Rica, Ecuador, Mexico and Nicaragua proposed an amendment to insert in the fourteenth bullet point the words "integration and" between "social" and "inclusion" as the two terms "integration" and "inclusion" did not have exactly the same meaning and integration was important. The amendment was adopted.

244. The Government members of Australia, Canada, Japan, New Zealand, Switzerland, Turkey and the United States proposed an amendment to add “by bilateral or regional agreements” at the end of the last bullet point. It was important to take into account the differences in national social security systems and this was most effectively done through bilateral or regional agreements. The Worker Vice-Chairperson agreed with the amendment as long as it was not going to restrict best practices, which she believed was not the intention of the Government members. The Government members of Belgium and France submitted an amendment to include mention of the word “multilateral”. The Employer Vice-Chairperson noted that in practice, social security agreements were most effective when covered by bilateral or regional agreements. The Government member of the United Kingdom supported the amendment and proposed a subamendment to insert the words “in relation to regular migrant workers” at the end of the sentence in order to clarify the situation for governments, on which the Government member of France agreed. The Employer Vice-Chairperson, while supporting both the amendment and the subamendment, observed that the subamendment was redundant since countries would have the final say on to whom such benefits applied in these agreements. The amendment was adopted as subamended.

245. The Worker Vice-Chairperson introduced an amendment to add a final bullet point that would read as follows: “Promoting the recognition and accreditation of migrant workers’ skills and qualifications in order to enhance their employability.” In the context of labour migration it was important to include best practices in this area. The Employer Vice-Chairperson fully supported this amendment. The recognition of qualifications would make it easier not only for migrant workers in host countries but also for those returning to their countries of origin. The Government member of Japan had no problem with the recognition of qualifications for certain fields, but he felt that this was difficult to achieve across the board. Hence, he proposed a subamendment to add “as appropriate” after “qualification”. The Government member of the United Kingdom expressed his agreement with the Worker Vice-Chairperson concerning the importance of recognition of qualifications and recalled that there were already a number of international initiatives and training organizations involved in this area. The Government members of China, India, Ireland and the United States also supported the amendment. The amendment was adopted as subamended.

246. Paragraph 24 was adopted as amended.

Paragraph 25

247. The Government members of Australia, Canada, New Zealand and Switzerland introduced an amendment to replace the paragraph with the following text: “The ILO, in consultation with Government members and the social partners, will develop the proposed approach for consideration by the ILO Governing Body in November 2005.” However, they proposed a subamendment to replace the words “the proposed approach” with “relevant guidelines comprised in this non-binding multilateral framework”, as the issue of the description of the framework had already been settled. The Government member of Australia supported the development by the ILO, together with the social partners and relevant experts, of guidelines to be contained in a non-binding multilateral framework, for presentation to the Governing Body in 2005. However, he felt that a series of tripartite meetings would not be fruitful, and that scarce resources would be better put to use in providing technical assistance to those constituents who needed it. He recalled that the representative of the Secretary-General mentioned that 60 countries were seeking ILO technical assistance. The Worker Vice-Chairperson accepted the amendment but was disappointed that the Government member thought that tripartite meetings were not useful. The Employer Vice-

Chairperson supported both the amendment and the subamendment. The amendment was adopted as subamended.

248. Paragraph 25 was adopted as amended.

Paragraph 26

249. The Government members of Australia, Japan, Switzerland and the United States proposed to replace the words “While recognizing” with “Recognizing” and to replace the text after the words “area of migration,” with the following text: “the ILO will work in partnership with other relevant international organizations to provide a platform for increased tripartite dialogue on migration and increased policy coherence on this subject”. The objective was to avoid duplication of work by encouraging the ILO to provide policy inputs to existing forums. The Government member of the United States supported the amendment and proposed a subamendment: in the first sentence, to add the word “labour” before “migration”. The Workers’ group thought it unfortunate to deny the Office the right to invite other agencies to discuss these issues at an ILO forum and asked that the second part of the amendment be reconsidered. The Workers’ group suggested a new subamendment to add at the end of the last sentence the words “working through an ILO forum for rights-based management of migration.” The Employer Vice-Chairperson stressed the need for the ILO to promote an open dialogue and therefore, gave support to the Worker members’ subamendment. The Government member of the United States suggested a compromise with a new subamendment: in the first sentence, the words “the ILO will work with” would be replaced with “an ILO forum may be established”. The Workers’ group accepted this and withdrew their subamendment. The amendment was adopted in this final form.

250. Paragraph 26 was adopted as amended.

Paragraph 27

251. The Government members of Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and the United Kingdom proposed to replace the paragraph with:

The Office shall undertake to identify the impediments to the ratification of these Conventions, taking into account that labour migration has evolved since their inception, and other relevant instruments have been developed at national, regional and international levels, such as the United Nations International Convention on the Rights of All Migrant Workers and Members of Their Families (1990) and the United Nations Convention against Transnational Organized Crime (2000) and its two associated Protocols. Upon completion of this exercise, the ILO may take appropriate steps to better promote the application of the basic principles contained in these Conventions. This initiative should also encompass other particularly relevant standards for migrant workers, including the fundamental ILO Conventions and ILO standards concerning private employment agencies, social security, protection of wages, labour inspection and occupational safety and health.

252. The Government member of France suggested two subamendments to the proposed text: to retain the first sentence from the original text, and to delete “Upon completion of this exercise”. The Workers’ group supported the amendment as subamended but proposed a further subamendment to delete the words “and its two associated Protocols” from the proposed amendment of the Government members of the Committee Member States of the EU, and to replace the proposed first sentence with “The ILO may take appropriate steps to better promote ratification of the Conventions, and application of the principles contained

in these Conventions.” The Workers’ group were of the view that the two UN Protocols tended to criminalize migrant workers. The Government member of France supported the Workers’ group’s subamendments. The Government member of the United States insisted on the two Protocols being mentioned as these are important agreements, and since this was only a reference to the instruments, and she proposed subamending the latter sentence to read “The ILO may take appropriate steps to better promote ratification and application of the principles contained in these Conventions.” The Government member of the Philippines supported the original amendment and the subamendment on ratification proposed by the Government member of the United States.

253. The Employer Vice-Chairperson opposed deletion of the word “basic” from the term “basic principles” because the Employers’ group thought that Conventions Nos. 97 and 143 did not give a true picture of the current reality. The Government member of Mexico also supported retaining the word “basic” in the text. The Government member of Canada preferred to delete “basic” for the sake of clarity. The Workers’ group stated that it was not possible to determine which principles were “basic”, although in a given context certain principles might be more relevant. They introduced a subamendment to change “basic principles” to “application of the principles pertaining to migrant workers”, which was acceptable to all the groups.

254. The Government member of South Africa proposed deleting the words “ratification and” from the subamendment of the Government member of the United States, which the Government member of the United States supported. The Worker Vice-Chairperson dropped her objection to the mention of the Protocols, but disagreed with the subamendment of the Government member of South Africa because once Conventions were adopted it was the work of the Office to promote them. The latter subamendment was rejected and the amendment was accepted incorporating the other proposed subamendments.

255. Paragraph 27 was adopted as amended.

Deletion of a paragraph

256. A paragraph which had followed paragraph 27 was deleted as a consequence of the adoption of paragraph 27 in its amended form. It had contained a reference to the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) and the United Nations Convention against Transnational Organized Crime (2000). While the Government member of Mexico would have liked to see it retained, he understood that the majority considered that the reference to these instruments in the previous paragraph was sufficient. He took this opportunity to recall his delegation’s preference concerning the preceding paragraph for the text that had been proposed by the Government group during the work of the Drafting Group. Inasmuch as the text referred to the promotion and ratification of international instruments on the subject, as part of the United Nations system, the ILO’s promotional work should not be confined solely to promoting instruments negotiated within its sphere; moreover, its effort should take account of changes in migration and developments in other forums.

Paragraph 28

257. The Government members of Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and the United Kingdom proposed to delete in the first sentence before “due consideration”

the words “In this context,” and to replace the second, third and fourth sentences of the paragraph with the words “It is important to ensure that the human and labour rights of such migrant workers are protected under national legislation.” It was critical to protect the human rights of migrants in irregular status, but countries had difficulties with regularization programmes because they could induce additional irregular migration. It was preferable to open more legal channels and combat irregular migration. In order to reach a consensus, the sponsors subamended their amendment to read:

Due consideration should be given to the particular problems faced by irregular migrant workers and the vulnerability of such workers to abuse. It is important to ensure that the human rights of irregular migrant workers are protected. It should be recalled that ILO instruments apply to all workers, including irregular migrant workers, unless otherwise stated. Consideration should be given to the situation of irregular migrant workers, ensuring that their human rights and fundamental labour rights are effectively protected and that they are not exploited or treated arbitrarily. Due consideration should also be given to the gender dimension in the application of relevant international standards, as well as to the various categories of temporary migrant workers, including seasonal workers.

The Government member of Namibia supported the subamended text. The Government members of Canada and New Zealand also supported the amendment because managed migration would deal with many of the issues under consideration.

258. The Worker Vice-Chairperson wished to put on record that the Workers’ group was disappointed with the position of some Government members on the issue of migrant workers in irregular status. Migrant workers in irregular status were people who lived alongside us in our communities but without security, and their children often grew up stateless. While the Workers’ group understood the complexities, they were unhappy that the question of regularization was not properly addressed. However, they would not oppose the amendment. The Government member of Nigeria supported the statement made by the Workers’ group and thought that due consideration should be given to the fact that migrant workers in irregular status also contributed to the development of host countries. She appealed to all receiving countries to consider favourably steps to regularize migrant workers in irregular status.

259. The Employer Vice-Chairperson supported the amendment in principle and wondered whether the Employers’ group’s proposed amendment referring to managed migration could be integrated into the text of the amendment. The Government member of the United Kingdom suggested that “Consistent with effective management of migration,” should precede the amendment proposed by the Government members of the Committee Member States of the EU. This found general approval.

260. Paragraph 28 was adopted as amended.

Paragraph 29

261. Paragraph 29 was adopted without amendment.

Paragraph 30

262. Two amendments, proposed respectively by the Government members of the Committee Member States of the EU, and the Government members of Denmark, the Netherlands and the United Kingdom, were withdrawn.

263. Paragraph 30 was adopted without amendment.

Paragraph 31

264. The Government members of Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and the United Kingdom proposed the following changes:

- deleting “and social partners” after “for the ILO to help governments”; inserting “labour” after “administer”; and adding after “and administer migration” the phrase “, in consultation with the social partners”. The Government member of Ireland introduced the amendment and stated that there was a growing acknowledgment of the important role of the social partners in advising governments; however, it was necessary to identify clearly the role of the different parties. It was the function of governments to elaborate and implement effective national policies but they should do so in consultation with the social partners;
- replacing “and undertake” with “undertaking” in the second bullet point;
- deleting “adequate” in the second bullet point. Although the word seemed innocuous, it could become contentious for national administrations, leading to unconstructive debates on, for example, the size of labour inspectorates;
- in the fifth bullet point deleting the word “implementation”, since that was the task of governments, and replacing “equal treatment of” with “labour protections for”.

265. The Worker Vice-Chairperson proposed, as an alternative to the first part of the amendment, replacing the word “elaborate” with “formulate” in the text preceding the bullet points. She insisted on the important role that the social partners played in the implementation of policies, but suggested as a subamendment deleting the words “to regulate and administer migration” which she agreed were the responsibility of governments. She accepted the second and third proposals concerning the second bullet point. She appealed for the withdrawal of the proposed amendment to the words “equal treatment of” in the fifth bullet point. It had nothing to do with government legislation, and was simply designed to ensure that workers’ and employers’ organizations were in a position to perform the tasks assigned to them under ILO Conventions.

266. The Employer Vice-Chairperson said he preferred “labour protections for” to “equal treatment of” in the fifth bullet point. He took issue with the use of the word “garantizar” in the Spanish version for “ensure” equal treatment of migrant workers in the English version. Employers were not in a position to guarantee equal treatment, which depended on national legislation. He suggested replacing “garantizar” by “velar”, which might be rendered in English by “look after”. The Worker Vice-Chairperson suggested replacing the word “ensure” with “promote”.

267. The Government member of Hungary expressed support for the original amendment in respect of implementation, a function which was the sole responsibility of the executive branch. The Worker Vice-Chairperson pointed out that employers’ and workers’ organizations played a major role not just in policy formulation but also in implementation in the context of labour inspection and labour tribunals, and in other ways such as organizing training courses. The Government member of Nigeria said that the social partners were needed not only to formulate policies but also to assist in their implementation. She would therefore be comfortable with retaining the words “and social partners” and expressed support for the subamendment introduced by the Workers’ group. The Government member of Ireland proposed replacing “implement” with “give effect to”,

which the Government members of Hungary and Japan and the Employer and Worker Vice-Chairpersons supported. The amendment, as subamended, was adopted.

- 268.** The Government members of Australia, Canada, Japan, New Zealand, Switzerland and the United States withdrew an amendment that would have inserted the words “and having regard to budgetary considerations” after “administration” in the first sentence.
- 269.** The Government members of Australia, Canada and the United States withdrew an amendment that would have replaced the text after the word “governments” in the first sentence with “elaborate and implement effective national and regional policies and practices to regulate and administer labour migration, in consultation with the social partners”.
- 270.** The Government members of Argentina, Brazil, Costa Rica, Ecuador, Mexico and Nicaragua introduced an amendment to replace “push factors” with “circumstances” in the third bullet point and to delete the word “developing”. The amendment was adopted.
- 271.** The Government members of Barbados, Jamaica and Suriname proposed inserting a new bullet point after the fourth point that would read “Support member States in capacity building for developing national databases concerning migrant workers.” The amendment was adopted.
- 272.** The Government members of Australia, Canada, Japan, New Zealand, Switzerland, Turkey and the United States proposed to add four bullet points at the end of the paragraph to read:
- develop and promote measures and activities to combat racism and xenophobia;
 - promote awareness of labour rights;
 - strengthen labour legislation so as to ensure that it provides labour protection for migrant workers and protects labour principles and rights identified in relevant ILO Conventions and instruments;
 - strengthen the capacity of authorities, including labour inspection services and labour tribunals, to secure compliance with labour laws, with a particular focus on the situation of migrant workers, by building transparency, knowledge and professionalism, and by sharing best practices.
- 273.** The Employer Vice-Chairperson supported the amendment but suggested replacing the word “xenophobia” at the end of the first bullet point by “discrimination”. The Worker Vice-Chairperson proposed an alternative subamendment to include both “xenophobia and discrimination”. The amendment was adopted as subamended.

274. Paragraph 31 was adopted as amended.

Paragraph 32

275. Paragraph 32 was adopted without amendment.

Paragraph 33

276. The Government members of Australia, Japan, New Zealand and Switzerland proposed inserting the phrase “and in conjunction with other international organizations that have migration as their core mandate” after the word “constituents” in the text preceding the bullet points, to recognize that other organizations had a role to play in building a global knowledge base. The Worker Vice-Chairperson proposed as a subamendment inserting the

words “as appropriate” between “and” and “in conjunction” and to delete the rest of the proposed phrase. The amendment, as subamended, was adopted.

277. The Government member of Canada introduced an amendment to delete “gender-responsive” and add the words “including on the gender dimensions of migration” after “for employment”, which was adopted.

278. The Government members of Austria, Belgium, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and the United Kingdom proposed to delete the last bullet point, which read “Studies of long-term labour market developments in so far as they can provide clues to the shape and character of future migration flows, and the likely adjustment policies that will be required to maximize mutual benefits.” Such studies would duplicate work already being done by the OECD and other bodies, and the ILO’s resources could be put to better use in other areas. The Worker Vice-Chairperson pointed out that the OECD work was essentially on developed countries. The ILO had core work to do on developing countries and issues of structural adjustment and the GEA. The Government member of the United States observed that the language used in the bullet point was too vague, for example “clues to” and “likely adjustment policies”. It would be inappropriate to invest scarce resources in such projects. The Employer Vice-Chairperson proposed as a subamendment the addition of a new bullet point worded “Strengthening of the ILO labour market information systems at regional level.” The Government member of the Netherlands said he could accept that subamendment if the last bullet point were deleted.

279. The Worker Vice-Chairperson maintained her opposition to the deletion. She proposed to subamend the bullet point to read “Studies of long-term labour market developments that are relevant to future migration flows and adjustment policies that will be required to maximize mutual benefits.” The Government member of Colombia supported that subamendment, stressing that such studies were needed in developing countries and regions. The Government member of the United States proposed deleting “that will be required”. The amendment was adopted as subamended.

280. The Government member of France introduced an amendment to add the words “and in integration policies” at the end of the third bullet point, which was adopted.

281. Paragraph 33 was adopted as amended.

Paragraph 34

282. The Government members of Argentina, Brazil, Costa Rica, Ecuador, Mexico and Nicaragua introduced an amendment to insert the words “in member States and” between “assist” and “employers” in the first sentence since ILO member States also needed assistance in establishing national mechanisms of social dialogue. The Government member of the Dominican Republic supported the amendment, which was adopted.

283. Paragraph 34 was adopted as amended.

Paragraph 35

284. In separate amendments, the Government members of Australia and Japan, and Costa Rica and Nicaragua proposed to delete the second sentence which read “For this purpose, consideration shall be given to the need to establish a Permanent Committee on Migration

of the ILO Governing Body” in the light of budgetary constraints which required funds to be channelled as a matter of priority into such vital activities as capacity building. The Worker Vice-Chairperson did not agree with the proposed deletion, and felt that the sentence was a signal to the Governing Body of the importance of this issue. She proposed a subamendment that would involve replacing the word “[consideration] shall” in the second sentence with “[consideration] may”. The proposal would not divert significant resources for the work of the new committee, and the final decision should be left to the Governing Body. The Government member of the United States supported the amendment to delete the sentence. All issues to be taken up by the new committee could be addressed by the Committee on Employment and Social Policy (ESP) of the Governing Body. However, in a spirit of compromise she proposed a further subamendment to read “future consideration may”. The Government member of Colombia proposed merging the first and second sentences which would then read “The ILO ... action, possibly giving consideration to the appropriateness of establishing ...” The Employer Vice-Chairperson said he could accept that subamendment. The Worker Vice-Chairperson rejected the proposal to insert the word “future” in the subamendment. She pointed out that the ESP Committee had not once in the last 12 years taken up the issue of labour migration. The Government member of the United States agreed to delete the word “future” from her subamendment. She nonetheless wanted to put on record the existing budget constraints, and that the ESP Committee had the mandate to address the issue of migration. The Government members of Canada and Japan also associated themselves with the latter comment. The Government member of Nigeria expressed concern about the views of some Government members from developed countries on the issue. She said that the Governing Body was in the best position to decide on the matter. The amendment was adopted as subamended.

285. Paragraph 35 was adopted as amended.

Paragraph 36

286. Paragraph 36 was adopted without amendment.

Consideration and adoption of the report

287. The Committee considered its draft report at its fifteenth sitting. The Reporter introduced the draft report, with the annexed resolution and conclusions as amended by the Committee. He said that the report reflected the cooperative spirit which had prevailed in the Committee and the genuine efforts made by all parties to reach viable and reasonable compromises. He submitted it for consideration and adoption as a comprehensive, true and faithful account of the Committee’s work. While international migration was a complex and controversial issue, a consensus had emerged in the Committee discussions on the need for better and more effective management of migration to better protect migrant workers. He hoped that the ILO would become better equipped to move towards creating a fair deal for migrant workers in the global economy based on the agreed plan of action.

288. The Secretary-General of the Conference, Mr. Juan Somavia, noted that the Committee had addressed some of the most contentious issues that were facing the international community. Migration profoundly affected societies and raised sensitive political issues. He congratulated the Committee on rising to a major challenge and reaching consensus on a plan of action for a non-binding multilateral framework for rights-based management of labour migration for ensuring a fair deal for migrant workers. The Committee had demonstrated the ability of tripartism to reach balanced results through social dialogue. The Office, for its part, would do its utmost to ensure that the outcome was translated into

concrete action through the Governing Body. It would also inform other organizations that had mandates and responsibilities in the area of migration of the plan of action and the steps taken to facilitate dialogue.

- 289.** The Committee unanimously adopted the report, subject to minor amendments and corrections to specific paragraphs submitted by some members.
- 290.** The Worker Vice-Chairperson thanked the Chairperson for his strong leadership, patience, and flexibility, which were critical in making the Committee deliberations a success. She thanked the Employer members for their cooperation and willingness to compromise on various issues to reach a consensus. She also thanked the Government members for engaging in serious and meaningful discussions. The Employer Vice-Chairperson expressed his group's gratitude to Government members for making laudable efforts in finding consensus solutions on the issue of migrant workers. He also thanked the Workers' group for the understanding reached on a number of issues. Finally he joined the Workers' group in thanking the Chairperson for his effective leadership. The Employer and Worker members thanked the Reporter, the secretariat, the interpreters and translators, who had all played an essential role in bringing about the Committee's good results.
- 291.** The Government member of Ireland, speaking on behalf of the Government members of the Committee Member States of the EU, was happy that a resolution had been adopted on a very important issue, and thanked the Employer and Worker members and the Chairperson for the successful outcome. He also extended thanks to the other delegates from the EU and especially to new members. The Government member of the Philippines considered that the Committee's conclusions represented a big step forward for migrant workers all over the world.
- 292.** The Chairperson stated that it had been a great pleasure to work with the Committee members on the important and complex issue of migrant workers. He had appreciated the open and frank discussions and the fact that there had been willingness to reach out to one another. The Committee had shown wisdom in striving for workable solutions. He congratulated the Employer Vice-Chairperson and the Worker Vice-Chairperson for their demonstrated leadership in negotiating to reach a consensus on what was feasible. He appreciated the efforts of the Government members in accommodating the views of the Employer and Worker members. The result of the Committee's work had also shown that the ILO's strength lay in its tripartism. He appreciated the supportive role and contribution of the secretariat. The Reporter, the interpreters and translators all deserved praise for their hard and diligent work. In concluding, the Chairperson hoped that the Committee's work would contribute to making decent work a reality to all workers in the world without exception.

Geneva, 15 June 2004.

(Signed) Y. Dé,
Chairperson.

N. Kebbon,
Reporter.

Resolution concerning a fair deal for migrant workers in a global economy

The General Conference of the International Labour Organization, meeting in its 92nd Session, 2004,

Having undertaken a general discussion based on an integrated approach on the basis of Report VI, *Towards a fair deal for migrant workers in the global economy*,

1. Adopts the following conclusions;
2. Invites the Governing Body to give due consideration to them in planning future action on migrant workers and to request the Director-General to take them into account both when preparing the Programme and Budget for the 2006-07 biennium and allocating such other resources as may be available during the 2004-05 biennium.

Conclusions on a fair deal for migrant workers in a global economy

Issues and challenges

1. The preparatory report for the present general discussion *Towards a fair deal for migrant workers in the global economy*, the rich and multifaceted discussion held in the Conference Committee as well as the report of the World Commission on the Social Dimension of Globalization reflect a clear consensus on the fact that international migration is increasingly important in the global economy of today. Nearly all countries today are affected by international migration, either as origin, transit or destination countries – and in many cases all these capacities. The rising mobility of people in search of opportunities and decent work and human security has been commanding the attention of policy-makers and prompting dialogue for multilateral cooperation in practically every region of the world. The ILO's mandate in the world of work as well as its competencies and unique tripartite structure entrust it with special responsibilities regarding migrant workers. Decent work is at the heart of this. The ILO can play a central role in promoting policies to maximize the benefits and minimize the risks of work-based migration and can work towards eliminating identifiable detriments of labour migration in collaboration with other international organizations.
2. Although migration has been a permanent phenomenon throughout history, international migration in the globalized economy is a growing and increasingly complex phenomenon. A very large part of contemporary migration is directly or indirectly related to the world of work. Of the 175 million people thought to be residing outside their countries of birth or citizenship, some 86 million are estimated to be economically active. Of these, 34 million are thought to be in developing regions. Women continue to constitute about half of all migrants, but most are now migrating on their own as primary income earners. Many people choose to migrate to improve their living standards and may migrate due to a lack of decent work opportunities at home; however, other factors contributing to migration include poverty, wars, famine and repression as well as population pressures and income inequalities. There are also instances of forced migration for work that should be eliminated.
3. Regional economic integration processes today provide opportunities for facilitating more productive use of labour within larger market spaces. Economic effects of migration for employment are mainly beneficial, allowing for non-inflationary economic expansion, job creation and rejuvenation of populations. Perceptions of adverse immigration impacts are often unfounded or exaggerated, although particular sectors have experienced declines in wages and conditions. Effects of labour migration on countries of origin, particularly less developed countries, are more complex.
4. It is recognized that among many of the beneficial elements of labour migration are non-inflationary economic expansion, job creation, growth and cross-fertilization of skills, technology exchange, rejuvenation of populations and stimulation of development through remittance flows. The ambition and the drive that motivate people to migrate generally help them to find jobs in many countries, work hard, and benefit both themselves and host country nationals. Demographic trends in some regions suggest that immigration will in some instances be an important component of a long-term solution to the anticipated problems raised by ageing. The ILO's Global Employment Agenda supports policies for economic growth and employment.

-
5. Despite the positive experiences of migrant workers, a significant number face undue hardships and abuse in the form of low wages, poor working conditions, virtual absence of social protection, denial of freedom of association and workers' rights, discrimination and xenophobia, as well as social exclusion. Gaps in working conditions, wages and treatment exist among migrant workers and between migrant and national workers. In a significant number of cases unemployment rates, job security and wages differ between regular migrant workers and national workers.
 6. The number of migrants in an irregular situation is rising, fuelled by the growth of informal forms of employment, shortages of workers for dirty, demeaning and dangerous jobs ("3D-jobs") and lack of opportunities for regular labour migration. The absence of formal management for migration and national policies in some countries contributes to the increasing number of irregular migrants. The increase in trafficking, especially of women and children, poses a particular threat to human rights protections and creates new challenges for governments and the international community. Victims of trafficking face abusive and exploitative situations, often without effective access to legal protection. In some countries, some irregular migrant workers face similar situations, including sexual and physical harassment, debt bondage, retention of identity documents and threats of denunciation to the authorities, without effective access to legal protection. Private fee-charging recruitment agencies are increasingly involved in international migration and despite efforts both at the national and international levels to regulate this market, some engage in unethical practices which may contribute to irregular migration, causing hardship to migrant workers.
 7. Temporary workers and migrant domestic workers often have limited legal rights, may be excluded from social security benefits and may face multiple disadvantages.
 8. The complex relationship between migration and development is another issue that is attracting increasing attention. While the potential long-term benefits of circular migration, cross-fertilization of skills and technology exchange have been recognized, the permanent loss of critically skilled workers in many developing countries is nonetheless an increasing issue of concern. This involves the loss of scarce national economic resources that have been invested in education and training. There is a need for further studies and analyses of the effects of the movements of highly skilled migrant workers and those with advanced education on economic and social development in developing countries. Health-care capacity of a number of countries has been particularly affected by the departure of trained doctors and nurses. In addition to the economic costs, there are often social costs to the families of migrant workers, including family dislocation, children growing up without parents, disrupted schooling, and the spread of HIV/AIDS.
 9. While returning migrant workers bring back skills, capital, experience and knowledge, these benefits from labour migration can be enhanced by appropriate and equitable conditions to support the return of migrants. Remittance flows represent the second largest source of external funding for developing countries after foreign direct investment; they are transfers of private individual earnings, and usually go towards improved housing, nutrition, schooling and health care. Many of these activities have a significant multiplier effect, with the potential to reduce poverty and expand decent work. Increased remittance flows should not substitute for sound macroeconomic policy, investment in public services and official development assistance (ODA). Improved policies and effective and targeted ODA are also required to reduce poverty in developing countries and to promote decent work as a central objective of national and international economic policies.

Policy approaches

- 10.** Acknowledging the sovereign right of all States to develop their own migration and labour policies, it is accepted that multilateral rules, standards or, as appropriate, guidelines, play an important role to make policies coherent, effective and fair. In that context, coherent, comprehensive, consistent and transparent policies are required to effectively manage migration. National policies and their administration must also be viable, adaptable, dynamic and flexible. All relevant ministries, and in particular labour ministries, merit a key role in policy formulation, elaboration, management and administration of labour migration to ensure that labour and employment policy considerations are taken into account. Effective administration of labour migration requires structures and mechanisms with necessary competencies and capacities within these ministries. Structures and regular mechanisms for social dialogue on migration policy are necessary for meaningful involvement of representative employers' and workers' organizations. Mechanisms for consultation with civil society and migrant groups are also needed.
- 11.** To be effective, credible and enforceable, national policy and practice regarding labour migration and the protection of migrant workers require a sound legal foundation based on the rule of national and international law. A broad array of international labour standards contain principles and rights to guide national law and policy on managing labour migration and the protection of migrant workers. The Migration for Employment Convention, 1949 (No. 97), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), and their accompanying Recommendations Nos. 86 and 151, in particular, call for cooperation among States, and measures to facilitate and control migration movements. They contain the underlying principle of equality of treatment between nationals and regular migrant workers, minimum standards of protection for all migrant workers, and provisions for participation of social partners in national policy formulation.
- 12.** All migrant workers also benefit from the protection offered by the ILO Declaration on Fundamental Principles and Rights at Work and its Follow-Up (1998). In addition, the eight core ILO Conventions regarding freedom of association and the right to bargain collectively, non-discrimination in employment and occupation, the prohibition of forced labour and the elimination of child labour, cover all migrant workers, regardless of status. The ILO Declaration makes specific reference to groups with special needs, specifically including migrant workers. Other ILO standards in areas such as employment, labour inspection, social security, maternity protection, wages, occupational safety and health, and private recruitment agencies as well as in such sectors as agriculture, construction and hotels and restaurants which traditionally employ a large number of migrant workers, also provide necessary guidance for national law and policy to ensure protection of migrant workers.
- 13.** Comprehensive national approaches to improving social welfare and social inclusion and cohesion in the context of labour migration are necessary and should be promoted. Important measures may include: entering into bilateral or multilateral agreements to provide social security coverage and benefits to regular migrant workers and, as appropriate, to migrant workers in irregular situations, in conformity with relevant international standards and practices; reflecting the differences in conditions facing men and women migrants through measures to improve conditions and reduce specific vulnerabilities faced by female migrants; promoting access to health care for migrant workers and their families, including promoting HIV/AIDS prevention; explicitly addressing discrimination and xenophobia against migrant workers, taking into account relevant recommendations in the Programme of Action adopted at the World Conference against Racism, Racial Discrimination, Xenophobia and Related Intolerance (Durban,

2001); and facilitating economic, social and cultural integration of regular migrant workers and family members into host societies.

- 14.** Employers confront numerous policy and practical challenges in employment of foreign workers, including: identifying, recruiting and ensuring entry of foreign workers through regular channels; complying with complex and lengthy administrative procedures; addressing document control; facing risks of sanctions for employing migrant workers without authorization; managing relations in multi-ethnic workplaces; and assuring proper training and workplace protection in multilingual contexts.
- 15.** For workers' organizations, labour migration poses particular concerns, notably: reaching migrant workers and organizing them into trade unions; ensuring solidarity between foreign and national workers, cooperating with employers to integrate migrants in multicultural workplaces; and obtaining access to policy forums to ensure that the views of men and women migrant workers are taken into account. Workers' organizations in countries of origin can assist migrant workers in obtaining accurate and comprehensive information about employment opportunities and workers' rights in destination countries.
- 16.** Measures to combat trafficking in persons should be strengthened. These measures should include provisions for the prosecution of persons engaged in trafficking, protection of and assistance to victims, coordination between domestic and international investigations, as well as efforts to address the root causes of the problem in countries of origin, including access to regular labour migration channels and to decent work and social protection alternatives in origin countries. Countries can also contribute to these measures by developing policies to combat and prevent irregular migration.
- 17.** Promotion of policies that maximize the contribution of migration to development is another essential component of a comprehensive policy to address the global context of migration. Among urgent required components are measures to reduce the costs of remittance transfers as well as developing incentives to promote productive investment of remittances. Equitable measures need to be explored to mitigate the loss of critically skilled workers, particularly in the public sectors of developing countries. Consideration may be given to allocating development assistance to projects and programmes generating or increasing employment in decent conditions. Facilitating training and return of migrants, transfer of capital and technology by migrants, and migrant transnational business initiatives are other options that could be promoted.
- 18.** While recognizing the sovereignty of States in determining their own migration policy, the need for international cooperation on migration, and in particular labour migration, among government and other stakeholders is manifested by the emergence of intergovernmental dialogue on migration policy in nearly every region of the world. This is evidenced by the current time-bound activities of the Berne Initiative and the Global Commission on International Migration, as well as ongoing policy dialogue activities under the auspices of the International Organization for Migration, the Office of the United Nations High Commissioner for Refugees and the ILO.
- 19.** The ILO has for many years been actively engaged in many areas of labour migration policy, ranging from elaborating policy approaches on protecting departing migrant workers to offering advice on how to address problems of irregular migration. It manages technical cooperation projects, provides training for policy-makers and administrators, and renders advisory services on policy development, legislation, and organizational development.

An ILO plan of action for migrant workers

20. A fair deal for all migrant workers requires a rights-based approach, in accordance with existing international labour standards and ILO principles, which recognizes labour market needs and the sovereign right of all nations to determine their own migration policies, including determining entry into their territory and under which conditions migrants may remain. As part of the broader commitment to promoting decent work, the ILO and its constituents agree on the desirability of maximizing the benefits to all that can flow from: (i) promoting policies that give priority to economic growth and employment; and (ii) encouraging regular labour migration. It is recognized that this goal requires a commitment to adopt national policies aimed at equal treatment of migrant workers with nationals in respect of national labour laws and access to applicable social protections, combating the exploitation often associated with migrants in irregular status, and the promotion of basic human rights for all migrants. It is clear that closer cooperation among sovereign States and the tripartite constituents can contribute towards more effective labour migration processes and protection systems. Many countries have requested technical assistance in improving their policies and legislation. In order to advance this agenda, the ILO and its constituents will carry out a plan of action in partnership with other relevant international organizations. The Office shall keep the ILO Governing Body and any other relevant ILO Committees informed of the progress of its implementation.

21. This plan of action shall include:

- development of a non-binding multilateral framework for a rights-based approach to labour migration which takes account of labour market needs, proposing guidelines and principles for policies based on best practices and international standards;
- identification of relevant action to be taken for a wider application of international labour standards and other relevant instruments;
- support for implementation of the ILO Global Employment Agenda at national level;
- capacity building, awareness raising and technical assistance;
- strengthening social dialogue;
- improving the information and knowledge base on global trends in labour migration, conditions of migrant workers, and effective measures to protect their rights;
- mechanisms to ensure ILO Governing Body follow-up of the plan of action and ILO participation in relevant international initiatives concerning migration.

22. A high priority should be given to capacity building and technical assistance, in line with this plan of action.

A non-binding multilateral framework for migrant workers in a global economy

23. In order to assist member States to develop more effective labour migration policies, the tripartite constituents have agreed to develop a non-binding multilateral framework for a rights-based approach to labour migration which takes account of national labour market needs. Such a framework will be drawn from, and based on, available information on policy and best practices in countries engaged in international migration, existing proposals to enhance the economic benefits of migration, relevant international labour standards, the 1998 Declaration on Fundamental Principles and Rights at Work and its

Follow-up, and other relevant international instruments. This framework should be of particular interest to countries emerging either as origin, destination or transit countries.

24. This framework will comprise international guidelines on best practices on areas including, but not limited to, the following:

- having regard to labour market needs and demographic trends in the various countries, expanding avenues for regular labour migration;
- promoting managed migration for employment purposes, including bilateral and multilateral agreements between host countries and countries of origin addressing different aspects of migration such as admission procedures, flows, social security, family reunification possibilities, integration policy and return;
- promoting managed migration to address the impact of an ageing population on national economies, where appropriate;
- licensing and supervision of recruitment and contracting agencies for migrant workers in accordance with ILO Convention No. 181 and Recommendation No. 188, with the provision of clear and enforceable contracts by those agencies;
- promoting decent work for migrant workers;
- preventing abusive practices, migrant smuggling and trafficking in persons;
- protecting and promoting the human rights of all migrant workers;
- promoting measures to ensure that all migrant workers benefit from the provisions of all relevant international labour standards;
- promoting awareness of migrant workers' rights;
- preventing and combating irregular labour migration;
- improving labour inspection and creation of channels for migrant workers to lodge complaints and seek remedy without intimidation;
- measures to reduce the cost of remittance transfers;
- incentives to promote productive investment of remittances;
- measures to ensure that all migrant workers are covered by national labour legislation and applicable social laws;
- policies to encourage return migration, reintegration into the country of origin and transfer of capital and technology by migrants;
- promoting guidelines for ethical recruitment of migrant workers and exploring mutually beneficial approaches to ensure the adequate supply of skilled health and education personnel that serve the needs of both sending and receiving countries, including through bilateral and multilateral agreements;
- addressing the specific risks for all migrant workers, men and women, in certain occupations and sectors with particular emphasis on dirty, demeaning and dangerous jobs, and on women in domestic service and the informal economy;

-
- promoting social integration and inclusion, reducing discrimination against migrant workers and measures to combat racism and xenophobia;
 - facilitating the portability of social security entitlements and other relevant entitlements through bilateral, regional or multilateral agreements in relation to regular migrants;
 - promoting the recognition and accreditation of migrant workers' skills and qualifications, as appropriate, in order to enhance their employability.
25. The ILO, in consultation with Government members, the social partners and relevant experts will develop the guidelines contained in this non-binding multilateral framework for consideration by the ILO Governing Body in November 2005.
26. Recognizing the importance of work currently being carried out in the existing international forums in the area of migration, an ILO forum may be established in partnership with other relevant international organizations to provide a platform for increased tripartite dialogue on labour migration and increased policy coherence on this subject.

International labour standards and other relevant instruments

27. ILO Convention No. 97 has been ratified by 42 countries and Convention No. 143 has been ratified by 18 countries. The Office shall undertake to identify the impediments to the ratification of these Conventions, taking into account that labour migration has evolved since their inception, and other relevant instruments have been developed at national, regional and international levels, such as the United Nations International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families (1990) and the United Nations Convention against Transnational Organized Crime (2000) and its two associated Protocols. The ILO may take appropriate steps to better promote the ratification of Conventions Nos. 97 and 143, and the application of the principles they contain pertaining to the protection of migrant workers. This initiative should also encompass other particularly relevant standards for migrant workers, including the fundamental ILO Conventions and ILO standards concerning private employment agencies, social security, protection of wages, labour inspection, and occupational safety and health.
28. Consistent with effective management of migration, due consideration should be given to the particular problems faced by irregular migrant workers and the vulnerability of such workers to abuse. It is important to ensure that the human rights of irregular migrant workers are protected. It should be recalled that ILO instruments apply to all workers, including irregular migrant workers, unless otherwise stated. Consideration should be given to the situation of irregular migrant workers, ensuring that their human rights and fundamental labour rights are effectively protected, and that they are not exploited or treated arbitrarily. Due consideration should also be given to the gender dimension in the application of relevant international labour standards, as well as to the various categories of temporary migrant workers, including seasonal workers.
29. Further research should be carried out on how to address some of the lacunae that have been identified in ILO standards on migrant workers, for example, through additional measures and guidelines for national legislation, policy and practice. Participants endorsed the conclusions of the 1997 Tripartite Meeting of Experts on Future ILO Activities in the

Field of Migration and called on the ILO to promote the implementation of the conclusions on migrant workers in time-bound activities.

- 30.** The ILO shall periodically prepare and widely disseminate a report on the implementation of international labour standards relevant to migrant workers.

Capacity building and technical assistance

- 31.** Considering the needs expressed by many member States for technical assistance in many areas of labour migration policy and administration, expanded advisory services and technical cooperation should be a key priority for the ILO to help governments and social partners formulate and give effect to national and regional policies and practices concerning labour migration. Such capacity building and technical assistance should, inter alia, further the following activities:

- support the development of gender-sensitive national migration policies;
- support member States in reviewing and updating laws and regulations, undertaking practical measures on labour migration, and improving the functioning of administrative arrangements and enforcement mechanisms;
- support member States in mitigating the circumstances driving migration through the generation of decent work opportunities in countries, including through the implementation of the ILO Global Employment Agenda at the national level;
- help build capacity for monitoring labour migration at the national level;
- support member States in capacity building for developing national databases concerning migrant workers;
- strengthen the capacity of workers' and employers' organizations to participate in the formulation and implementation of labour migration and integration policies, and promote equal treatment of migrant workers;
- promote awareness and better understanding of the ILO standards relevant to migrant workers and assist member States in conforming national labour migration policies and programmes to these standards;
- develop and promote measures and activities to combat racism, discrimination and xenophobia;
- promote awareness of labour rights;
- strengthen labour legislation so as to ensure that it provides labour protection for migrant workers and protects labour principles and rights identified in relevant ILO Conventions and instruments;
- strengthen the capacity of authorities, including labour inspection services and labour tribunals, to secure compliance with labour laws, with a particular focus on the situation of migrant workers, by building transparency, knowledge and professionalism, and by sharing best practices.

- 32.** The ILO International Training Centre in Turin should be involved in the development and carrying out of these capacity-building activities and technical assistance projects.

Development of a global knowledge base

33. Together with its constituents and, as appropriate, in conjunction with other international organizations, the ILO should continue building a global knowledge base on international labour migration, focusing its research and strengthening its knowledge management tools in the following areas:
- continued qualitative and quantitative research in areas of migration for employment, including on the gender dimensions of migration;
 - develop models for future information exchange on job openings and skills needs for foreign workers;
 - collection and dissemination of information and profiles of “best practices” in relevant categories of labour migration management and in integration policies;
 - specific assistance to constituents to improve and build capacity to collect and analyse sex-disaggregated data;
 - cooperation and exchange among countries to improve migration statistics, particularly by expansion of the ILO’s International Labour Migration Database;
 - studies of long-term labour market developments that are relevant to future migration flows, and adjustment policies to maximize mutual benefits.

Social dialogue

34. ILO support is required to assist its member States and employers’ and workers’ organizations in establishing national mechanisms of social dialogue on migration, facilitating participation of social partners in relevant international forums, preparing educational materials, providing services to migrants, conducting anti-discrimination and integration activity, and addressing other concerns.

Follow-up

35. The ILO Governing Body, as appropriate, shall periodically review the progress made in implementing these conclusions and plan of action. For this purpose, consideration may be given to the need to establish a Permanent Committee on Migration of the ILO Governing Body.
36. The ILO is expected to participate actively in relevant international forums and to enhance cooperation with other relevant international organizations for the furtherance of this plan of action.

CONTENTS

	<i>Page</i>
<i>Sixth item on the agenda: Migrant workers (general discussion based on an integrated approach):</i>	
Report of the Committee on Migrant Workers	1
Resolution concerning a fair deal for migrant workers in a global economy	55
Conclusions on a fair deal for migrant workers in a global economy	56